

# HOUSE BILL 484

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By: **Delegates Morales, Angel, Carr, Glenn, Gutierrez, Hettleman, Hill, C. Howard, Krimm, Lafferty, J. Lewis, R. Lewis, Lierman, Luedtke, Moon, Sanchez, Turner, Wilkins, and P. Young**

Introduced and read first time: January 25, 2018

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Average Weekly Wage – Multiple Employers**

3 FOR the purpose of requiring that the weekly wages from the employments of a covered  
4 employee who, at the time of an accidental personal injury, was concurrently  
5 employed by more than one employer be combined for purposes of computing the  
6 average weekly wage; making certain conforming changes; providing for the  
7 application of this Act; and generally relating to the computation of the average  
8 weekly wage of a covered employee.

9 BY repealing and reenacting, without amendments,  
10 Article – Labor and Employment  
11 Section 9–602(a), 9–630(b), and 9–637(c)  
12 Annotated Code of Maryland  
13 (2016 Replacement Volume and 2017 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – Labor and Employment  
16 Section 9–602(l)  
17 Annotated Code of Maryland  
18 (2016 Replacement Volume and 2017 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
20 That the Laws of Maryland read as follows:

21 **Article – Labor and Employment**

22 9–602.

23 (a) (1) Except as otherwise provided in this section, the average weekly wage

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 of a covered employee shall be computed by determining the average of the weekly wages  
2 of the covered employee:

3 (i) when the covered employee is working full time; and

4 (ii) at the time of:

5 1. the accidental personal injury; or

6 2. the last injurious exposure of the covered employee to the  
7 hazards of an occupational disease.

8 (2) For purposes of a computation under paragraph (1) of this subsection,  
9 wages shall include:

10 (i) tips; and

11 (ii) the reasonable value of housing, lodging, meals, rent, and other  
12 similar advantages that the covered employee received from the employer.

13 (3) If a covered employee establishes that, because of the age and  
14 experience of the covered employee at the time of the accidental personal injury or last  
15 injurious exposure to the hazards of the occupational disease, the wages of the covered  
16 employee could be expected to increase under normal circumstances, the expected increase  
17 may be taken into account when computing the average weekly wage of the covered  
18 employee under paragraph (1) of this subsection.

19 (l) (1) This subsection applies only to a covered employee who:

20 (i) has suffered:

21 1. a serious permanent partial disability under § 9–630 of  
22 this subtitle; or

23 2. a permanent total disability under § 9–637 of this subtitle;

24 (ii) was concurrently employed by more than one employer at the  
25 time of the accidental personal injury; **AND**

26 (iii) [worked, on average, 20 hours per week or less in the  
27 employment in which the accidental personal injury occurred; and

28 (iv)] as a result of the accidental personal injury, is unable to work at  
29 any employment the covered employee was engaged in at the time of the accidental  
30 personal injury or any similar type of employment.

31 [(2) (i) If the covered employee earned weekly wages from another

1 employment that exceeded the weekly wages the covered employee earned from the  
2 employment in which the accidental personal injury occurred, the average weekly wage of  
3 the covered employee shall be based on the weekly wages the covered employee earned in  
4 the other employment.

5 (ii) If the covered employee earned weekly wages from two or more  
6 other employments and, for more than one of such employments, the weekly wages earned  
7 by the employee exceeded the weekly wages of the covered employee from the employment  
8 in which the accidental personal injury occurred, the average weekly wage of the covered  
9 employee shall be based on weekly wages of the employment where the employee earned  
10 the highest wages.]

11 **(2) IF THE COVERED EMPLOYEE WAS EMPLOYED BY MORE THAN ONE**  
12 **EMPLOYER AT THE TIME OF ACCIDENTAL PERSONAL INJURY, THE WEEKLY WAGES**  
13 **FROM THE EMPLOYMENTS THE EMPLOYEE WAS ENGAGED IN AT THE TIME OF THE**  
14 **ACCIDENTAL PERSONAL INJURY SHALL BE COMBINED FOR PURPOSES OF**  
15 **COMPUTING THE AVERAGE WEEKLY WAGE OF THE COVERED EMPLOYEE.**

16 (3) This subsection may not be interpreted as:

17 (i) except as provided in §§ 9-630 and 9-637 of this subtitle,  
18 relieving from liability to pay compensation the employer in whose employment the  
19 accidental personal injury occurred; **OR**

20 (ii) creating any liability to pay compensation on the part of another  
21 employer in whose employment the accidental personal injury did not occur]; or

22 (iii) requiring the weekly wages from the employments the employee  
23 was engaged in at the time of the accidental personal injury to be combined for purposes of  
24 computing the average weekly wage of the covered employee].

25 9-630.

26 (b) (1) This subsection applies to the payment of weekly compensation  
27 required under subsection (a) of this section if the average weekly wage of a covered  
28 employee is computed under § 9-602(l) of this subtitle.

29 (2) The employer in whose employment the accidental personal injury  
30 occurred or the employer's insurer shall pay the covered employee weekly compensation  
31 that is based on the weekly wages of the covered employee at the employment in which the  
32 covered employee was injured.

33 (3) Subject to paragraph (4) of this subsection, any additional weekly  
34 compensation resulting from computing the average weekly wage based on weekly wages  
35 earned by the covered employee in other employment shall be payable in the first instance  
36 by the employer in whose employment the employee was injured or the employer's insurer.

1 (4) Subject to any right of the Subsequent Injury Fund to be impleaded or  
2 any right of the Subsequent Injury Fund to defend in a case involving payment from the  
3 Subsequent Injury Fund created under Title 10, Subtitle 2 of this article, as allowable under  
4 Subtitle 8 of this title, the Subsequent Injury Fund shall reimburse the employer in whose  
5 employment the employee was injured or the employer's insurer the amount of additional  
6 weekly compensation paid by the employer or insurer under paragraph (3) of this  
7 subsection.

8 9-637.

9 (c) (1) This subsection applies to the payment of weekly compensation  
10 required under subsection (a) of this section if the average weekly wage of a covered  
11 employee is computed under § 9-602(l) of this subtitle.

12 (2) The employer in whose employment the accidental personal injury  
13 occurred or the employer's insurer shall pay the covered employee weekly compensation  
14 that is based on the weekly wages of the covered employee at the employment in which the  
15 covered employee was injured.

16 (3) Subject to paragraph (4) of this subsection, any additional weekly  
17 compensation resulting from computing the average weekly wage based on weekly wages  
18 earned by the covered employee in other employment shall be payable in the first instance  
19 by the employer in whose employment the employee was injured or the employer's insurer.

20 (4) Subject to any right of the Subsequent Injury Fund to be impleaded or  
21 any right of the Subsequent Injury Fund to defend in a case involving payment from the  
22 Subsequent Injury Fund created under Title 10, Subtitle 2 of this article, as allowable under  
23 Subtitle 8 of this title, the Subsequent Injury Fund shall reimburse the employer in whose  
24 employment the employee was injured or the employer's insurer the amount of additional  
25 weekly compensation paid by the employer or insurer under paragraph (3) of this  
26 subsection.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
28 apply only prospectively and may not be applied or interpreted to have any effect on or  
29 application to any claim arising from events occurring before the effective date of this Act.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 2018.