

44-511. Definitions; average weekly wage; volunteers; state's average weekly wage. (a) As used in this section:

- (1) The term "money" shall be construed to mean the gross remuneration, on an hourly, output, salary, commission or other basis earned while employed by the employer, including bonuses and gratuities. Money shall not include any additional compensation, as defined in paragraph 2.
- (2) (A) The term "additional compensation" shall include and mean only the following: (i) Board and lodging when furnished by the employer as part of the wages, which shall be valued at a maximum of \$25 per week for board and lodging combined, unless the value has been fixed otherwise by the employer and employee prior to the date of the accident or injury, or unless a higher weekly value is proved; and (ii) employer-paid life insurance, disability insurance, health and accident insurance and employer contributions to pension and profit sharing plans.
- (B) In no case shall additional compensation include any amounts of employer taxes paid by the employer under the old-age and survivors insurance system embodied in the federal social security system.
- (C) Additional compensation shall not be included in the calculation of average wage until and unless such additional compensation is discontinued. If such additional compensation is discontinued subsequent to a computation of average weekly wages under this section, there shall be a recomputation to include such discontinued additional compensation.
- (3) The term "wage" shall be construed to mean the total of the money and any additional compensation which the employee receives for services rendered for the employer in whose employment the employee sustains an injury arising out of and in the course of such employment.
- (b) (1) Unless otherwise provided, the employee's average weekly wage for the purpose of computing any compensation benefits provided by the workers compensation act shall be the wages the employee earned during the calendar weeks employed by the employer, up to 26 calendar weeks immediately preceding the date of the injury, divided by the number of calendar weeks the employee actually worked, or by 26 as the case may be.
- (2) If actually employed by the employer for less than one calendar week immediately preceding the accident or injury, the average weekly wage shall be determined by the administrative law judge based upon all of the evidence and circumstances, including the usual wage for similar services paid by the same employer, or if the employer has no employees performing similar services, the usual wage paid for similar services by other employers. The average weekly wage so determined shall not exceed the actual average weekly wage the employee was reasonably expected to earn in the employee's specific employment, including the average weekly value of any additional compensation.
- (3) The average weekly wage of an employee who performs the same or a very similar type of work on a part-time basis for each of two or more employers, shall be the sum of the average weekly wages of such employee paid by each of the employers.
- (4) In determining an employee's average weekly wage with respect to the employer against whom claim for compensation is made, no money or additional compensation paid to or received by the employee from such employer, or from any source other than from such employer, shall be included as wages, except as provided in this section. No wages, other compensation or benefits of any type, except as provided in this section, shall be considered or included in determining the employee's average weekly wage.
- (5) (A) The average weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, ambulance attendants and drivers as provided in subsection (b) of K.S.A. 44-508, and amendments thereto, firefighter or members of regional emergency medical response teams as provided in K.S.A. 48-928, and amendments thereto, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the dollar amount closest to, but not exceeding, 112½% of the state average weekly wage.
- (B) The average weekly wage of any person performing community service work shall be deemed to be \$37.50.
- (C) The average weekly wage of a volunteer member of the Kansas department of civil air patrol officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto, shall be deemed to be \$476.38. Whenever the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act are increased for payroll periods chargeable to fiscal years commencing after June 30, 1988, the average weekly wage which is deemed to be the average weekly wage under the provisions of this subsection for a volunteer member of the Kansas department of civil air patrol shall be increased by an amount, adjusted to the nearest dollar, computed by multiplying the average of the percentage increases in all monthly steps of such pay plan by the average weekly wage deemed to be the average weekly wage of such volunteer member under the provisions of this subsection prior to the effective date of such increase in the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act.
- (D) The average weekly wage of any other volunteer under the workers compensation act, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the usual wages paid by the employer for such services to employees who are not volunteers, or, if the employer has no employees performing such services for wages who are not volunteers, the average weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who are not volunteers. Volunteer employment is not presumed to be full-time employment.
- (c) The state's average weekly wage for any year shall be the average weekly wage paid to employees in insured work subject to Kansas employment security law as determined annually by the secretary of labor as provided in K.S.A. 44-704, and amendments thereto.
- (d) Members of a labor union or other association who perform services in [on] behalf of the labor union or other association and who are not paid as full-time employees of the labor union or other association and who are injured or suffer occupational disease in the course of the performance of duties in [on] behalf of the labor union or other association shall recover compensation benefits under the workers compensation act from the labor union or other association if the labor union or other association files an election with the director to bring its members who perform such services under the coverage of the workers compensation act. The average weekly wage for the purpose of this subsection shall be based on what the employee would earn in the employee's general occupation if at the time of the injury the employee had been performing work in the employee's general occupation. The insurance coverage shall be furnished by the labor union or other association.
- History:** L. 1927, ch. 232, § 11; L. 1933, ch. 74, § 1 (Special Session); L. 1941, ch. 263, § 1; L. 1955, ch. 250, § 5; L. 1974, ch. 203, § 18; L. 1977, ch. 175, § 3; L. 1979, ch. 156, § 9; L. 1986, ch. 189, § 2; L. 1987, ch. 187, § 9; L. 1988, ch. 167, § 6; L. 1993, ch. 286, § 37; L. 2001, ch. 121, § 3; L. 2002, ch. 149, § 4; L. 2004, ch. 179, § 16; L. 2011, ch. 55, § 13; May 15.