

Chapter 283

(Senate Bill 843)

AN ACT concerning

Workers' Compensation – Benefits – Hearing Loss

FOR the purpose of altering the frequencies in which industrial noise must be for an employer to be required to provide workers' compensation to a covered employee for hearing loss; altering the method used to determine the percentage of hearing loss deafness for purposes of workers' compensation; altering the method used to determine the deduction required to be made to allow for the average amount of hearing loss from nonoccupational causes in the population for purposes of calculating workers' compensation benefits for occupational deafness; ~~requiring tinnitus to be considered part of a covered employee's hearing loss~~; and generally relating to workers' compensation benefits.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section ~~9–505~~ and 9–650
Annotated Code of Maryland
(2016 Replacement Volume and 2023 Supplement)

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

Article – Labor and Employment9–505.

(a) Except as otherwise provided, an employer shall provide compensation in accordance with this title to a covered employee for loss of hearing by the covered employee due to industrial noise in the frequencies of 500, 1,000, 2,000, [and] 3,000, AND 4,000 hertz.

(b) An employer is not liable for compensation for occupational deafness under subsection (a) of this section unless the covered employee claiming benefits worked for the employer in employment that exposed the covered employee to harmful noise for at least 90 days.

9–650.

(a) (1) Hearing loss shall be measured by audiometric instrumentation that meets the following criteria:

(i) ANSI 3.6–1996;

(ii) ANSI S3.43–1992; and

(iii) ANSI 3.39–1987 or any ANSI standard that supersedes the previous calibration or measurement criteria.

(2) Measurements shall be conducted in a sound room that meets the ANSI 3.1–1991 criteria for maximum permissible ambient noise for audiometric test rooms.

(3) Behavioral psychoacoustic measurements shall be obtained with instrumentation that utilizes insert earphones, as referenced in ANSI 3.6–1996.

(4) Electrodiagnostic measurements such as auditory evoked potentials, acoustic emittance measurements, or distortion product otoacoustic emissions may be obtained to determine the nature and extent of workplace hearing loss.

(5) Audiologic results shall be used in conjunction with other information to evaluate a claimant’s compensable hearing loss.

(b) (1) The percentage of hearing loss for purposes of compensation for occupational deafness shall be determined by calculating the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, 2,000, [and] 3,000, **AND 4,000** hertz in accordance with paragraph (2) of this subsection.

(2) The average of the thresholds in hearing shall be calculated by:

(i) adding together the lowest measured losses in each of the [4] **5** frequencies; and

(ii) dividing the total by [4] **5**.

(3) To allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss determined under paragraphs (1) and (2) of this subsection one-half of a decibel for each year of the covered employee’s age over 50 [at the time of the last exposure to industrial noise] **OR FOR EACH YEAR SUBSEQUENT TO THE DATE OF THE COVERED EMPLOYEE’S LAST INJURIOUS EXPOSURE TO INDUSTRIAL NOISE, WHICHEVER IS LESS.**

(c) (1) If the average hearing loss in the [4] **5** frequencies determined under subsection (b) of this section is 25 decibels or less, the covered employee does not have a compensable hearing loss.

(2) If the average hearing loss in the [4] **5** frequencies determined under subsection (b) of this section is 91.7 decibels or more, the covered employee has a 100% compensable hearing loss.

(3) For every decibel that the average hearing loss exceeds 25 decibels, the covered employee shall be allowed 1.5% of the compensable hearing loss, up to a maximum of 100% compensable hearing loss at 91.7 decibels.

(d) The binaural percentage of hearing loss shall be determined by:

(1) multiplying the percentage of hearing loss in the better ear by 5;

(2) adding that product to the percentage of hearing loss in the poorer ear;

and

(3) dividing that sum by 6.

~~(E) (1) TINNITUS SHALL BE CONSIDERED PART OF A COVERED EMPLOYEE'S HEARING LOSS UNDER THIS SECTION.~~

~~(2) WHEN DETERMINING THE PERCENTAGE OF HEARING LOSS ATTRIBUTABLE TO TINNITUS, THE COMMISSION SHALL:~~

~~(I) CONSIDER THE PROVISIONS OF § 9-721(A) OF THIS TITLE AND THE APPLICABLE PROVISIONS OF § 9-721(B) OF THIS TITLE; AND~~

~~(H) ADD THE PERCENTAGE OF HEARING LOSS ATTRIBUTABLE TO TINNITUS TO THE HEARING LOSS PERCENTAGE DETERMINED UNDER SUBSECTION (D) OF THIS SECTION TO DETERMINE THE TOTAL PERCENTAGE OF THE COVERED EMPLOYEE'S HEARING LOSS.~~

~~(3) A COVERED EMPLOYEE MAY HAVE A COMPENSABLE CLAIM FOR HEARING LOSS ATTRIBUTABLE TO TINNITUS UNDER THIS SUBSECTION IN THE ABSENCE OF A COMPENSABLE CLAIM FOR HEARING LOSS UNDER SUBSECTIONS (B) THROUGH (D) OF THIS SECTION.~~

~~[(e)] (F)~~ (1) In determining the percentage of hearing loss under this section, consideration may not be given to whether the use of an amplification device improves the ability of a covered employee to understand speech or enhance behavioral hearing thresholds.

(2) (i) In determining a workers' compensation claim for noise-related hearing loss, audiologic data shall use both bone conduction and air conduction results.

(ii) If a conductive loss is present, the bone conduction thresholds for each ear, rather than the air conduction levels, shall be used to calculate a claimant's average hearing loss.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

Approved by the Governor, April 25, 2024.