

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

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

From and after May 6, 2015, earnings shall include the amount of compensation for the number of hours commonly regarded as a day's work for any employments in which the person was engaged at the time of the person's injury. Earnings shall include any forms of compensation identified in SDCL 62-1-1(6). "Engaged" means the person was an employee as defined in SDCL 62-1-3 on the date of the person's injury, or was covered by SDCL 62-1-4.1 through 62-1-5.2 for which no earnings are imputed unless the injury arose out of and in the course of that work.

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

An employer which is deemed to have accepted the provisions of Title 62 by complying with SDCL 62-3-5 shall produce, if demanded by the employers or insurers against whom an injured employee has made a workers' compensation claim, all payroll records referring to its employee available for the fifty-two weeks preceding the employee's claimed dates of injury, including:

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

The employer receiving such a demand shall produce such records in ten business days, and shall be entitled to charge a reasonable fee for the production of the information.

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

The Legislature finds that, for claims in which neither medical nor indemnity benefits were being paid or were owed preceding May 6, 2015, an employee's earnings up to the claimed date of injury were to be calculated based exclusively on the employment in which an employee's injury occurred. The Legislature also finds that the application of the concurrent earnings doctrine to claims in which neither medical nor indemnity benefits were being paid or were owed as of May 6, 2015 improperly alters the requirement that earnings be based exclusively on the injury employment. Therefore, the concurrent earnings rule in *Wheeler v Cinna Bakers*, 2015 SD 25 is hereby abrogated as to those claims.

Section 4. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as follows:

The Legislature intends, as to an employee's claims in which neither medical nor indemnity benefits were being paid or were owed preceding May 6, 2015, only to abrogate the concurrent earnings doctrine expressly adopted by the court, thereby returning the common law of this state to its status

immediately prior to the court's decision in *Wheeler v Cinna Bakers*, 2015 SD 25, which the Legislature understands to be that earnings from the employment at which the employee was injured cannot be combined with other employments to determine earnings for the purpose of calculating an employee's average weekly wage. The Legislature does not intend to affect any other rule or principle of statutory or common law, including but not limited to the calculation of post-injury earnings in 62-4-5, and volunteer earnings in 62-1-5.1.

Section 5. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as follows:

Compensation received by an employee performing services for an educational institution in a period between two successive academic years or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, shall not be aggregated with earnings from the employment in which the employee was injured.

Section 6. That chapter 62-1 be amended by adding thereto a NEW SECTION to read as follows:

Compensation received by an employee engaged in interstate or foreign commerce, or in any case where the laws of the United States provide for compensation or for liability for injury or death by accident of the employee, shall not be aggregated with earnings from the employment in which the employee was injured.

Section 7. That chapter 62-2 be amended by adding thereto a NEW SECTION to read as follows:

The workers' compensation advisory council shall include in its annual report data about the average amount of disability or fatality benefits paid per 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 recommend to the 2019 Legislature whether to continue, revise or repeal this Act.