

1 SENATE BILL NO. 347

2 INTRODUCED BY T. FACEY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION COVERAGE OPTIONS
5 FOR VOLUNTEER EMERGENCY MEDICAL TECHNICIANS, NONTRANSPORTING MEDICAL UNITS, AND
6 CERTAIN AMBULANCE SERVICES; AMENDING SECTION 39-71-118, MCA; AND PROVIDING AN
7 EFFECTIVE DATE."

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

10
11 **Section 1.** Section 39-71-118, MCA, is amended to read:
12 **"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical**
13 **technician defined.** (1) As used in this chapter, the term "employee" or "worker" means:

14 (a) each person in this state, including a contractor other than an independent contractor, who is in the
15 service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied,
16 oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the
17 elected and appointed paid public officers and officers and members of boards of directors of quasi-public or
18 private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the
19 corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not
20 otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of
21 the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
22 employment is excluded.

23 (b) any juvenile who is performing work under authorization of a district court judge in a delinquency
24 prevention or rehabilitation program;

25 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training
26 under a state or federal vocational training program, whether or not under an appointment or contract of hire with
27 an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving
28 payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational
29 training programs, as outlined in this subsection, while they are on the premises of a public school or community
30 college.

1 (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

2 (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community
3 service for a nonprofit organization or association or for a federal, state, or local government entity under a court
4 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
5 appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment
6 from a third party. For a person covered by the definition in this subsection (1)(e):

7 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment
8 award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part
9 4, for a full-time employee at the time of the injury; and

10 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the
11 minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service
12 required under the order from the court or hearings officer.

13 (f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

14 (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under
15 Title 7, chapter 34, part 1;

16 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
17 considered an employee for workers' compensation purposes only. The department of public health and human
18 services shall provide workers' compensation coverage for recipients of financial assistance, as defined in
19 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or
20 private worksites through an endorsement to the department of public health and human services' workers'
21 compensation policy naming the public or private worksite entities as named insureds under the policy. The
22 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
23 participant's training while receiving financial assistance or while participating in the food stamp program under
24 a written agreement between the department of public health and human services and each public or private
25 entity. The department of public health and human services may not provide workers' compensation coverage
26 for individuals who are covered for workers' compensation purposes by another state or federal employment
27 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for
28 work of a similar nature at the assigned worksite.

29 (i) a member of a religious corporation, religious organization, or religious trust while performing services
30 for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

1 (2) The terms defined in subsection (1) do not include a person who is:

2 (a) performing voluntary service at a recreational facility and who receives no compensation for those
3 services other than meals, lodging, or the use of the recreational facilities;

4 (b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under
5 the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs services on
6 behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

7 (c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and
8 providing care without wage compensation to no more than six foster children in the provider's own residence.
9 The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure
10 and recreational activities, and providing for other needs and activities arising in the provision of in-home foster
11 care.

12 (d) performing temporary agricultural work for an employer if the person performing the work is otherwise
13 exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to
14 a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is
15 not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person
16 does not regularly perform agricultural work away from the person's own fixed business location. For the
17 purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

18 (3) With the approval of the insurer, an employer may elect to include as an employee under the
19 provisions of this chapter a volunteer as defined in subsection (2)(b); ~~a volunteer emergency medical technician~~
20 ~~as defined in subsection (10); or a volunteer firefighter as defined in 7-33-4510. An ambulance service not~~
21 ~~otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in~~
22 ~~50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this~~
23 ~~chapter a volunteer emergency medical technician.~~

24 (4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed
25 limited liability company, the employer may elect to include as an employee within the provisions of this chapter
26 any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member
27 of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or
28 limited liability company business.

29 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
30 naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage

1 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner,
2 sole proprietor, or member is not considered an employee within this chapter until notice has been given.

3 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following
4 notification.

5 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
6 minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination
7 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than
8 \$900 a month and not more than 1 1/2 times the state's average weekly wage.

9 (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability
10 company, the employer may elect to include as an employee within the provisions of this chapter any corporate
11 officer or manager exempted under 39-71-401(2).

12 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
13 naming the corporate officer or manager to be covered and stating the level of compensation coverage desired
14 by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer
15 or manager is not considered an employee within this chapter until notice has been given.

16 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following
17 notification.

18 (d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be
19 based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d).
20 For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the
21 electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's
22 average weekly wage.

23 (6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are
24 furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or
25 corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to
26 be under the control and employment of the employer. This presumption may be rebutted as provided in
27 39-71-117(3).

28 (7) A student currently enrolled in an elementary, secondary, or postsecondary educational institution
29 who is participating in work-based learning activities and who is paid wages by the educational institution or
30 business partner is the employee of the entity that pays the student's wages for all purposes under this chapter.

1 A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject
2 to the provisions of this chapter.

3 (8) For purposes of this section, an "employee or worker in this state" means:

4 (a) a resident of Montana who is employed by an employer and whose employment duties are primarily
5 carried out or controlled within this state;

6 (b) a nonresident of Montana whose principal employment duties are conducted within this state on a
7 regular basis for an employer;

8 (c) a nonresident employee of an employer from another state engaged in the construction industry, as
9 defined in 39-71-116, within this state; or

10 (d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose
11 employer elects coverage with an insurer that allows an election for an employer whose:

12 (i) nonresident employees are hired in Montana;

13 (ii) nonresident employees' wages are paid in Montana;

14 (iii) nonresident employees are supervised in Montana; and

15 (iv) business records are maintained in Montana.

16 (9) An insurer may require coverage for all nonresident employees of a Montana employer who do not
17 meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection
18 (8)(d).

19 (10) (a) ~~With the approval of the insurer, an~~ An ambulance service not otherwise covered by subsection
20 (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or
21 county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical
22 technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g)
23 or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may
24 purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage
25 under plan No. 1, 2, or 3 as provided in this chapter.

26 (b) ~~In the event of~~ If there is an election under subsection (10)(a), the employer shall report payroll for
27 all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of
28 volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average
29 weekly wage divided by 40 hours.

30 (c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer

1 nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as
2 described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has
3 elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician
4 pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency
5 medical technician, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits
6 at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year.
7 If the separate election is made as provided in this subsection (10), payroll information for those self-employed
8 sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

9 (d) A volunteer emergency medical technician who receives workers' compensation coverage under this
10 section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer
11 firefighter.

12 (e) (i) The term "volunteer emergency medical technician" means a person who has received a certificate
13 issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public
14 through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting
15 medical unit, as defined in 50-6-302, in service to a town, city, or county.

16 (ii) The term does not include a volunteer emergency medical technician who serves an employer as
17 defined in 7-33-4510.

18 (f) The term "volunteer hours" means the time spent by a volunteer emergency medical technician in the
19 service of an employer or as a volunteer for a town, city, or county, including but not limited to training time,
20 response time, and time spent at the employer's premises."

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22 **NEW SECTION. Section 2. Effective date.** [This act] is effective July 1, 2015.

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