

**39-71-401(2) Exemptions -- When Created, Background Info, Other State Similarities** --- DRAFT as of 1/22/04

This table is based on the Annotations for the Montana Codes, minutes for House and Senate hearings on relevant bills, and information from the U.S. Chamber of Commerce "2002 Analysis of Workers' Compensation Laws" to provide some idea of what other states are doing for similar exemptions. The cross-state comparison relies on the report's shorthand information and does not directly analyze each state's workers' compensation law. Please note:

- 1) The table should be used only for general comparison.
- 2) Twelve states base the requirement for workers' compensation on the number of employees. Thresholds range from one to five employees. The category "Exemption Variations" often includes these states if an occupation is likely to have few employees per firm and thus be exempt. Also, Wyoming, North Dakota and Illinois, which require work comp only for hazardous or "extra-hazardous" employment, and Hawaii, which requires only industrial employees to be covered, often are included in Exemption Variations.
- 3) Exemptions (the far left column) are those listed in MAC 39-71-401(2).
- 4) Montana is included in the list of states, as is the District of Columbia. Thus, the column on the far right generally will total to 51.
- 5) Since the focus is Montana exemptions, Montana always will be among the states that exempt an occupation. Texas generally will be represented because Texas is the only state that allows employers to choose whether to provide workers' compensation coverage.

<b>Exemption</b>	<b>Background Info</b>	<b>Effective Date</b>	<b>States (includes D.C.)</b>
(a) Household, domestic employment	1915 law also exempted "farm or other laborers, engaged in agricultural pursuits, or persons whose employment is of a casual nature." Farm and rancher laborers amended out in 1987, as part of revisions.		Domestics exmt:24 Hrs/household variations: 20 Not covered: 7
(b) Casual employment (defined in 39-71-116(7): "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer."	originally in 1915 law. Separated out in 1973		Exempt <sup>1</sup> : 26 Variations: 10 Not specified <sup>1</sup> : 15

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(c) Employment of dependent member of an employer's family if exemption may be claimed by employer under Internal Revenue Code	<p>1973 reference "dwelling in his household" changed in 1989, Chpt 33 to exemption under IRS -- referencing whether a person is claimed as a dependent for income tax purposes.</p> <p>reaction to Cottrill v State Comp Insur. Fund 44 St. Rep 1762 (1987)</p>		<p>Exempt: 14 Exemption tied to staff limits: 10 Not specified: 27</p>

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<p>(d) employment of sole proprietors, working members of a partnership, working members of a LLP, working members of a member-managed LLC, except as provided in subsection (3)</p> <p>(NOTE: subsection (3) refers to Independent Contractors)</p>	<p>1987, chpt 464 -- added "except as provided in subsection (3)</p> <p>1995 Chpt 516</p> <p>1997 Chpt 172 (SB 41) Sponsor Steve Benedict says bill streamlines process, removes "underinsured fund" and updates to improve LLP, approved in 1995 session. Testimony focused on underinsured fund and issue of it not working. Request to put efforts into uninsured employers fund.</p> <p><u>Proponents:</u>          Chuck Hunter, Dept. Labor&amp; Industry          Nancy Butler, State Fund          George Wood, MT Self-Insurers</p> <p><u>Opponents:</u> none</p>	<p>7/1/95 7/1/97</p>	<p><b>Sole proprietors</b>          Exempt<sup>1</sup>: 43          Not specified<sup>2</sup>: 5          Exempt var.: 3</p> <p><b>Partners</b>          Exempt: 38          Not specified: 5          Exempt var.: 8</p> <p><b>Mbr-mng'd LLC</b>          Exempt: 5          Not specified: 35          Exempt var.<sup>3</sup>: 11</p>
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<p>(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings</p>	<p>1987 Chpt 464 - broker or salesman licensed under board of realty regulation</p> <p>2001 -- expanded coverage to include securities, insurance sales folk Sponsor, Sen. Grimes, said bill fixed 1977 law to apply to other salespeople paid solely by commission. No opponents. Proponents: -Greg Van Horssen, State Farm -John Metropolous, Farmers Insurance -Joe Mazurek, D.A. Davidson</p>	<p>4/21/01</p>	<p><b>Real estate:</b> Exempt: 29 Not Specified<sup>4</sup>: 21 Exempt var: 1(Ia)</p> <p><b>Securities</b> Exempt: 2 Not Specified: 40</p> <p><b>Insur/Cmsn</b> Exempt: 4 Not Specified: 39</p> <p><b>Brokers/Sellers -- Cmsn<sup>4</sup> Exempt: 12</b></p>
<p>(f) employment as a direct seller as defined by 26 U.S.C. 3508</p>	<p>1987, chpt 464, in customer's home</p> <p>1995 chpt 48 incl "as defined" in federal law. Multiple supporters-including Amway, Mary Kay, Kirby sellers.</p>	<p>2/9/95</p>	<p>Exempt: 3 Exempt on #s<sup>5</sup>: 12 Not Specified: 26</p> <p><b>Brokers/Sellers -- Cmsn Exempt<sup>4</sup>:12</b></p>
<p>(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the U.S.</p>	<p>1973 - Referenced "Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States."</p>		<p>Similar language: 6 Interstate commerce ref<sup>6</sup>: 12 Not specified: 33</p>
<p>(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105</p>	<p>1985, chpt 336 - Exception added</p>		<p>Exempt: 4 Exempt var <sup>7</sup>: 15 Not specified: 22</p>

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<b>Exemption</b>	<b>Background Info</b>	<b>Effective Date</b>	<b>States (includes D.C.)</b>
(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter		1973	Exempt: 11 Common carriers/ fed law exempt: 5 Not specified: 35

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<p>(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event</p>	<p>Chapter 100</p> <p>HB 19 by Rep. R. Lenhart. No opponents. Proponents included:          Tom Clement, Helena Babe Ruth,          Rick Harbin, Colstrip Park District,          Sen. Bob DePratu, Whitefish          Bob Worthington, MOA member          John Williams, Colstrip Park Dist Brd.</p> <p>Clement said cost of work comp would be \$5,000-\$7,000 yr. Officials have liability ins coverage          Harbin: school officials already covered.</p>	<p>applied to incidents on/after 10-1-'85 3/16/01</p>	<p>Similar groups exempt: 6          Exempt var.: 8          Not specified: 37</p>
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<p>(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publications and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier": (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but (ii) does not include an employee of the paper who incidentally to the employee's main duties, carriers or delivers papers.</p>	<p>Chapter 148 (HB 80)</p> <p>Partially stems from court case in which Billings Gazette sued when a newspaper carrier's girlfriend was injured helping carrier deliver papers. Gazette lost.</p> <p>Rep. Jan Brown sponsored HB 80.</p> <p>Proponents in House or Senate hearings:          Les Loble for Lee Enterprises, with Lee paper support from the Gazette, Montana Standard, Missoulian, Independent Record)          Bruce Smith of Bozeman Chronicle          Dave Byerly, Lewistown News Argu          Steve Studt, Great Falls Tribune          George Moore, MT Press Association</p> <p>Opponents in House or Senate hearings:          Hiram Shaw, Workers Comp. Division          Jim Murry, AFL-CIO</p>		<p>1+ Exempt<sup>8</sup>: 8          Not specified: 42          Specifically covered:          1(Ky)</p>
<p>(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e)</p>	<p>chpt 573</p> <p>Previously had been deleted by one amendment, added by another in 1987</p>	<p>7/1/91</p>	<p>Exempt: 2          Exempt var.<sup>7</sup>: 15          Not specified: 34</p>
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<p>(m) a person who is employed by an enrolled tribal member or an association, business, corporation or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation</p>	<p>chpt 555 General revision of statute  chpt 516 - clarifications</p>	<p>7/1/93 7/1/95</p>	<p>Exempt: 2 Exempt var.<sup>7</sup>: 15 Not specified: 34</p>
<p>(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey.</p>	<p>chpt 142 Apparently jockey's union insurance was better than work comp - will look into this more thoroughly.</p>	<p>3/15/95</p>	<p>Exempt: 3 Exempt var.<sup>7</sup>: 17 Not specified: 31</p>
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<p>(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet</p>	<p>Rep. E. Clark said HB26 exempts people who see themselves as self-employed in horse-racing.  <u>Proponents</u> at House or Senate hearing:                  Sam Murfitt, Executive Secretary Montana Board of Horse Racing,                  Department of Commerce                  Nancy Butler, Gen'l Counsel, State Fund                  Jerry Keck, Administrator, Employee Relations Div,                  Department of Labor                  Mike Ottman, race horses owner                  Buster Brown, Shelby Fair Board  <u>Opponents</u>: None</p>	<p>2/14/01</p>	<p>Exempt: 2                  Exempt var .<sup>7</sup>: 15                  Not specified: 31</p>
<p>(p) employment of an employer's spouse for who an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703</p>	<p>chpt 112</p>	<p>7/1/95</p>	<p>Exempt: 7                  Exempt var.: 15                  Not specified: 29</p>
<p>(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:                  (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;                  (ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and                  (iii) performs all services as an independent contractor pursuant to a written contract</p>	<p>chpt 95 inserts petroleum land professional. Stated purpose of bill as heard in Senate Labor and Industry Committee was "to define the law to identify what a petroleum land professional is; to determine they are independent contractors; they have written agreements with the client for their contractual work; and they are not employees." (Minutes 1/19/95) Sponsor, Sen. Keating said original bill language was taken from New Mexico, Texas and Colorado statutes. National Petroleum Assn. supplied information.</p>	<p>3/9/95</p>	<p>Exempt: 2                  Exempt var.: 16                  Not specified: 33</p>
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<p>(r) an officer of a quasi-public or a private corporation or manager of a manager-managed LLC who qualified under one or more of the following provisions:          (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the LLC and does not receive any pay from the corporation or the LLC for performance of the duties;          (ii) the officer or manager is engaged primarily in household employment for the corporation or the LLC;          (iii) the officer or manager either:          (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the LLC; or          (B) owns less than 20% of the number of shares of stock in the corporation or LLC if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or LLC; or          (iv) the officer is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A)or(B)</p>	<p>chpt 516           chpt 172 - inserted "not" after "manager is"          chpt 386 - inserts clarifications in (iii) (B)</p>	<p>7/1/97</p>	<p>Exempt: 7          Exempt var.<sup>9</sup>: 11          Not specified or not exempt: 33</p>
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<p>(s) a person who is an officer or a manager of a ditch company defined in 27-1-731</p>	<p>chpt 386</p>	<p>7/1/97</p>	<p>Exempt: 2 Exempt var.: 7 Not specified: 42</p>
<p>(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order</p>	<p>chpt 491 (HB 561) Part of a broad-reaching bill that included: harmonization of definitions among Titles and harmonization of administrative functions, including a move of unemployment functions to DOR. <u>Proponents</u> reflected administrative changes : Mary Bryson, director, Dept of Revenue; Pat Haffey, Dept Labor &amp; Industry; Jeff Miller, DOR; Dennis Zeiler, DOLI; Tom Harrison, Montana CPAs; David Owen, MT Chamber of Commerce; Riley Johnson, NFIB; Bob Gilbert, Job Servers Employment Council; Nancy Butler, State Fund; Eric Ellman, Direct Trade Assn (there for a direct seller amendment); Erin Rowe-Graves, Amway (also supporting amendment); Brad Griffin, MT Retail Assn. (also supporting amendment.) No opponents. One question about affect on UI exemptions for church employees. Response from DOLI was: very few people affected, small impact in revenue.</p>	<p>1/1/98</p>	<p>Exempt: 6 Exempt var.: 7 Not specified: 38</p>
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<p>(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;</p>	<p>Chapter 83 (HB 150) Rep. Lawson  <u>Proponents:</u>                  Chris Volinkaty, Children's DD Services and Executive Director, Child Development Center, presented written testimony.                  Jerry Driscoll, Montana State AFL-CIO;                  Louella Halmans, Baker resident; Joan Kimble, Yellowstone County Counsel on Aging, Billings;                  Don Judge, Teamsters 190; Susan Smith-Havener, Billings;                  Joan Gromin, Development Administrator, STEP;                  Val Piercy, Florence resident; Sylvia Danforth, Director, DEEP; Wally Melcher; Janie McCall, Administrator, Montana Children's Initiative and Montana Association of Independent Disabilities Services  <u>Informational Testimony:</u>                  John Andrews, Department of Labor &amp; Industry;                  Jannis Conselyea, Bureau Chief, Program Support, Developmental Disabilities Program.</p>	<p>10/1/03</p>	
<p><b>Exemption</b></p>	<p><b>Background Info</b></p>	<p><b>Effective Date</b></p>	<p><b>States (includes D.C.)</b></p>

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<p>(v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10).          NOTE: 39-71-118(10) says:          (10) For purposes of this section, an "employee or worker in this state" means:              (a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;              (b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;              (c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or              (d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:                  (i) nonresident employees are hired in MT;                  (ii) nonresident employees' wages are paid in MT;                  (iii) nonresident employees are supervised in MT;          and              (iv) business records are maintained in MT.</p>	<p>Chapter 193 (SB108)  <u>Proponents</u> at House or Senate hearing: Kevin Braun, Dept of Labor &amp; Industry; Jerry Keck, Employee Relations Div, DLI; Matthew Cohn, Montana State Fund;          Aiden Myhre, MT Chamber of Commerce.          Jacqueline Lenmark, American Insurance Association; George Wood, Montana Self-Insured Employers. Also represented in support: Larry Jones, Liberty Mutual Insurance.          Considered housekeeping bill.          Addressed court case involving an out-of-state trucker, Schimmel, and the Montana Uninsured Employers Fund</p>	<p>7/1/03</p>	
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- 1) Exempt in most cases also means elective. Not specified may indicate the industry has workers' compensation coverage.
- 2) Not specified may mean coverage is required for companies of x number of employees and not required if fewer employees, but the type of company is not specified.
- 3) Outside of Montana, exemption variations for (d), relating to sole proprietors, partnerships and limited-liability member-managed companies may have some overlap with (r), which involves manager-managed LLCs, depending on how the U.S. Chamber of Commerce summarized each state's laws for LLCs.
- 4) The numbers do not add to 51 because some states list "brokers" with real estate licensees and other states list "brokers" separately. Since it is not clear if securities and insurance "brokers" are included, these categories are marked as not specified in some cases (since insurance and securities are not specifically mentioned even if "brokers" are mentioned). However, some may be marked as exempting "brokers"-- amounting to double-counting for those states for whom "brokers" are listed but that do not specify what type of brokers.
- 5) Exempt on #s - Means when employment is under a specified number of staff the employer is exempt. Direct seller and other categories, e.g. barber/cosmetologist, may or may not fit this exemption but are listed as being exempted.
- 6) Interstate commerce reference includes railroads, although there is a separate category in Montana law for railroad workers.
- 7) Variation includes an exemption because state laws allow exemptions for fewer than "x" employees, which is likely in this case.
- 8) One or more of the listed group is exempt.
- 9) Maine requires coverage for quasi-municipal corporations. North Carolina requires coverage for quasi-public corporations but other corporate officers may reject.

Draft review 1/16/04