

HOUSE BILL NO. 362

INTRODUCED BY M. DUNWELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR EXPANDED STANDARDS OF WORKPLACE
5 HEALTH AND SAFETY FOR PUBLIC SECTOR EMPLOYEES; EXPANDING DEPARTMENT OF LABOR AND
6 INDUSTRY DUTIES TO INCLUDE INSPECTIONS IN CASES OF INSTANCES OF OCCUPATIONAL DISEASE;
7 PROVIDING THAT PUBLIC SECTOR EMPLOYERS MAY NOT USE, OCCUPY, OR CONSTRUCT
8 WORKPLACES THAT DO NOT MEET THESE STANDARDS; EXTENDING THE RIGHTS OF PUBLIC SECTOR
9 EMPLOYEES TO OBSERVE MONITORING OF RECOGNIZED HAZARDS AND TO ACCESS RECORDS;
10 PROVIDING FOR EXPANDED NOTICE OF RECOGNIZED HAZARDS; PROVIDING FOR BIENNIAL REPORTS
11 TO AN INTERIM COMMITTEE; SUPERSEDING THE UNFUNDED MANDATE LAWS; AND AMENDING
12 SECTIONS 50-71-112, 50-71-113, 50-71-116, 50-71-118, AND 50-71-119, MCA."

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

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16 **Section 1.** Section 50-71-112, MCA, is amended to read:

17 **"50-71-112. Definitions.** As used in this part, the following definitions apply:

- 18 (1) "Department" means the department of labor and industry provided for in 2-15-1701.
19 (2) "Employee" has the meaning provided in 39-71-118.
20 (3) "Employer" has the meaning provided in 39-71-117.
21 (4) "Health" means protection against occupational illness.
22 (5) "Inspection" means an onsite review of a workplace by the department to determine compliance with
23 standards adopted under this part.

24 (6) "Occupational disease" has the meaning provided in 39-71-116.

25 ~~(6)(7)~~ "Private sector employer" means any employer that is not a public sector employer. The term
26 includes for-profit and not-for-profit employers.

27 ~~(7)(8)~~ (a) "Public sector employee" means an employee of a public sector employer.

28 (b) The term does not include a contractor.

29 ~~(8)(9)~~ "Public sector employer" means:

- 30 (a) a state agency;

- 1 (b) each county in the state;
- 2 (c) each municipality in the state;
- 3 (d) each school district or community college; and
- 4 (e) any other political subdivision of the state.
- 5 ~~(9)~~(10) "Safety" means protection against occupational injury or death.
- 6 ~~(10)~~(11) "Safety consultation services" has the meaning provided in 39-71-1503.
- 7 ~~(11)~~(12) "Standard" means a rule adopted by the department pursuant to this part that is designed to
- 8 promote or ensure safety or health in the workplace.
- 9 ~~(12)~~(13) "State agency" means any branch of government, including a department, board, commission,
- 10 office, bureau, institution, university system entity, or unit of state government recognized in the state budget.
- 11 ~~(13)~~(14) "Workplace" means any site or location where an employee performs work for the employee's
- 12 employer."

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- 14 **Section 2.** Section 50-71-113, MCA, is amended to read:
- 15 **"50-71-113. Administrative authority -- funding.** (1) The department has authority to administer the
- 16 provisions of this part.
- 17 (2) In addition to administering the provisions of this part, the department may:
- 18 (a) promote occupational safety and health;
- 19 (b) educate employers and employees in occupational safety and health matters;
- 20 (c) conduct research regarding occupational safety and health data, topics, and techniques; and
- 21 (d) investigate occupational injuries, illnesses, occupational diseases, and deaths involving public sector
- 22 employees.
- 23 (3) The department may develop and operate a statewide employment safety program. The statewide
- 24 employment safety program may include but is not limited to:
- 25 (a) a safety awareness component;
- 26 (b) an employee education component;
- 27 (c) an employer education component; and
- 28 (d) industry-specific initiatives.
- 29 (4) The activities of the department under the provisions of this part are funded by the workers'
- 30 compensation administration fund provided in 39-71-201.

1 (5) The department may accept, receive, and administer gifts, grants, or other funds from public or
 2 private agencies and from the United States for the purpose of carrying out the provisions of this part. Funds
 3 received by the department under this subsection must be deposited into the fund provided for in 39-71-201."
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5 **Section 3.** Section 50-71-116, MCA, is amended to read:

6 **"50-71-116. Duties of public sector employers and public sector employees.** (1) Each public sector
 7 employer shall:

8 (a) furnish a place of employment that is free from recognized hazards that cause or are likely to cause
 9 death or serious physical acute or chronic harm to public sector employees;

10 (b) adopt and use practices, means, methods, operations, and processes that are adequate to render
 11 the workplace safe; and

12 (c) take appropriate actions necessary to protect the life, health, and safety of public sector employees.

13 (2) A public sector employer may not require or permit a public sector employee to go to or be in any
 14 place of employment or workplace that does not meet standards for safety and health pursuant to this part unless:

15 (a) it is understood and accepted by the public sector employee that it is part of the public sector
 16 employee's occupation; or

17 (b) the public sector employee is at the place of employment or workplace to prevent or abate a
 18 recognized safety and health hazard.

19 (3) A public sector employer may not occupy or maintain a workplace that does not meet standards for
 20 safety and health pursuant to this part.

21 (4) A public sector employer may not construct or cause to be constructed a place of employment that
 22 does not meet standards for safety and health pursuant to this part. A public sector employer shall provide
 23 reasonable environmental testing of buildings prior to occupancy.

24 ~~(2)~~(5) Each public sector employee shall comply with the safety and health standards, rules, and orders
 25 issued pursuant to this part as they apply to the public sector employee's own actions and conduct."
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27 **Section 4.** Section 50-71-118, MCA, is amended to read:

28 **"50-71-118. Inspections.** (1) The department may inspect all workplaces of any public sector employer
 29 for the purpose of determining whether the public sector employer is in compliance with the safety and health
 30 standards that apply to the employer and the employer's workplaces. A department employee conducting an

1 inspection shall, upon request, present appropriate credentials to the public sector employer. The department
2 shall invite a representative of the public sector employer and a representative of any labor organization that
3 represents employees of the public sector employer who are working at the workplace that is to be inspected to
4 accompany the department employee on the inspection. The labor organization representative must be on paid
5 status while accompanying the department employee on the inspection.

6 (2) An inspection may be performed:

7 (a) periodically without prior notice or scheduling;

8 (b) at the request of the public sector employer;

9 (c) as the result of a complaint of a violation of a safety or health standard at a public sector employer's
10 workplace;

11 (d) as part of a department investigation following a report of an occupational injury, illness, occupational
12 disease, or death; or

13 (e) following the issuance of a citation, after the public sector employer has been given a reasonable
14 opportunity to correct any violation of standards.

15 (3) A public sector employer may not interfere with a department inspection conducted pursuant to this
16 section.

17 (4) The department may not unreasonably interfere with the operations of a public sector employer while
18 conducting an inspection. An unscheduled inspection does not constitute unreasonable interference with the
19 public sector employer's operations."
20

21 **Section 5.** Section 50-71-119, MCA, is amended to read:

22 **"50-71-119. Report of inspection -- violations -- penalty -- appeal process.** (1) (a) The department
23 shall make a written report of each inspection that it conducts under 50-71-118.

24 (b) The inspection report must include a list of violations of standards that the inspector discovered
25 during the inspection. A violation of a standard by a public sector employee is attributable to the public sector
26 employer for the purposes of this part.

27 (c) The department shall provide a copy of the inspection report to the public sector employer and to a
28 representative of a labor organization that represents public sector employees at the workplace that was
29 inspected.

30 (d) The public sector employer shall post a copy of the list of hazards included in the inspection report

1 at one or more visible locations at the workplace that is the subject of the inspection report. The posting must be
2 in a location likely to be seen by employees at that workplace.

3 (e) The public sector employer shall allow employees or their representatives to observe monitoring or
4 measuring of employee exposure to recognized safety and health hazards.

5 (f) The public sector employer shall allow access by an employee or the employee's representative to
6 accurate records of employee exposures to recognized safety and health hazards when granted access to
7 records of employee exposures.

8 (g) The public sector employer shall notify an employee who has been or is being exposed to recognized
9 safety and health hazards and inform the employee of corrective action being taken.

10 (2) The department may issue a written citation to the public sector employer for a violation of a standard.

11 The citation must specify:

12 (a) the nature of the violation;

13 (b) the standard that was violated; and

14 (c) a timeframe within which the public sector employer is required to correct the violation.

15 (3) (a) The department may impose upon a public sector employer a monetary penalty of not more than
16 \$1,000 for each violation for which a citation has been issued.

17 (b) The department may, in its sole discretion, waive or reduce a penalty under this subsection (3) if the
18 public sector employer timely corrects or cures the violation for which the penalty was imposed.

19 (c) Monetary penalties collected pursuant to this subsection (3) must be deposited into the workers'
20 compensation administration fund provided for in 39-71-201.

21 (4) (a) A public sector employer may appeal a citation or a penalty.

22 (b) An appeal to the department must be in writing and made within 30 days of the issuance of the
23 citation.

24 (c) The appeal of a citation or a penalty is conducted as a contested case under Title 2, chapter 4."
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26 **NEW SECTION. Section 6. Reports to legislature.** The director of the department shall biennially
27 report to the economic affairs interim committee on activities conducted pursuant to this part. The report must
28 include:

29 (1) total inspections made and citations issued;

30 (2) the number of civil penalties assessed, the total amount of fines collected, and the number of appeals

1 heard; and

2 (3) recommendations to improve the ability of the department to improve health and safety in the public
3 sector employee workplace.

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5 NEW SECTION. **Section 7. Unfunded mandate laws superseded.** The provisions of [this act]
6 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

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8 NEW SECTION. **Section 8. Codification instruction.** [Section 6] is intended to be codified as an
9 integral part of Title 50, chapter 71, part 1, and the provisions of Title 50, chapter 71, part 1, apply to [section 6].

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