

SENATE BILL NO. 127

INTRODUCED BY E. BUTTREY

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A BILL FOR AN ACT ENTITLED: "AN ACT ~~GENERALLY REVISING EMPLOYMENT LAW;~~ REVISING THE
DEFINITION OF "MISCONDUCT" FOR UNEMPLOYMENT INSURANCE PURPOSES; ~~REVISING ELIGIBILITY~~
~~REQUIREMENTS FOR RECEIVING UNEMPLOYMENT BENEFITS;~~ AND AMENDING ~~SECTIONS~~ SECTION
39-51-201 ~~AND 39-51-2104~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise,
the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of
payment, for employment during a calendar year.

(2) "Base period" means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an
individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4
most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of
labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state
because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United
States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for
unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar
week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new
valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A
subsequent benefit year may not be established in Montana until the expiration of the current benefit year.

1 However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor
2 of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

3 (4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with
4 respect to the individual's unemployment.

5 (5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

6 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June
7 30, September 30, or December 31.

8 (7) "Contributions" means the money payments to the state unemployment insurance fund required by
9 this chapter but does not include assessments under 39-51-404.

10 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

11 (9) (a) "Domestic or household service" means employment of persons other than members of the
12 household for the purpose of tending to the aid and comfort of the employer or members of the employer's family,
13 including but not limited to housecleaning and yard work.

14 (b) The term does not include employment beyond the scope of normal household or domestic duties,
15 such as home health care or domiciliary care.

16 (10) "Employing unit" means any individual or organization, including the state government and any of
17 its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate,
18 joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with
19 the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee
20 or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals
21 perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(p). All
22 individuals performing services within this state for any employing unit that maintains two or more separate
23 establishments within this state are considered to be employed by a single employing unit for all the purposes
24 of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee
25 of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether
26 the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the
27 employing unit has actual or constructive knowledge of the work.

28 (11) "Employment office" means a free public employment office or branch of an office operated by this
29 state or maintained as a part of a state-controlled system of public employment offices or other free public
30 employment offices operated and maintained by the United States government or its instrumentalities as the

1 department may approve.

2 (12) "Fund" means the unemployment insurance fund established by this chapter to which all
3 contributions and payments in lieu of contributions must be paid and from which all benefits provided under this
4 chapter must be paid.

5 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for
6 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant
7 and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

8 (14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a
9 hospital.

10 (15) "Independent contractor" means an individual working under an independent contractor exemption
11 certificate provided for in 39-71-417.

12 (16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education
13 Assistance Act, 25 U.S.C. 450b(e).

14 (17) (a) "Institution of higher education", for the purposes of this part, means an educational institution
15 that:

16 (i) admits as regular students only individuals having a certificate of graduation from a high school or the
17 recognized equivalent of a certificate;

18 (ii) is legally authorized in this state to provide a program of education beyond high school;

19 (iii) provides an educational program for which the institution awards a bachelor's or higher degree or
20 provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of
21 postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a
22 recognized occupation; and

23 (iv) is a public or other nonprofit institution.

24 (b) All universities in this state are institutions of higher education for purposes of this part.

25 (18) "Licensed and practicing health care provider" means a health care provider who is primarily
26 responsible for the treatment of a person seeking unemployment insurance benefits and who is:

27 (a) licensed to practice in this state as:

28 (i) a physician under Title 37, chapter 3;

29 (ii) a dentist under Title 37, chapter 4;

30 (iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse

1 practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

2 (iv) a physical therapist under Title 37, chapter 11;

3 (v) a chiropractor under Title 37, chapter 12;

4 (vi) a clinical psychologist under Title 37, chapter 17; or

5 (vii) a physician assistant under Title 37, chapter 20; or

6 (b) with respect to a person seeking unemployment insurance benefits who resides outside of this state,
7 a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in
8 the jurisdiction where the person seeking the benefit lives.

9 (19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

10 (i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer,

11 INCLUDING:

12 (A) INSUBORDINATION SHOWING A DELIBERATE, WILLFUL, OR PURPOSEFUL REFUSAL TO FOLLOW THE
13 REASONABLE DIRECTIONS, PROCESSES, OR INSTRUCTIONS OF THE EMPLOYER;

14 (B) REPEATED INEXCUSABLE TARDINESS FOLLOWING WARNINGS BY THE EMPLOYER;

15 (C) DISHONESTY RELATED TO EMPLOYMENT, INCLUDING BUT NOT LIMITED TO DELIBERATE FALSIFICATION OF
16 COMPANY RECORDS, THEFT, DELIBERATE DECEPTION, OR LYING;

17 (D) FALSE STATEMENTS MADE AS PART OF A JOB APPLICATION PROCESS, INCLUDING BUT NOT LIMITED TO
18 DELIBERATE FALSIFICATION OF THE INDIVIDUAL'S CRIMINAL HISTORY, WORK RECORD, OR EDUCATIONAL OR LICENSURE
19 ACHIEVEMENTS;

20 (E) REPEATED AND INEXCUSABLE ABSENCES, INCLUDING ABSENCES FOR WHICH THE EMPLOYEE WAS ABLE TO
21 GIVE ADVANCE NOTICE AND FAILED TO DO SO;

22 (F) DELIBERATE ACTS THAT ARE ILLEGAL, PROVOKE VIOLENCE OR VIOLATION OF THE LAW, OR VIOLATE A
23 COLLECTIVE BARGAINING AGREEMENT BY WHICH THE EMPLOYEE IS COVERED. HOWEVER, AN EMPLOYEE WHO ENGAGES
24 IN LAWFUL UNION ACTIVITY MAY NOT BE DISQUALIFIED BECAUSE OF MISCONDUCT UNDER THIS SUBSECTION (19)(A)(I)(F).

25 (G) VIOLATIONS OF A COMPANY RULE IF THE RULE IS REASONABLE AND IF THE CLAIMANT KNEW OR SHOULD HAVE
26 KNOWN OF THE EXISTENCE OF THE RULE; OR

27 (H) ACTIONS BY THE CLAIMANT WHO, WHILE ACTING WITHIN THE SCOPE OF EMPLOYMENT, COMMITS VIOLATIONS
28 OF LAW THAT SIGNIFICANTLY AFFECT THE CLAIMANT'S JOB PERFORMANCE OR THAT SIGNIFICANTLY HARM THE EMPLOYER'S
29 ABILITY TO DO BUSINESS;

30 (ii) deliberate violations or disregard of EXPRESS established employer standards or of standards of

1 behavior that the employer has the right to expect of an employee, INCLUDING CONDUCT THAT WOULD BE
 2 CONSIDERED BY A REASONABLE PERSON TO BE:

3 (A) UNPROFESSIONAL OR INAPPROPRIATE;

4 (B) A CONFLICT OF INTEREST;

5 (C) A BREACH OF PUBLIC TRUST;

6 (D) UNACCEPTABLE CUSTOMER SERVICE;

7 (E) DISRESPECTFUL TOWARD THE EMPLOYER, COWORKERS, SUPERVISORS, MANAGERS, SUBORDINATES,
 8 CLIENTS, OR CUSTOMERS;

9 (F) A FAILURE TO MAINTAIN THE QUALIFICATION, CERTIFICATION, LICENSURE, OR TRAINING REQUIREMENTS
 10 IDENTIFIED FOR THE POSITION;

11 (G) A FAILURE TO UTILIZE LEAVE AND RELATED EMPLOYEE BENEFITS IN THE MANNER FOR WHICH THEY WERE
 12 INTENDED;

13 (H) A FAILURE TO RESOLVE WORK-RELATED ISSUES AND DISPUTES IN A PROFESSIONAL MANNER;

14 (I) A FAILURE TO MAKE WORK-RELATED DECISIONS OR TAKE ACTIONS THAT ARE IN THE BEST INTEREST OF THE
 15 EMPLOYER; AND

16 (J) A FAILURE TO ACT IN A MANNER THAT SUPPORTS THE MISSION OF THE EMPLOYER;

17 (iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or
 18 a fellow employee; or

19 (iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or
 20 substantial disregard of the employer's interest.

21 (b) The term does not include:

22 (i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

23 (ii) inadvertent or ordinary negligence in isolated instances; or

24 (iii) good faith errors in judgment or discretion.

25 (20) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code,
 26 26 U.S.C. 132.

27 (21) "State" includes, in addition to the states of the United States of America, the District of Columbia,
 28 Puerto Rico, the Virgin Islands, and Canada.

29 (22) "Taxes" means contributions and assessments required under this chapter but does not include
 30 penalties or interest for past-due or unpaid contributions or assessments.

1 (23) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise
2 that is wholly owned by that tribe.

3 (24) "Unemployment insurance administration fund" means the unemployment insurance administration
4 fund established by this chapter from which administrative expenses under this chapter must be paid.

5 (25) (a) "Wages", unless specifically exempted under subsection (25)(b), means all remuneration payable
6 for personal services, including the cash value of all remuneration paid in any medium other than cash. The
7 reasonable cash value of remuneration payable in any medium other than cash must be estimated and
8 determined pursuant to rules prescribed by the department. The term includes but is not limited to:

9 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness
10 periods;

11 (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service
12 by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

13 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are
14 documented by the employee to the employer for tax purposes.

15 (b) The term does not include:

16 (i) the amount of any payment made by the employer for employees, if the payment was made for:

17 (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
18 Revenue Code;

19 (B) sickness or accident disability under a workers' compensation policy;

20 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
21 health insurance for the employee or the employee's immediate family; or

22 (D) death, including life insurance for the employee or the employee's immediate family;

23 (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other
24 expenses, as set forth in department rules;

25 (iii) a no-additional-cost service;

26 (iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers
27 program, 19 U.S.C. 2318; or

28 (v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a
29 partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship
30 pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the

1 salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

2 (26) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

3 (27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive
4 for 1 week of total unemployment."
5

6 ~~Section 2. Section 39-51-2104, MCA, is amended to read:~~

7 ~~"39-51-2104. General benefit eligibility conditions. (1) An unemployed individual, including an alien
8 entitled to benefits under the provisions of 39-51-2110, is eligible to receive benefits for any week of total
9 unemployment within the individual's benefit year only if the department finds that the individual:~~

10 ~~(a) has filed a claim and has filed continued claims in accordance with rules that the department may
11 prescribe;~~

12 ~~(b) is able to work, is available for work, and is seeking work. An individual may not place limitations on
13 the individual's availability that would constitute a withdrawal from the labor market. A claimant is not considered
14 ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure
15 is because of an illness or disability that occurs after the claimant has filed or reopened a claim for unemployment
16 insurance benefits and suitable work has not been offered to the claimant after the beginning of the illness or
17 disability;~~

18 ~~(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a
19 waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this
20 subsection;~~

21 ~~(i) if benefits have been paid for that week;~~

22 ~~(ii) unless the individual was eligible for benefits during the week;~~

23 ~~(iii) unless it occurs within the benefit year of the claimant;~~

24 ~~(iv) unless it occurs after benefits first could become payable to any individual under this chapter.~~

25 ~~(d) has registered for work with the individual's local job service office unless the individual is excused
26 by department rule from registering for work.~~

27 ~~(2) (a) Except as provided in subsection (2)(b), if an individual is unavailable for work for less than 3 days
28 within a week for which work is available, the individual must be paid the weekly benefit amount reduced by
29 one-fifth of that amount for each day or part of a day that the individual is unavailable for work.~~

30 ~~(b) If the individual is unavailable for work for 3 days or more, or part of each of 3 days or more, within~~

1 a week for which work is available, the individual must be considered unavailable for work for the entire week and
2 is not eligible to receive benefits for the week.

3 ~~———— (3) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust
4 their regular benefits and who are in need of reemployment services.~~

5 ~~———— (b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection
6 (3)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.~~

7 ~~———— (c) The requirement for participation in reemployment services may be waived if the department
8 determines that:~~

9 ~~———— (i) the individual has completed reemployment services; or~~

10 ~~———— (ii) the individual's failure to participate in reemployment services is justifiable."~~

11 ~~————~~ - END -