

AN ACT

ENTITLED, An Act to define when concurrent employment may be used to calculate earnings in workers' compensation cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That the code be amended by adding a NEW SECTION to read:

The Legislature finds that the aggregation of wages from concurrent employment was not within the Legislature's intent when it enacted the definition of earnings in subdivision 62-1-1(6). Therefore, the holding in *Wheeler v. Cinna Bakers LLC*, 2015, 864 N.W. 2d 17, 2015, regarding the aggregation of wages is abrogated.

Section 2. That chapter 62-1 be amended by adding a NEW SECTION to read:

For a workers' compensation claim arising before May 6, 2015, an employee's earnings up to the claimed date of injury are calculated exclusively on the wages earned at the place of employment where the injury occurred.

Section 3. That chapter 62-1 be amended by adding a NEW SECTION to read:

For a workers' compensation claim arising after May 5, 2015, if an employee was working for more than one employer, the employee's earnings used to calculate the employee's average weekly wage in §§ 62-4-24, 62-4-25, or 62-4-26 shall include the amount of compensation for the number of hours commonly regarded as a day's work for each employer in which the person was concurrently employed at the time of the person's injury; however, an employee's earnings from concurrent employment are aggregated only if the injury occurred when the employee was actively working in the concurrent employment and when the injury prevents the employee from performing the employee's duties at the employee's other concurrent employment.

Section 4. That subdivision (6) of § 62-1-1 be amended to read:

(6) "Earnings," the amount of compensation for the number of hours commonly regarded as

a day's work for the employment in which the employee was working at the time of the employee's injury. It includes payment for all hours worked, including overtime hours at straight-time pay, and does not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed by the employee by the nature of the employment; wherever allowances of any character made to an employee in lieu of wages are specified as a part of the wage contract, the allowances shall be deemed a part of the employee's earnings;

Section 5. That chapter 62-6 be amended by adding a NEW SECTION to read:

An employer which complies with this title shall produce, if demanded by any employer or insurer against whom an injured employee has made a workers' compensation claim, the work-related records referring to its employee available for the fifty-two weeks preceding the employee's claimed dates of injury, such as:

- (1) The weeks in which the employee performed services;
- (2) The earnings the employee received for the services, as defined in subdivision 62-1-1(6);
- (3) Interruptions in employment if the employee was rehired or seasonally employed;
- (4) Changes in the employee's grade of employment;
- (5) The employee's job description; and
- (6) Federal or state tax deductions.

The employer receiving this demand shall produce the employee's work-related records in ten business days, and may charge a fee for the production of the records. The fee for the production of the employee's work-related records may not exceed fifteen dollars.

An employee waives any right to privacy to these work-related records when the employee makes a claim for workers' compensation benefits and the employee consents to the release of these work-related records to the employer or insurer against which the employee is making a claim for workers'

compensation benefits.

Section 6. That chapter 62-2 be amended by adding a NEW SECTION to read:

The Workers' Compensation Advisory Council shall include in its annual report data about the average amount of disability or fatality benefits paid for a claim over the most recent calendar years, the ratio of disability and fatality benefits to overall benefits paid, and any changes in premium base rates directly attributable to including concurrent earnings in benefits. It shall report to the 2019 Legislature the impact of this Act.

Section 7. That § 58-20-3.1 be amended to read:

58-20-3.1. Premiums for workers' compensation insurance may not be based on wages paid to employees while they are on vacation, holidays, or sick leave or on wages received from employment not performed for the insured employer.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1084

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1084  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State