

In subsection (c)(1) of this section, the reference to hearing "loss" is substituted for the former reference to hearing "disability", to clarify that a covered employee may be entitled to compensation for a hearing loss even if the hearing loss does not result in a disability to perform the employment of the covered employee.

The Labor and Employment Article Review Committee notes, for consideration by the General Assembly, that the standards for measuring hearing loss under this section differ from the standards for measuring hearing loss under the Guides to the Evaluation of Permanent Impairment (American Medical Association, 2nd ed., 1984). Rather than measuring hearing loss by calculating the average of hearing levels at 3 frequencies (500, 1,000, and 2,000 Hz), the Guides requires hearing loss to be measured by calculating the average of hearing levels at 4 frequencies (500, 1,000, 2,000, and 3,000 Hz). In addition, the Guides sets 25 decibels and 91.7 decibels as the thresholds for no hearing loss and total hearing loss, rather than 15 decibels and 82 decibels. The General Assembly may wish to consider conforming this section to the Guides.

Defined terms: "Compensation" § 9-101

"Covered employee" § 9-101

9-651. EXTENT OF LIABILITY.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN EMPLOYER IS LIABLE FOR THE FULL EXTENT OF THE OCCUPATIONAL DEAFNESS OF A COVERED EMPLOYEE IF:

(1) THE EMPLOYMENT OF THE COVERED EMPLOYEE BY THE EMPLOYER HAS CONTRIBUTED TO ANY EXTENT TO THE OCCUPATIONAL DEAFNESS OF THE COVERED EMPLOYEE; AND

(2) THE EMPLOYER OTHERWISE IS LIABLE UNDER THIS SECTION AND § 9-505 OF THIS TITLE.

(B) LIMITATION ON LIABILITY.

AN EMPLOYER IS LIABLE ONLY FOR THE PART OF THE DEAFNESS ATTRIBUTABLE TO THE EMPLOYMENT BY THE EMPLOYER IF THE EMPLOYER ESTABLISHES BY COMPETENT EVIDENCE, INCLUDING THE RESULTS OF A PROFESSIONALLY CONTROLLED HEARING TEST, THE EXTENT OF THE DEAFNESS OF THE COVERED EMPLOYEE THAT EXISTED BEFORE EXPOSURE TO HARMFUL NOISE IN THE EMPLOYMENT OF THE EMPLOYER.

REVISOR'S NOTE: This section is new language derived without substantive change from the first and second sentences of former Art. 101, § 25A.