

SENATE BILL NO. 344

INTRODUCED BY J. ESSMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "MISCONDUCT" WITH RESPECT TO UNEMPLOYMENT INSURANCE BENEFITS; AND AMENDING SECTION 39-51-201, 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 the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. 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 base period means 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", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the 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 year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

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

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



1 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June  
2 30, September 30, or December 31.

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

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

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

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

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

23 (11) "Employment office" means a free public employment office or branch of an office operated by this  
24 state or maintained as a part of a state-controlled system of public employment offices or other free public  
25 employment offices operated and maintained by the United States government or its instrumentalities as the  
26 department may approve.

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

30 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for

1 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant  
2 and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

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

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

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

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

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

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

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

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

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

20 (18) "Misconduct" means a culpable breach by an employee of the employee's duties or obligations to  
21 the employer or a pattern of irresponsible behavior, either of which manifest a disregard for a material interest  
22 of the employer.

23 ~~(18)~~(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue  
24 Code, 26 U.S.C. 132.

25 ~~(19)~~(20) "State" includes, in addition to the states of the United States of America, the District of  
26 Columbia, Puerto Rico, the Virgin Islands, and Canada.

27 ~~(20)~~(21) "Taxes" means contributions and assessments required under this chapter but does not include  
28 penalties or interest for past-due or unpaid contributions or assessments.

29 ~~(21)~~(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business  
30 enterprise that is wholly owned by that tribe.

