

HOUSE BILL NO. 472
INTRODUCED BY J. KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN EMPLOYER WHO RELOCATES OR TERMINATES OPERATION OF A COVERED ESTABLISHMENT TO PAY EMPLOYEES SEVERANCE PAY EQUAL TO 1 WEEK'S PAY FOR EACH YEAR OF SERVICE BY THE EMPLOYEE IN THAT ESTABLISHMENT; PROVIDING THAT SEVERANCE PAY IS A WAGE CLAIM SUBJECT TO EXISTING COLLECTION AND PENALTY PROVISIONS; AMENDING SECTION 39-3-209, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 and 2], the following definitions apply:

(1) "Calamity" means fire, flood, or any other natural disaster or the final order of any federal, state, or local governmental agency, including an adjudicated bankruptcy.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Covered establishment" means any retail, industrial, or commercial facility or part of a facility that employs or has employed 100 or more employees at any time in the preceding 18-month period.

(4) "Employee" means an individual employed in a covered establishment who is regularly scheduled to work 40 hours each week.

(5) "Employer" means a person who directly or indirectly owns and operates a covered establishment. For purposes of this definition, a parent corporation is considered the indirect owner and operator of any covered establishment that is directly owned and operated by its corporate subsidiary.

(6) "Person" means an individual, group of individuals, partnership, corporation, association, or other entity.

(7) "Relocation" means the removal of all or substantially all of the retail, industrial, or commercial operations in a covered establishment to a new location, within or outside of the state, 100 or more miles distant from their original location.

(8) "Termination" means the substantial cessation of retail, industrial, or commercial operations in a covered establishment.

(9) "Week's pay" means an amount equal to the base pay of the gross wages, excluding benefits and

insurance, paid to an employee during the year of service prior to relocation or termination.

(10) "Year of service" means 12 consecutive months worked from the employee's original date of hire.

NEW SECTION. Section 2. Severance pay -- notice requirements -- authority of commissioner -- exceptions. (1) Except as provided in subsection (6), an employer who relocates or terminates a covered establishment shall pay each employee severance pay at the rate of 1 week's pay for each year of service to the employer by the employee in that establishment.

(2) The severance pay to an eligible employee must be paid in addition to any final wage payment to the employee and must be paid in the employee's final pay check or no later than the next regularly scheduled payday in the next pay period subsequent to termination or relocation of the covered establishment.

(3) A covered establishment proposing to relocate or terminate shall notify the commissioner and each affected employee in writing not less than 60 days prior to the relocation or termination.

(4) The commissioner may supervise the payment of the unpaid severance pay owed to an employee under this section by bringing an action in district court to recover the amount of any unpaid severance pay. Any money and penalties recovered by the commissioner on behalf of an employee pursuant to this subsection must be held in trust by the commissioner for disbursement to eligible employees.

(5) In any investigation or proceeding under this section, the commissioner may examine books and records of any employer.

(6) The requirement to make payments pursuant to this section does not apply to an employer if:

- (a) relocation or termination of a covered establishment is necessitated by a calamity;
- (b) the employee is covered by an express contract providing for severance pay that is equal to or greater than the severance pay required by this section;
- (c) the employee accepts employment at the new location; or
- (d) the employee has been employed by the employer for less than 3 years.

(7) This section does not prevent the individual employee who has been underpaid or the commissioner on behalf of all the underpaid employees from maintaining an action for recovery of the wages due under Title 39, chapter 3, part 2.

Section 3. Section 39-3-209, MCA, is amended to read:

"39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages -- severance pay. (1) It shall be is the duty of the commissioner of labor to inquire diligently for any violations

of this part and to institute actions for the collection of unpaid wages and for the penalties provided for ~~herein in~~ this part in ~~such cases as he may deem~~ that the commissioner considers proper and to enforce ~~generally~~ the provisions of this part.

(2) Severance pay owed pursuant to [section 2] is a wage claim that is subject to the provisions of this part."

NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 3, part 2, and the provisions of Title 39, chapter 3, part 2, apply to [sections 1 and 2].

NEW SECTION. Section 5. Effective date -- applicability. [This act] is effective July 1, 2003, and applies to a person who terminates or relocates a covered establishment on or after [the effective date of this act].

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