

## 1 SENATE BILL NO. 482

2 INTRODUCED BY P. EKEGREN, J. WHITAKER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE METHOD TO BE USED IN ESTABLISHING THE  
5 RATE FOR ELECTED WORKERS' COMPENSATION COVERAGE FOR SELF-EMPLOYED VOLUNTEER  
6 FIREFIGHTERS; AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA; AND PROVIDING AN  
7 IMMEDIATE EFFECTIVE DATE."

8

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

10

11 **Section 1.** Section 39-71-118, MCA, is amended to read:

12 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term  
13 "employee" or "worker" means:

14 (a) each person in this state, including a contractor other than an independent contractor, who  
15 is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,  
16 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully  
17 employed, and all of the elected and appointed paid public officers and officers and members of boards  
18 of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while  
19 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are  
20 included as employees if they are not otherwise covered by workers' compensation and if an employer has  
21 elected to be bound by the provisions of the compensation law for these casual employments, as provided  
22 in 39-71-401(2). Household or domestic employment is excluded.

23 (b) any juvenile who is performing work under authorization of a district court judge in a  
24 delinquency prevention or rehabilitation program;

25 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job  
26 training under a state or federal vocational training program, whether or not under an appointment or  
27 contract of hire with an employer, as defined in this chapter, and, except as provided in subsection (9),  
28 whether or not receiving payment from a third party. However, this subsection does not apply to students  
29 enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of  
30 a public school or community college.

1 (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

2 (e) a person, other than a juvenile as defined in subsection (1)(b), who is performing community  
3 service for a nonprofit organization or association or for a federal, state, or local government entity under  
4 a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or  
5 not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not  
6 receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

7 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an  
8 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title  
9 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

10 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon  
11 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community  
12 service required under the order from the court or hearings officer.

13 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

14 (g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109,  
15 or a person who provides ambulance services under Title 7, chapter 34, part 1; and

16 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704 is considered an  
17 employee for workers' compensation purposes only. The department of public health and human services  
18 shall provide workers' compensation coverage for participants in the FAIM project who are placed at public  
19 or private worksites through an endorsement to the department of public health and human services'  
20 workers' compensation policy naming the public or private worksite entities as named insureds under the  
21 policy. The endorsement may cover only the entity's FAIM participants and may only be for the duration  
22 of each participant's training in the FAIM project under a written agreement between the department of  
23 public health and human services and each public or private entity. The department of public health and  
24 human services may not provide workers' compensation coverage for individuals who are covered for  
25 workers' compensation purposes by another state or federal employment training program. Premiums and  
26 benefits must be based upon the wage that a probationary employee is paid for work of a similar nature  
27 at the assigned worksite.

28 (2) The terms defined in subsection (1) do not include a person who is:

29 (a) participating in recreational activity and who at the time is relieved of and is not performing  
30 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,

1 permit, device, or other emolument of employment;

2 (b) performing voluntary service at a recreational facility and who receives no compensation for  
3 those services other than meals, lodging, or the use of the recreational facilities;

4 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage  
5 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs  
6 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined  
7 in 39-71-123.

8 (d) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141,  
9 and providing care without wage compensation to no more than six foster children in the provider's own  
10 residence. The person may receive reimbursement for providing room and board, obtaining training, respite  
11 care, leisure and recreational activities, and providing for other needs and activities arising in the provision  
12 of in-home foster care.

13 (3) With the approval of the insurer, an employer may elect to include as an employee under the  
14 provisions of this chapter any volunteer as defined in subsection (2)(c).

15 (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member  
16 of a fire company organized and funded by a county, a rural fire district, or a fire service area.

17 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service  
18 of an employer, including but not limited to training time, response time, and time spent at the employer's  
19 premises.

20 (5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a  
21 member-managed limited liability company, the employer may elect to include as an employee within the  
22 provisions of this chapter any member of the partnership or limited liability partnership, the owner of the  
23 sole proprietorship, or any member of the limited liability company devoting full time to the partnership,  
24 limited liability partnership, proprietorship, or limited liability company business.

25 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice  
26 naming the partners, sole proprietor, or members to be covered and stating the level of compensation  
27 coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection  
28 (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice  
29 has been given.

30 (c) A change in elected wages must be in writing and is effective at the start of the next quarter

1 following notification.

2 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to  
3 the minimum and maximum limitations of this subsection. For premium ratemaking and for the  
4 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less  
5 than \$900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

6 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited  
7 liability company, the employer may elect to include as an employee within the provisions of this chapter  
8 any corporate officer or manager exempted under 39-71-401(2).

9 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice  
10 naming the corporate officer or manager to be covered and stating the level of compensation coverage  
11 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A  
12 corporate officer or manager is not considered an employee within this chapter until notice has been given.

13 (c) A change in elected wages must be in writing and is effective at the start of the next quarter  
14 following notification.

15 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to  
16 the minimum and maximum limitations of this subsection. For premium ratemaking and for the  
17 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not  
18 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this  
19 chapter.

20 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,  
21 or the county commissioners or trustees for a fire service area may elect to include as an employee within  
22 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'  
23 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

24 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for  
25 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times  
26 the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly  
27 wage.

28 (c) A self-employed sole proprietor or partner who has elected not to be covered under this  
29 chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) AND WHEN INJURED IN  
30 THE COURSE AND SCOPE OF EMPLOYMENT AS A VOLUNTEER FIREFIGHTER, may in addition to the benefits described

1 in subsection (7)(b) be eligible for benefits at an assumed wage of \$5.15 an hour THE MINIMUM WAGE  
 2 ESTABLISHED UNDER TITLE 39, CHAPTER 3, PART 4, for 2,080 hours a year. In order to qualify under this  
 3 subsection (7)(c), the THE trustees of a rural fire district, a county governing body providing rural fire  
 4 protection, or the county commissioners or trustees for a fire service area shall MAY make an election FOR  
 5 BENEFITS. Payrolls IF AN ELECTION IS MADE, PAYROLLS must be reported and premiums must be assessed on  
 6 the assumed wage.

7 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose  
 8 services are furnished by a person, association, contractor, firm, limited liability company, limited liability  
 9 partnership, or corporation, other than a temporary service contractor, to an employer, as defined in  
 10 39-71-117, is presumed to be under the control and employment of the employer. This presumption may  
 11 be rebutted as provided in 39-71-117(3).

12 (9) A student currently enrolled in an elementary, secondary, or postsecondary educational  
 13 institution who is participating in work-based learning activities and who is paid wages by the educational  
 14 institution or business partner is the employee of the entity that pays the student's wages for all purposes  
 15 under this chapter. A student who is not paid wages by the business partner or the educational institution  
 16 is a volunteer and is subject to the provisions of this chapter.

17 (10) For purposes of this section, an "employee or worker in this state" means:

18 (a) a resident of Montana who is employed by an employer and whose employment duties are  
 19 primarily carried out or controlled within this state;

20 (b) a nonresident of Montana whose principal employment duties are conducted within this state  
 21 on a regular basis for an employer;

22 (c) a nonresident employee of an employer from another state engaged in the construction  
 23 industry, as defined in 39-71-116, within this state; or

24 (d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and  
 25 whose employer elects coverage with an insurer that allows an election for an employer whose:

26 (i) nonresident employees are hired in Montana;

27 (ii) nonresident employees' wages are paid in Montana;

28 (iii) nonresident employees are supervised in Montana; and

29 (iv) business records are maintained in Montana.

30 (11) An insurer may require coverage for all nonresident employees of a Montana employer who

1 do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election  
2 under subsection (10)(d)."

3

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

5 **"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by  
6 an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value  
7 of all remuneration paid in any medium other than cash. The term includes but is not limited to:

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

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

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

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

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

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

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

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

24 (b) the amount of the payment made by the employer for employees, if the payment was made  
25 for:

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

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

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

1 (iv) death, including life insurance for the employee or the employee's immediate family;  
 2 (c) vacation or sick leave benefits accrued but not paid;  
 3 (d) special rewards for individual invention or discovery; or  
 4 (e) monetary and other benefits paid to a person as part of public assistance provided through the  
 5 FAIM project, as defined in 53-4-702.

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

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

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

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

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

27

28 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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