

SENATE BILL NO. 222

INTRODUCED BY D. BROWN

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A LIMITED WORKERS' COMPENSATION BENEFIT FOR PROBATIONARY EMPLOYEES UNDER 20 YEARS OF AGE; ESTABLISHING PROVISIONS TO IMPLEMENT A LIMITED WORKERS' COMPENSATION BENEFIT FOR PROBATIONARY EMPLOYEES UNDER 20 YEARS OF AGE; AMENDING SECTION 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Probationary employee benefits -- insurer obligations.** (1) Subject to

subsection (2), an employer that includes within a written personnel policy a term of probation of not more than 90 consecutive calendar days from the date of hire and that requires a safety training program within the probationary period for an employee is eligible for a reduced workers' compensation premium for the probationary period.

(2) (a) The employer may not have previously hired the employee.

(b) This section does not apply to employers subject to a collective bargaining agreement.

(c) The provisions of this section apply only to a probationary employee who has not reached 20 years of age.

(3) Upon a request from the insurer providing workers' compensation coverage, the employer shall provide:

(a) the number of probationary employees on the payroll for the reporting period; and

(b) the number of relevant safety training hours provided or to be provided within the payroll reporting period at which attendance of any probationary employee is required.

(4) An insurer shall provide payroll reporting periods for premium payments that allow an employer to use the 90-day probationary period for reporting payroll.

(5) A probationary employee under the terms of this section who is injured in the course of employment may claim medical benefits and all other benefits under this chapter but is subject to a limit on wage-loss compensation, as provided in 39-71-123(3)(c), and is ineligible for a preference for reemployment under

1 39-71-317(2).

2 (6) If an employee completes a 90-day probationary period and is retained as a nonprobationary  
3 employee, any injuries occurring after the 90-day period are covered as full benefits as provided under this  
4 chapter.

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6 **Section 2.** Section 39-71-123, MCA, is amended to read:

7 **"39-71-123. Wages defined -- compensation benefits.** (1) "Wages" means all remuneration paid for  
8 services performed by an employee for an employer; or income provided for in subsection (1)(d). Wages include  
9 the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

10 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,  
11 vacations, and periods of sickness;

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

14 (c) tips or other gratuities received by the employee; to the extent that tips or gratuities are documented  
15 by the employee to the employer for tax purposes;

16 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken  
17 by a sole proprietor or partner; regardless of whether the sole proprietor or partner has performed work or  
18 provided services for that remuneration;

19 (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based  
20 on its actual value; and

21 (f) payments made to an employee on any basis other than time worked, including but not limited to  
22 piecework, an incentive plan, or a profit-sharing arrangement.

23 (2) The term "wages" does not include any of the following:

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

26 (b) the amount of the payment made by the employer for employees; if the payment was made for:

27 (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal  
28 Revenue Code;

29 (ii) sickness or accident disability under a workers' compensation policy;

30 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including health

1 insurance for the employee or the employee's immediate family;

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

3 (c) vacation or sick leave benefits accrued but not paid;

4 (d) special rewards for individual invention or discovery; or

5 (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

6 (3) (a) Except as provided in ~~subsection~~ subsections (3)(b) and (3)(c), for compensation benefit  
7 purposes, the average actual earnings for the four pay periods immediately preceding the injury are the  
8 employee's wages, except that if the term of employment for the same employer is less than four pay periods,  
9 the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired  
10 to work.

11 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the  
12 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for  
13 an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period,  
14 including periods of idleness or seasonal fluctuations.

15 (c) For compensation benefit purposes, the wage for an employee who is serving a 90-day probationary  
16 period as provided in [section 1] is the minimum wage applicable for the pay periods in which the probationary  
17 employee worked.

18 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent  
19 employments, the average actual wages must be calculated as provided in subsection (3). As used in this  
20 subsection, "concurrent employment" means employment in which the employee was actually employed at the  
21 time of the injury and would have continued to be employed without a break in the term of employment if not for  
22 the injury.

23 (b) Except as provided in 39-71-118(7)(c) and (12)(c), the compensation benefits for a covered volunteer  
24 must be based on the average actual wages in the volunteer's regular employment, except self-employment as  
25 a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury  
26 incurred.

27 (c) The compensation benefits for an employee working at two or more concurrent remunerated  
28 employments must be based on the aggregate of average actual wages of all employments, except for the wages  
29 earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be  
30 covered, from which the employee is disabled by the injury incurred.

1           (5) For the purposes of calculating compensation benefits for an employee working for an employer, as  
2 provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based  
3 upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition  
4 of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as  
5 of the date of injury or for the period in which the premium is due."  
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7           NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
8 integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to [section 1].  
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10           NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured,  
11 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
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13           NEW SECTION. **Section 5. Effective date -- applicability.** [This act] is effective July 1, 2013, and  
14 applies to workers' compensation policies written on or after July 1, 2013.  
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