

BUSINESS &amp; LABOR

**Montana Code Annotated 2009**EXHIBIT NO. 4  
DATE 2-18-11  
BILL NO. SB 342

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**39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) A charge may not be made to the account of a covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for **misconduct** in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307;

(e) if the base period employer is ordered to military service, as defined in 10-1-1003; or

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10.

**History:** En. Sec. 11, Ch. 685, L. 1979; amd. Sec. 3, Ch. 3, L. 1981; amd. Sec. 2, Ch. 50, L. 1989; amd. Sec. 24, Ch. 373, L. 1991; amd. Sec. 1, Ch. 86, L. 1993; amd. Sec. 25, Ch. 381, L. 2005; amd. Sec. 10, Ch. 52, L. 2007.

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**39-51-2302. Disqualification for leaving work without good cause.** (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified for any of the following reasons:

(a) The individual leaves employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing health care provider and, after recovering from the illness or injury when recovery is certified by a licensed and practicing health care provider, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible.

(b) The individual leaves temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons.

(c) The individual leaves employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(d) The individual leaves employment because of the mandatory military transfer of the individual's spouse. Any benefits paid under this subsection (2)(d) are not chargeable to the employer's account.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204.

**History:** En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (a); amd. Sec. 4, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 371, L. 1985; amd. Sec. 30, Ch. 373, L. 1991; amd. Sec. 9, Ch. 60, L. 1997; amd. Sec. 6, Ch. 61, L. 1999; amd. Sec. 3, Ch. 94, L. 2003; amd. Sec. 26, Ch. 381, L. 2005; amd. Sec. 12, Ch. 52, L. 2007; amd. Sec. 2, Ch. 86, L. 2007.

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**39-51-2303. Disqualification for discharge due to misconduct** An individual must be disqualified for benefits after being discharged:

(1) for misconduct connected with the individual's work or affecting the individual's employment until the individual has performed services:

(a) for which remuneration is received equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred; and

(b) that constitute employment as defined in [39-51-203](#) and [39-51-204](#); or

(2) for gross misconduct connected with the individual's work or committed on the employer's premises, as determined by the department, for a period of 52 weeks.

**History:** En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (b); amd. Sec. 5, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 16, Ch. 234, L. 1987; amd. Sec. 7, Ch. 61, L. 1999.

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**39-51-2508. Eligibility requirements for extended benefits -- disqualifications -- acceptance of suitable work.** (1) An individual is eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds with respect to the week that the individual:

(a) is an exhaustee, as defined in [39-51-2501](#);

(b) has been paid total wages for employment in the base period, as defined in [39-51-201](#), in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

(c) is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if disqualified, the individual satisfies the requirements for requalification in that part; and

(d) has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(c), an individual is disqualified for extended benefits if the individual fails to seek work. The disqualification continues for the week in which the failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of the individual's weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under [39-51-2303\(2\)](#) may not be paid extended benefits unless the individual has earned at least eight times the weekly benefit amount after the date of the disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to [39-51-2302\(3\)](#), requalifies for regular benefits may not be paid extended benefits unless the individual has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". The definition must be in accordance with the requirements of 26 U.S.C. 3304.

**History:** En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(c); amd. Sec. 1, Ch. 99, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 272, L. 1983; amd. Sec. 5, Ch. 171, L. 1993; amd. Sec. 175, Ch. 42, L. 1997.

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**39-51-2113. (Effective January 1, 2010) Benefit ineligibility for suspension.** (1) An individual who files for benefits during a disciplinary suspension is ineligible to receive benefits for 2 weeks or until the suspension ends, whichever occurs first.

(2) Ineligibility based upon a disciplinary suspension may not be imposed for any week beginning after the second week of the suspension. If the individual remains suspended, the individual must be considered discharged for purposes of unemployment insurance. The department shall determine whether the discharge constitutes misconduct under 39-51-2303.

**History:** En. Sec. 3, Ch. 88, L. 2009.

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1 contributions and payments in lieu of contributions must be paid and from which all benefits provided under this  
2 chapter must be paid.

3 (13) "Gross misconduct" <sup>different than "misconduct"</sup> means a criminal act, other than a violation of a motor vehicle traffic law, for  
4 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant  
5 and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

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

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

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

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

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

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

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

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

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

23 (18) "Licensed and practicing health care provider" means a health care provider who is primarily  
24 responsible for the treatment of a person seeking unemployment insurance benefits and who is:

25 (a) licensed to practice in this state as:

26 (i) a physician under Title 37, chapter 3;

27 (ii) a dentist under Title 37, chapter 4;

28 (iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse  
29 practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

30 (iv) a physical therapist under Title 37, chapter 11;