

**Workman's Compensation Law, Computation. Compensation. Rule for Computing. When Begins. Volunteer Fire Brigade, Members not Under Compensation Law. Hoboes Serving Sentence, not Under Compensation Law. Policemen, not Under Compensation Law. Merchants, Certain May Become Bound. Industrial Accident Board, Jurisdiction of. Contractors, on Public Work. Public Work, Contractors on.**

1. Rule announced for computing the compensation to be allowed to injured workmen;
2. The period of compensation begins after the expiration of the second week, or on the fifteenth day following an injury.
3. Members of a volunteer fire brigade are not subject to the provisions of the law;
4. "Hoboes" serving sentence who are forced to work on municipal streets are not subject to the law;
5. Policemen are not subject to the law;
6. Merchants dealing in dry goods are not subject to the law, but in concert with their employees may become bound under classification 27.

7. The jurisdiction of the Industrial Accident Board does not extend over Glacier National Park;

8. Contractors on public work may only become bound under plan No. 3.

August 3, 1915.

Hon. A. E. Spriggs,  
Chairman Industrial Accident Board,  
Helena, Montana.

Dear Sir:

Replying to your recent communication wherein you submit for my consideration a number of legal questions pertaining to the workman's compensation law, you are advised:

1. In computing the compensation to be allowed an injured workman, his average daily wages, exclusive of over time, must be used as a basis, (Sec. 6 v.), and where employment extends through seven days weekly, the employee is entitled to receive one half his average net earnings within the maximum and minimum fixed by the law. This conclusion is manifest from the language of Section 6 u, which specifically states that the term "week" means six working days, but includes Sundays.

2. The period of compensation begins after the expiration of the second calendar week, or on the 15th day following the injury. (Sec. 16 q.).

3. Members of a voluntary fire brigade are not subject to the provisions of the law, for the very obvious reason that the relationship of employer and employee does not exist between the members and the municipality; such persons, moreover, receive no wages, and in case of injury there would exist no means of determining the amount of compensation to be allowed.

4. "Hoboes" who are serving sentence at hard labor for the violation of municipal ordinances, and are forced to work on the city streets, are not to be enumerated by the municipality as employees engaged in any of the hazardous pursuits mentioned by the statute, for the law is intended to compensate only free workmen for injuries sustained by them in the course of their lawful employments.

5. Policemen are public officers, and while paid by the city for their services, are not to be regarded as employees thereof. (State ex rel Quintin vs. Edwards, 38 Mont. 250). They are not, therefore, subject to the provisions of the Compensation Act.

6. Merchants dealing in drygoods are not engaged in hazardous occupations as defined by Section 4 a, b, c, d, and e. They may become bound by the provisions of the compensation law only by adopting plan No. 3, class 27. In your statement of facts, you set forth that a certain drygoods merchant employs a number of persons who operates elevators in his store, and has several chauffeurs to operate his delivery trucks, and it is contended that the employer should be permitted to at least come under plan No. 1 or 2 as to these employees. This contention is not tenable for at least two reasons. In the first place the employment of such persons is incidental to the principal business of the employer.

Section 3 f is called to your attention, the language of which clearly indicates that the employer must be engaged in an industry specified as hazardous by the Act to enable him as a matter of right to elect to become bound by the provisions of the Act; and in the second place, there is no provision in the law enabling the employer to accept the compensation principle as to part of his employees, and reject it as to the remainder. In Bradbury's Workmen's Compensation Laws, 2nd Ed., Vol. 1, page 210, 211, the principle is announced that where the Act is elective, election must be made as to all employees or none. It follows, perforce, that where the principal business of the employer is not hazardous as a matter of law, the mere fact that a few of his employees may be engaged incidentally in hazardous pursuits, will not operate to enable him to elect to become bound by any other than plan No. 3, class 27. Where, however, the employer carries on two or more distinct occupations, the one non-hazardous, and the other hazardous, such as general merchandizing, and the operation of grain elevators, he would be permitted to elect to become bound by any of the three plans as to the latter.

In this connection you are referred to a former opinion calling attention to the powers of the Board to declare as hazardous occupations other than those enumerated in the law, by virtue of the provisions of Section 5 of the Act.

7. You inquire whether the jurisdiction of your Board extends over Glacier National Park. The Compensation law is not extra territorial in operation. By the provisions of Chapter 33, Laws of 1911, page 51, exclusive jurisdiction was ceded to the United States over and within all territory now or hereafter included in Glacier National Park. The State reserved only the right to serve civil and criminal process within the limits of the Park, in any suits of prosecution for, or on account of rights acquired, obligations incurred, or crimes committed in the state outside of the Park, and saving further to the State the right to tax persons and corporations, their franchises and property on lands included in the Park. See also Volume 5, Opinions Attorney General, p. 164, where you will find a general discussion relative to the operation of state laws over Federal territory within this state.

8. You inquire whether under previous ruling of this office, that counties are excluded from the operation of the Act, a contractor engaged in the occupation of constructing bridges for counties, may elect to become bound by the provisions of plan No. 1 of the Act. Section 3 e prohibits such a course; in that it requires contractors engaged in the performance of contract work for public corporations to become bound if at all, by plan No. 3.

Yours very truly,  
J. B. POINDEXTER,  
Attorney General.