

**2021 House Bill No. 1408**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by Tim Wahlin**  
**Workforce Safety and Insurance**  
**February 1, 2021**

Mr. Chairman and Members of the Committee, my name is Tim Wahlin. I am the Chief of Injury Services at WSI. I am here today to provide testimony regarding HB 1408. The WSI Board does not support this bill.

This bill would alter the calculation of wages for injured employees. By way of reference, NDCC 65-01-02(6) defines "Average weekly wage" and identifies formulas used for varying types of employment. "Wages" are defined, in relevant part, as "remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes." NDCC 65-01-02(37)(a)(1). An employee's lost earnings are replaced by WSI should an injury create a disability.

The bill would add to the wage calculation any amounts paid by an employer for health care coverage and "monthly" contributions into a retirement system. For employers maintaining those fringe benefits, it may increase the indemnity payments an injured employee will receive depending upon the employee's level of earnings.

North Dakota's indemnity, or wage replacement benefit system, is regressive by nature. Wage replacement benefits are capped at a maximum of 125% of the average weekly wage in the state, currently \$1,292. An injured employee earning more than this amount will not be fully compensated for lost wages. Additionally, those below the minimum \$620 per week (60% of the state's average wage) are guaranteed their net wages after deducting social security taxes and federal income taxes. This minimum calculation exceeds the standard two-thirds gross wages all other employees earning above the minimum threshold are paid. Because indemnity benefits are not taxable, and because it has consistently been the legislature's policy that wage loss benefits not exceed actual earnings, these reductions are in place.

There is uncertainty regarding application of the bill for minimum calculation purposes. The bill alters the definition of wages, yet application and identification of the minimum calculation appears at NDCC 65-05-09. Should this bill proceed, the organization will need additional direction regarding the inclusion or exclusion of these fringe benefits in deriving an employee's minimum calculation. For purposes of developing the fiscal impact, the organization has excluded application of these amounts in applying the minimum calculations.

The WSI Board opposes the bill for several reasons. First, inclusion of these benefits can compensate an employee more than they were earning while working. Most wage loss scenarios are of short duration and an employee returns to the employer of injury. For injury years 2019 and 2020, 48% of all indemnity claims were less than 31 days. In these circumstances the employee will continue to be covered by the employer health plan and

additionally receive credit in the form of wages for that benefit. In other words, the employee will receive double compensation for that amount. The same may well occur with employer contributions to a retirement program but it is dependent upon the type of program in place.

Additionally, the Board's position is based upon the administrative complexity this creates in developing an employee's wage. Currently the WSI wage calculations can be generated by using pay stubs or tax documents such as W-2's. Gathering consistent information regarding the existence of employer health plans, whether the employee has elected coverage, or the amount of employer participation is complicated and onerous. This is especially true if an employee has numerous employers. Obviously balancing benefits against the administrative burden is for this body to determine in deriving North Dakota policy.

Finally, the Board expressed more concern regarding the complexity of inclusion of employer contributions to retirement programs. They indicated often these are elective and an employee's participation can vary widely even within a given year. Often the lowest paid or employees with the greatest need are unable to participate in these plans. As a result, these employees would yield no benefit from the inclusion. They also indicated in some employment, retirement contributions are not derived until year-end, so for those employees, accurate inclusion would be impossible.

This concludes my testimony. I would be happy to answer any questions you may have at this time.