

HOUSE BILL NO. 577

INTRODUCED BY W. STAHL

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A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING TIPS AND GRATUITIES FROM THE DEFINITION OF "WAGES" UNDER UNEMPLOYMENT INSURANCE LAW AND UNDER WORKERS' COMPENSATION LAW IN ORDER TO REDUCE EMPLOYER CONTRIBUTIONS TO THE UNEMPLOYMENT INSURANCE PROGRAM AND THE WORKERS' COMPENSATION PROGRAM; AND AMENDING SECTIONS 33-22-2006, 39-51-201, AND 39-71-123, MCA."

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

Section 1. Section 33-22-2006, MCA, is amended to read:

"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid -- eligibility for small group coverage -- amounts. (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan that meets the requirements of creditable coverage for the employer's and any related employer's employees;

(c) do not have delinquent state income tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and

(e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than \$75,000 in wages, as defined in 39-71-123 and including tips or other gratuities received, from the small employer or related employer in the prior tax year.

(2) An owner, partner, or shareholder of a business who received more than \$75,000 in wages, as defined in 39-71-123 and including tips or other gratuities received, and those individuals' spouses who are

1 employees are not eligible under this chapter for:

2 (a) any premium assistance payment. However, a premium incentive payment may be made for the
3 premium share paid by the business for group health insurance coverage for:

4 (i) the owner, partner, or shareholder;

5 (ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or

6 (iii) dependents of those listed in subsection (2)(a)(i).

7 (b) a tax credit for group health insurance premiums paid by the business or the owner, partner, or
8 shareholder for group health insurance coverage for the individual or the individual's dependents.

9 (3) An employee, including an owner, partner, or shareholder or any dependent of an employee, who
10 is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or
11 medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance
12 payment.

13 (4) The commissioner shall establish, by rule, the maximum number of employees that may be employed
14 to qualify as a small employer under subsection (1). However, the number may not be less than two employees
15 or more than nine employees. The maximum number may be different for employers seeking premium incentive
16 payments and premium assistance payments than for employers seeking a tax credit. The number must be set
17 to maximize the number of employees receiving coverage under this part. The commissioner may not change
18 the maximum employee number more often than every 6 months. If the maximum number of allowable employees
19 is changed, the change does not disqualify registered employers with respect to the tax year for which the
20 employer has registered.

21 (5) Except as provided in subsection (6), an eligible small employer may claim a tax credit in the following
22 amounts:

23 (a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's
24 spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age;
25 or

26 (ii) not more than \$125 each month for each employee and \$100 each month for each employee's
27 spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older;
28 and

29 (b) not more than \$40 each month for each dependent, other than the employee's spouse, if the
30 employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition

1 to the employee's spouse.

2 (6) An employer may not claim a tax credit:

3 (a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

4 (b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

5 (c) for premiums for which a deduction is claimed under 15-30-2131 or 15-31-114.

6 (7) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid
7 by the employer for the qualifying small group."

8

9 **Section 2.** Section 39-51-201, MCA, is amended to read:

10 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise,
11 the following definitions apply:

12 (1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of
13 payment, for employment during a calendar year.

14 (2) "Base period" means:

15 (a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an
16 individual's benefit year;

17 (b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4
18 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

19 (c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of
20 labor of the United States, the period applicable under the unemployment law of the paying state; or

21 (d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state
22 because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United
23 States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for
24 unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

25 (3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar
26 week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new
27 valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A
28 subsequent benefit year may not be established in Montana until the expiration of the current benefit year.
29 However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor
30 of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

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

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

4 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June
5 30, September 30, or December 31.

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

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

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

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

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

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

30 (12) "Fund" means the unemployment insurance fund established by this chapter to which all

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" 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;

1 (v) a chiropractor under Title 37, chapter 12;

2 (vi) a clinical psychologist under Title 37, chapter 17; or

3 (vii) a physician assistant under Title 37, chapter 20; or

4 (b) with respect to a person seeking unemployment insurance benefits who resides outside of this state,
5 a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in
6 the jurisdiction where the person seeking the benefit lives.

7 (19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code,
8 26 U.S.C. 132.

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

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

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

15 (23) "Unemployment insurance administration fund" means the unemployment insurance administration
16 fund established by this chapter from which administrative expenses under this chapter must be paid.

17 (24) (a) "Wages", unless specifically exempted under subsection (24)(b), means all remuneration payable
18 for personal services, including the cash value of all remuneration paid in any medium other than cash. The
19 reasonable cash value of remuneration payable in any medium other than cash must be estimated and
20 determined pursuant to rules prescribed by the department. The term includes but is not limited to:

21 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness
22 periods; and

23 (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service
24 by the employee for the employer, other than retirement or pension benefits from a qualified plan; ~~and~~

25 ~~—— (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are~~
26 ~~documented by the employee to the employer for tax purposes.~~

27 (b) The term does not include:

28 (i) the amount of any payment made by the employer for employees, if the payment was made for:

29 (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
30 Revenue Code;

- 1 (B) sickness or accident disability under a workers' compensation policy;
- 2 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
3 health insurance for the employee or the employee's immediate family; or
- 4 (D) death, including life insurance for the employee or the employee's immediate family;
- 5 (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other
6 expenses, as set forth in department rules;
- 7 (iii) a no-additional-cost service; or
- 8 (iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers
9 program, 19 U.S.C. 2318; or
- 10 (v) tips or other gratuities received by the employee.
- 11 (25) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.
- 12 (26) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive
13 for 1 week of total unemployment."

- 14
- 15 **Section 3.** Section 39-71-123, MCA, is amended to read:
- 16 **"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an
17 employee for an employer; or income provided for in subsection ~~(1)(d)~~ (1)(c). Wages include the cash value of
18 all remuneration paid in any medium other than cash. The term includes but is not limited to:
- 19 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,
20 vacations, and periods of sickness;
- 21 (b) backpay or any similar pay made for or in regard to previous service by the employee for the
22 employer, other than retirement or pension benefits from a qualified plan;
- 23 ~~(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented~~
24 ~~by the employee to the employer for tax purposes;~~
- 25 ~~(d)~~(c) income or payment in the form of a draw, wage, net profit, or substitute for money received or
26 taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or
27 provided services for that remuneration;
- 28 ~~(e)~~(d) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based
29 on its actual value; and
- 30 ~~(f)~~(e) payments made to an employee on any basis other than time worked, including but not limited to

1 piecework, an incentive plan, or profit-sharing arrangement.

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

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

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

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

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

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

11 (iv) death, including life insurance for the employee or the employee's immediate family;

12 (c) vacation or sick leave benefits accrued but not paid;

13 (d) special rewards for individual invention or discovery;

14 (e) tips or other gratuities received by the employee; or

15 ~~(e)~~(f) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

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

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

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

29 (b) Except as provided in 39-71-118(7)(c), the compensation benefits for a covered volunteer must be
30 based on the average actual wages in the volunteer's regular employment, except self-employment as a sole

1 proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

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

6 (5) For the purposes of calculating compensation benefits for an employee working for an employer, as
7 provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based
8 upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition
9 of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as
10 of the date of injury or for the period in which the premium is due."

11 - END -