

DATE 1-20-05

HB 237

U. S. Department of Labor



Employment and Training Administration

Dallas / Denver Region IV

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Dallas, Texas 75202

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Reply to: OSP-DWS

January 19, 2005

Mr. Steve Bullock
Attorney at Law
Bullock Law Firm
Greater Northern Town Center
30 West 14th Street, Suite 204
P.O. Box 1330
Helena, MT 59624-1330

Dear Mr. Bullock:

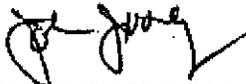
This is in response to your request to review the definitions for the term "instructional capacity" under consideration to resolve a potential federal conformity issue in Draft Bill MT D 24. We reviewed the definitions for the term "instructional capacity" used in the Illinois and Iowa Employment Security Acts as you requested. As the author of Montana proposed bill MT D 24, we understand that you are seeking ways to resolve a potential federal conformity issue concerning unemployment benefits for noncertified school employees during closures. In the draft bill MT D 24, the definition of "instructional capacity" is limited to certified teachers or specialists employed as regular classroom teachers or school specialists or nonlicensed substitute teachers or specialists on either a full-time or a part-time basis. For federal law purposes, the term *instructional capacity* must include persons who are engaged in teaching students in formal classroom situations and individuals who teach informally such as, tutorial relationships. The definition also applies to the category of persons involved in the direction of students in independent research and learning. The definition of instructional capacity contained in MT D 24 limits it to teachers, specialists and substitute teachers. It does not include other "instructional capacity" individuals, such as paraprofessional teacher aides, etc.

To avoid any conformity issues, we recommended to the Montana Department of Employment that the definition of "instructional capacity" be expanded to include the classifications of professionals as well as paraprofessionals. Otherwise, if enacted, MT D 24 would create a conformity issue since all the individuals in an instructional capacity will not be treated equally. The definitions included in the Illinois and Iowa Employment Security Acts Section meet the requirements of Section 3304(a)(6)(A)(i) of the Federal Unemployment Tax Act. If either of these definitions is added to MT D 24 to exclude certain employees in an instructional capacity, it would resolve the potential federal conformity issue. However, we would like to reserve our final opinion until we have an opportunity to review any revisions to the bill.

We are glad to respond to any inquires you may have on behalf of a member of the State Legislature regarding federal conformity issues as it relates to proposed or enacted legislation. As you may know, we have an excellent working relationship with Commissioner Keith Kelly, Don Gilbert, Legal Counsel, and the staff of the Montana Department of Labor and Industry. Our comments regarding legislation are forwarded to Commissioner Kelly regularly as the Agency prepares summaries and analyses of program impact and costs of bills and amendments. It is for this reason that we provide information on conformity issues directly with his office and staff. We encourage you to work with his office as any legislation proposed or enacted would impact heavily on the Department of Labor and Industry.

Thank you for the opportunity to review and comment on these definitions. Inquiries should be directed to Cynthia Green or me at (214) 767-2154.

Sincerely,



JOSEPH C. JUAREZ
Regional Administrator

Cc: Commissioner Keith Kelly
Don Gilbert, Legal Counsel