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HOUSE BILL NO. 159  
INTRODUCED BY MCKENNEY  
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES."

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

- Section 1.** Section 39-51-201, MCA, is amended to read:
- "39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:
- (1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.
  - (2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the



1 first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the  
2 arrangement approved by the secretary of labor of the United States, the base period is the period applicable  
3 under the unemployment law of the paying state. For an individual who fails to meet the qualifications of  
4 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116,  
5 or a similar statute of another state or the United States, the base period means the first 4 quarters of the last  
6 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24  
7 months of the date on which the individual's disability was incurred.

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

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

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

18 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June  
19 30, September 30, or December 31.

20 (7) "Contributions" means the money payments to the state unemployment insurance fund required by  
21 this chapter but does not include assessments under 39-51-404(4).

22 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part  
23 17.

24 (9) "Domestic or household service" means employment of persons other than members of the  
25 household for the purpose of tending to the aid and comfort of the employer or members of the employer's  
26 family, including but not limited to housecleaning and yard work, but does not include employment beyond the  
27 scope of normal household or domestic duties, such as home health care or domiciliary care.

28 (10) "Employing unit" means any individual or organization, (including the state government and any of  
29 its political subdivisions or instrumentalities or an Indian tribe or tribal unit), partnership, association, trust, estate,  
30 joint-stock company, insurance company, limited liability company or limited liability partnership that has filed

1 with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy,  
2 trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one  
3 or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and  
4 (1)(q). All individuals performing services within this state for any employing unit that maintains two or more  
5 separate establishments within this state are considered to be employed by a single employing unit for all the  
6 purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or  
7 employee of an employing unit is considered to be employed by the employing unit for the purposes of this  
8 chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee,  
9 provided that the employing unit has actual or constructive knowledge of the work.

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

14 (12) "Fund" means the unemployment insurance fund established by this chapter to which all  
15 contributions and payments in lieu of contributions are required to be paid and from which all benefits provided  
16 under this chapter must be paid.

17 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for  
18 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a  
19 flagrant and wanton disregard of and for the rights, ~~or~~ title, or interest of a fellow employee or the employer.

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

22 (15) "Independent contractor" means an individual who renders service in the course of an occupation  
23 and:

24 (a) has been and will continue to be free from control or direction over the performance of the services,  
25 both under a contract and in fact; and

26 (b) is engaged in an independently established trade, occupation, profession, or business.

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

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

- 1 (i) admits as regular students only individuals having a certificate of graduation from a high school or  
2 the recognized equivalent of a certificate;
- 3 (ii) is legally authorized in this state to provide a program of education beyond high school;
- 4 (iii) provides an educational program for which it awards a bachelor's or higher degree or provides a  
5 program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or  
6 postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized  
7 occupation; and
- 8 (iv) is a public or other nonprofit institution.
- 9 (b) ~~Notwithstanding subsection (17)(a), all~~ All universities in this state are institutions of higher education  
10 for purposes of this part.
- 11 (18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code,  
12 26 U.S.C. 132.
- 13 (19) "State" includes, in addition to the states of the United States of America, the District of Columbia,  
14 Puerto Rico, the Virgin Islands, and Canada.
- 15 (20) "Taxes" means contributions and assessments required under this chapter but does not include  
16 penalties or interest for past-due or unpaid contributions or assessments.
- 17 (21) "Tribal unit" means an Indian tribe and any tribal subdivision; or subsidiary; or any business  
18 enterprise that is wholly owned by that tribe.
- 19 (22) "Unemployment insurance administration fund" means the unemployment insurance administration  
20 fund established by this chapter from which administrative expenses under this chapter must be paid.
- 21 (23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration  
22 payable for personal services, including the cash value of all remuneration paid in any medium other than cash.  
23 The reasonable cash value of remuneration payable in any medium other than cash must be estimated and  
24 determined pursuant to rules prescribed by the department. The term includes but is not limited to:
- 25 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness  
26 periods;
- 27 (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous  
28 service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and
- 29 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are  
30 documented by the employee to the employer for tax purposes.

- 1 (b) The term does not include:
- 2 (i) the amount of any payment made by the employer for employees, if the payment was made for:
- 3 (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
- 4 Revenue Code;
- 5 (B) sickness or accident disability under a workers' compensation policy;
- 6 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
- 7 health insurance for the employee or the employee's immediate family; or
- 8 (D) death, including life insurance for the employee or the employee's immediate family;
- 9 (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other
- 10 expenses, as set forth in department rules; ~~or~~
- 11 (iii) a no-additional-cost service; or
- 12 (iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers
- 13 program, 19 U.S.C. 2318.
- 14 (24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.
- 15 (25) An individual's "weekly benefit amount" means the amount of benefits that the individual would be
- 16 entitled to receive for 1 week of total unemployment."
- 17

18 **Section 2.** Section 39-51-204, MCA, is amended to read:

19 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

20 (a) domestic or household service in a private home, local college club, or local chapter of a college

21 fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and

22 has domestic or household service employment, all employees engaged in domestic or household service must

23 be excluded from coverage under this chapter if the employer:

24 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the

25 subject wages attributable to domestic or household service; and

26 (ii) keeps separate books and records to account for the employment of persons in domestic or

27 household service.

28 (b) service performed by a dependent member of a sole proprietor for whom an exemption may be

29 claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based

30 on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

1 (c) service performed as a freelance correspondent or newspaper carrier if the person performing the  
2 service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged  
3 in writing that the person performing the service and the service are not covered. As used in this subsection:

4 (i) "freelance correspondent" ~~is~~ means a person who submits articles or photographs for publication and  
5 is paid by the article or by the photograph; and

6 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering  
7 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the  
8 employee's main duties, carries or delivers papers.

9 (d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance  
10 salespeople paid solely by commission and without a guarantee of minimum earnings;

11 (e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

12 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment  
13 insurance and workers' compensation;

14 (ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the  
15 cosmetologist or barber:

16 (A) is free from all control and direction of the owner in the contract;

17 (B) receives payment for service from individual clientele; and

18 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge;

19 and

20 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The  
21 existence of a single license for the salon or shop may not be construed as a lack of freedom from control or  
22 direction under this subsection.

23 (f) casual labor not in the course of an employer's trade or business performed in any calendar quarter,  
24 unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual  
25 who is regularly employed by the employer to perform the service. "Regularly employed" means that the service  
26 is performed during at least 24 days in the same quarter.

27 (g) service performed by sole proprietors, working members of a partnership, members of a  
28 member-managed limited liability company that has filed with the secretary of state, or partners in a limited  
29 liability partnership that has filed with the secretary of state;

30 (h) service performed for the installation of floor coverings if the installer:

- 1 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 2 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 3 (iii) may perform service for anyone without limitation;
- 4 (iv) may accept or reject any job;
- 5 (v) furnishes substantially all tools and equipment necessary to provide the service; and
- 6 (vi) works under a written contract that:
- 7 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract
- 8 obligations;
- 9 (B) states that the installer is not covered by unemployment insurance; and
- 10 (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption
- 11 from workers' compensation requirements;
- 12 (i) service performed as a direct seller as defined by 26 U.S.C. 3508;
- 13 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
- 14 professional" means a person who:
- 15 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating
- 16 a business agreement for the exploration or development of minerals;
- 17 (ii) is paid for service that is directly related to the completion of a contracted specific task rather than
- 18 on an hourly wage basis; and
- 19 (iii) performs all services as an independent contractor pursuant to a written contract.
- 20 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
- 21 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 22 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
- 23 conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is
- 24 impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who,
- 25 because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;
- 26 (m) service performed as part of an unemployment work-relief or work-training program assisted or
- 27 financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an
- 28 Indian tribe by an individual receiving work relief or work training;
- 29 (n) service performed for a state prison or other state correctional or custodial institution by an inmate
- 30 of that institution;

- 1 (o) service performed by an individual who is sentenced to perform court-ordered community service  
2 or similar work;
- 3 (p) service performed by elected public officials;
- 4 (q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject  
5 to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded  
6 from coverage under this chapter if the employer:
- 7 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the  
8 monetary amount or number of employees and days worked for the subject wages attributable to agricultural  
9 labor; and
- 10 (ii) keeps separate books and records to account for the employment of persons in agricultural labor.
- 11 (r) service performed in the employ of any other state or its political subdivisions or of the United States  
12 government or of an instrumentality of any other state or states or their political subdivisions or of the United  
13 States, except that national banks organized under the national banking law are not entitled to exemption under  
14 this subsection and are subject to this chapter the same as state banks, if the service is excluded from  
15 employment as defined in 5 U.S.C. 8501(1)(l) and section 3306(c)(6) of the Federal Unemployment Tax Act;
- 16 (s) service in which unemployment insurance is payable under an unemployment insurance system  
17 established by an act of congress if the department enters into agreements with the proper agencies under an  
18 act of congress and those agreements become effective in the manner prescribed in the Montana Administrative  
19 Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring  
20 potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of  
21 congress or who have, after acquiring potential rights to unemployment insurance under the act of congress,  
22 acquired rights to benefits under this chapter;
- 23 (t) service performed in the employ of a school or university if the service is performed by a student who  
24 is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse  
25 is advised, at the time that the spouse commences to perform the service, that the employment of the spouse  
26 to perform the service is provided under a program to provide financial assistance to the student by the school  
27 or university and that the employment is not covered by any program of unemployment insurance;
- 28 (u) service performed by an individual who is enrolled at a nonprofit or public educational institution that  
29 normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in  
30 attendance at the place where its educational activities are carried on, as a student in a full-time program taken



1 for credit at an institution that combines academic instruction with work experience if the service is an integral  
 2 part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u)  
 3 does not apply to service performed in a program established for or on behalf of an employer or group of  
 4 employers;

5 (v) service performed as an officer or member of the crew of a vessel on the navigable waters of the  
 6 United States;

7 (w) service performed by an alien ~~admitted to the United States to perform agricultural labor pursuant~~  
 8 ~~to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act as identified in 8 U.S.C.~~  
 9 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

10 (x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for  
 11 another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

12 (y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care  
 13 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing  
 14 the service is employed directly by a family member or an individual who is a legal guardian; ~~or~~

15 (z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an  
 16 amateur athletic event; or

17 (aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration  
 18 received for those services is less than \$1,000 in the calendar year.

19 (2) An individual found to be an independent contractor by the department under the terms of  
 20 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent  
 21 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

22 (3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or  
 23 a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is  
 24 excluded from employment for purposes of the Federal Unemployment Tax Act."

25

26 **Section 3.** Section 39-51-301, MCA, is amended to read:

27 **"39-51-301. Administration -- duties and powers of department.** (1) It is the duty of the department  
 28 to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures,  
 29 require reports, make investigations, and take action ~~as~~ that it considers necessary or suitable in administering  
 30 this chapter.

1 (2) The department shall determine its own organization and methods of procedure in accordance with  
2 the provisions of this chapter and must have an official seal, which is judicially noticed.

3 (3) Whenever the department believes that a change in contribution or benefit rates will become  
4 necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make  
5 recommendations with respect to the change.

6 (4) The department and the board may issue subpoenas and compel testimony and the production of  
7 evidence, including books and records, in regard to any investigation or proceeding under this chapter.

8 ~~(5) The department may delegate to the department of revenue all duties associated with the~~  
9 ~~administration of unemployment insurance contributions and the employment security account. The duties must~~  
10 ~~be carried out in conformity with the requirements of the program budget plan with the United States department~~  
11 ~~of labor. The department of revenue must receive funds from the department for the performance of the~~  
12 ~~delegated duties. The department of revenue has rulemaking authority with respect to any function or duty~~  
13 ~~delegated to the department of revenue pursuant to this section.~~

14 ~~———(6) The department may revoke its delegation to the department of revenue at any time.~~

15 ~~(7)~~(5) Employees transferring from the department of revenue to the department as a result of the  
16 termination of the delegation of duties ~~in subsection (5) associated with unemployment insurance contribution~~  
17 functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee  
18 before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and  
19 leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned,  
20 and any other rights under any law or administrative policy including the State Employee Protection Act.  
21 Employees transferring must be considered internal applicants by the department of revenue for recruitment  
22 purposes for 1 year from the date of the termination of the delegation of duties ~~in subsection (5) associated with~~  
23 unemployment insurance contribution functions.

24 ~~(8)~~(6) The department shall succeed the department of revenue in its rights to property relating to the  
25 termination of the delegation of duties ~~in subsection (5) associated with unemployment insurance contribution~~  
26 functions to the extent that is consistent with federal property transfer policy. The property includes real property,  
27 records, office equipment, forms, supplies, and contracts other than the program budget plan with the United  
28 States department of labor.

29 ~~(9)~~(7) (a) The termination of the delegation of duties ~~in subsection (5) associated with unemployment~~  
30 insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

1 (b) All appeals that have not been heard prior to the termination of the delegation of duties ~~in subsection~~  
 2 ~~(5) associated with unemployment insurance contribution functions~~ must be made in accordance with the  
 3 procedures identified in 39-51-1109.

4 (c) The department must be substituted for the department of revenue and succeed to all audits,  
 5 determinations, and other actions following the date of the termination of the delegation of duties ~~in subsection~~  
 6 ~~(5) associated with unemployment insurance contribution functions~~.

7 ~~(4)(8)~~ The rights, privileges, and duties of the holders of bonds and other obligations issued and of the  
 8 parties to contracts, leases, indentures, and other transactions entered into before the termination of the  
 9 delegation of duties ~~in subsection (5) associated with unemployment insurance contribution functions~~ remain  
 10 in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by  
 11 reason of the delegation of duties. The department is substituted for the department of revenue and, ~~subject to~~  
 12 ~~the provisions of subsection (5)~~; succeeds to the rights and duties under the provisions of those bonds,  
 13 contracts, leases, indentures, and other transactions. The provisions of this subsection ~~(4)~~ do not apply to the  
 14 program budget plan agreement between the department and the United States department of labor."  
 15

16 **Section 4.** Section 39-51-302, MCA, is amended to read:

17 "**39-51-302. Administrative rules.** ~~(1)~~ The department may adopt procedural and substantive rules  
 18 necessary to implement this chapter.

19 ~~(2) The department shall delegate rulemaking authority to the department of revenue with respect to~~  
 20 ~~any function or duty delegated to the department of revenue pursuant to 39-51-301(5)."~~  
 21

22 **Section 5.** Section 39-51-409, MCA, is amended to read:

23 "**39-51-409. Employment security account.** (1) There is an account created in the state special  
 24 revenue fund called the employment security account.

25 (2) Money deposited in the employment security account may be appropriated to the department for  
 26 payment of:

27 (a) unemployment insurance benefits;

28 (b) expenses incurred in collecting money deposited in the account;

29 (c) expenses incurred for the employment offices established in 39-51-307, including expenses for  
 30 providing services to the business community;

1            (d) expenses incurred for the apprenticeship and training program;  
 2            (E) EXPENSES FOR DISPLACED HOMEMAKER PROGRAMS PROVIDED FOR UNDER 39-7-305;  
 3            (e)(F) expenses for department research and analysis functions that provide employment, wage, and  
 4 economic data; and  
 5            (f)(G) expenses for department functions pertaining to wage and hour laws, prevailing wages, and  
 6 collective bargaining.  
 7            ~~(2)~~(3) The department may transfer funds from the employment security account to the unemployment  
 8 insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the  
 9 transfer will not decrease the money in the account below the level appropriated by the legislature to provide  
 10 for the employment services programs identified in subsection (2).  
 11            ~~(3)~~(4) The department may transfer appropriation authority in employment services programs between  
 12 the federal special revenue and the state special revenue fund types."  
 13

14            **Section 6.** Section 39-51-1110, MCA, is amended to read:

15            **"39-51-1110. Refunds to employers.** (1) If an employer claims an adjustment or the department ~~or~~  
 16 ~~its delegate, as provided in 39-51-304,~~ determines through an examination of the employer's account that the  
 17 employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment  
 18 insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim  
 19 is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest  
 20 became due or within ~~one~~ 1 year from the date the payment is made, whichever is later. The department ~~or its~~  
 21 ~~delegate pursuant to 39-51-304(5),~~ shall credit or refund the amount to the employer, without interest.

22            (2) If the department ~~or its delegate pursuant to 39-51-304(5),~~ determines that an employer has paid  
 23 taxes to this state under this chapter but the taxes should have been paid to another state under a similar act  
 24 of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of  
 25 payment that the other state has been fully paid, then a refund to the employer must be made upon application  
 26 without limitation of time.

27            (3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then  
 28 refunds must be made of all taxes required under this chapter from employers for that year."  
 29

30            **Section 7.** Section 39-51-1206, MCA, is amended to read:

1 **"39-51-1206. Department to provide for notification of employers of their classification and**  
 2 **contribution rate.** (1) The department shall by ~~regulation~~ rule provide for the proper notification of employers  
 3 of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2),  
 4 the notification is final for all purposes unless ~~and until~~ the employer files a written request with the department  
 5 for a redetermination or hearing on the classification and rate of contribution within 30 days after ~~receipt~~ the  
 6 mailing date of the notice. The department may extend the 30-day period for good cause.

7 (2) The department may make changes in classification and rate of contribution upon an oral request  
 8 for redetermination from the employer if the department finds that the department has made an error."  
 9

10 **Section 8.** Section 39-51-1218, MCA, is amended to read:

11 **"39-51-1218. Rate schedules.**

12 SCHEDULES OF CONTRIBUTION RATES - Part I

13		Sched.	Sched.	Sched.	Sched.
14		I	II	III	IV
15	Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
16	Average Tax Rate	1.37	1.57	1.77	1.97
17	Rate Class	Contribution Rates for Eligible Employers			
18	1	0.00%	0.07%	0.27%	0.47%
19	2	0.07	0.27	0.47	0.67
20	3	0.27	0.47	0.67	0.87
21	4	0.47	0.67	0.87	1.07
22	5	0.67	0.87	1.07	1.27
23	6	0.87	1.07	1.27	1.47
24	7	1.07	1.27	1.47	1.67
25	8	1.27	1.47	1.67	1.87
26	9	1.47	1.67	1.87	2.07
27	10	1.67	1.87	2.07	2.27
28	Rate Class	Contribution Rates for Deficit Employers			
29	1	3.17%	3.37%	3.57%	3.77%
30	2	3.37	3.57	3.77	3.97

1	3	3.57	3.77	3.97	4.17
2	4	3.77	3.97	4.17	4.37
3	5	3.97	4.17	4.37	4.57
4	6	4.17	4.37	4.57	4.77
5	7	4.37	4.57	4.77	4.97
6	8	4.57	4.77	4.97	5.17
7	9	4.77	4.97	5.17	5.37
8	10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

10	Sched.	Sched.	Sched.	Sched.	Sched.	Sched.
11	V	VI	VII	VIII	IX	X
12	(.0135)	(.0095)	<del>(.00575)</del>	(.0050)	(...)	(...)
13			<u>(.0075)</u>			
14	2.17	2.37	2.57	2.77	2.97	3.17
15	Contribution Rates for Eligible Employers					
16	0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
17	0.87	1.07	1.27	1.47	1.67	1.87
18	1.07	1.27	1.47	1.67	1.87	2.07
19	1.27	1.47	1.67	1.87	2.07	2.27
20	1.47	1.67	1.87	2.07	2.27	2.47
21	1.67	1.87	2.07	2.27	2.47	2.67
22	1.87	2.07	2.27	2.47	2.67	2.87
23	2.07	2.27	2.47	2.67	2.87	3.07
24	2.27	2.47	2.67	2.87	3.07	3.27
25	2.47	2.67	2.87	3.07	3.27	3.47
26	Contribution Rates for Deficit Employers					
27	3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
28	4.17	4.37	4.57	4.77	4.97	5.17
29	4.37	4.57	4.77	4.97	5.17	5.37
30	4.57	4.77	4.97	5.17	5.37	5.57

1	4.77	4.97	5.17	5.37	5.57	5.77
2	4.97	5.17	5.37	5.57	5.77	5.97
3	5.17	5.37	5.57	5.77	5.97	6.17
4	5.37	5.57	5.77	5.97	6.17	6.37
5	5.57	5.77	5.97	6.17	6.37	6.37
6	6.37	6.37	6.37	6.37	6.37	6.37"

7

8 **Section 9.** Section 39-51-1219, MCA, is amended to read:

9 **"39-51-1219. Procedures for the substitution, merger, transfer, or acquisition of an employer**  
 10 **account by a successor employing unit -- prohibitions and penalties -- definitions.** (1) (a) Subject to the  
 11 provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) If an  
 12 employer in any manner succeeds to or acquires all or substantially all a portion of the trade or business of an  
 13 another employer or transfers all or a portion of the employer's trade or business to another employer and both  
 14 employers are under substantially common ownership, management, or control at the time of the succession,  
 15 acquisition, or transfer, the experience rating record attributable to the predecessor employer must be  
 16 transferred to and combined with the experience rating record of the successor employer. who at the time of  
 17 acquisition was a covered employer and whenever in respect to whom the department finds that the business  
 18 of the predecessor is continued solely by the successor:

19 (a) (b) the separate account and the actual contribution, benefit, and taxable payroll experience of the  
 20 predecessor must, upon the joint application of the predecessor and the successor within 90 days after the  
 21 acquisition and approval by the department, be transferred to the successor employer for the purpose of  
 22 determining the successor's liability and rate of contribution; and In the case of a partial transfer of a trade or  
 23 business, the portion of the experience rating record transferred from the predecessor employer to the successor  
 24 employer must be based on the portion of the trade or business transferred. The portion must be determined  
 25 in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters  
 26 immediately preceding the date of the transfer.

27 (c) Whenever a transfer involves only a portion of the experience rating record and the predecessor  
 28 employer or successor employer fails to supply the required payroll information to the department within 10 days  
 29 after notification, the transfer must be based on estimates of the applicable payrolls.

30 (b)(d) any Any successor employer who was not an employer on the date of acquisition becomes a

1 covered employer as of that date.

2 (e) A successor employer must be notified by the department in writing of the transfer of the experience  
 3 rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the  
 4 notice was mailed, the successor employer's right to appeal the transfer is waived.

5 ~~(2) (a) Whenever any individual or organization (whether or not a covered employer) in any manner~~ If  
 6 an employer transfers, succeeds to, or acquires all or a portion part of the trade or business of an a covered  
 7 employer who at the time of acquisition was a covered employer and whenever that and the employers are not  
 8 under substantially common ownership, management, or control, the predecessor employer and the successor  
 9 employer have the option to transfer the applicable portion of the experience rating record from the predecessor  
 10 employer to the successor employer if that portion of the trade or business is continued by the successor  
 11 employer.:

12 ~~(a) (b) so much of the separate account and the actual contribution, benefit, and taxable payroll~~  
 13 ~~experience of the predecessor as is attributable to the portion of the business transferred, as determined on a~~  
 14 ~~pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion~~  
 15 ~~of the business bear to the payroll of the predecessor in the last 4 completed calendar quarters immediately~~  
 16 ~~preceding the date of transfer, must, upon the~~ In order to make the transfer, a joint application for the transfer  
 17 of the experience rating record must be made by of the predecessor employer and the successor employer  
 18 within 90 days after of the acquisition and approval by the department, be transferred to the successor employer  
 19 for the purpose of determining the successor's liability and rate of contribution; and

20 (c) In the case of a complete transfer of the trade or business, all of the experience rating record of the  
 21 predecessor employer is transferred to the successor employer.

22 (d) In the case of a partial transfer of the trade or business, the portion of the experience rating record  
 23 transferred from the predecessor employer to the successor employer must be based on the portion of the trade  
 24 or business transferred. This portion must be determined in the same ratio as the payroll transferred to the  
 25 successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.

26 ~~(b)(e) any A~~ any A successor employer who was not an employer on the date of acquisition becomes a  
 27 covered employer as of that date.

28 ~~(3) (a) (f)~~ (f) The 90-day period for filing the joint application may be extended at the discretion of the  
 29 department.

30 ~~(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last~~



1 computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by  
 2 substantial evidence that the management, the ownership, or both the management and ownership are not  
 3 substantially the same for the successor as for the predecessor, in which case the successor shall begin with  
 4 the rate of a new employer. Whenever a mandatory transfer involves only a portion of the experience rating  
 5 record and the predecessor or successor employers fail to supply the required payroll information within 10 days  
 6 after notice, the transfer must be based on estimates of the applicable payrolls. The successor must be notified  
 7 in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the  
 8 right to appeal is waived.

9 ~~\_\_\_\_\_ (c) Whenever a predecessor covered employer has an eligible experience rating account as of the last~~  
 10 ~~computation date and when it is shown by substantial evidence that the management, the ownership, or both~~  
 11 ~~the management and the ownership are substantially the same for the successor as for the predecessor, the~~  
 12 ~~transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a~~  
 13 ~~portion of the experience rating record and the predecessor or successor employers fail to supply the required~~  
 14 ~~payroll information within 10 days after notification, the transfer must be based on estimates of the applicable~~  
 15 ~~payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of~~  
 16 ~~notification that the experience rating account of the predecessor not be transferred.~~

17 ~~(4)(3)~~ (a) If the successor employer was a covered employer prior to the date of the acquisition of all  
 18 or a part portion of the predecessor's predecessor employer's trade or business and if:

19 (i) the employers are not under substantially common ownership, management, or control at the time  
 20 of acquisition, the successor's successor employer's rate of contribution, effective the first day of the calendar  
 21 year immediately following the date of acquisition, is based on the combined experience of the predecessor  
 22 employer and successor employer; or

23 (ii) the employers were under substantially common ownership, management, or control at the time of  
 24 acquisition, the successor employer's experience rate must be combined with the predecessor employer's  
 25 experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which  
 26 the acquisition occurred.

27 (b) If the successor employer was not a covered employer prior to the date of the acquisition of all or  
 28 a part portion of the predecessor's predecessor employer's trade or business and the employers are not under  
 29 substantially common ownership, management, or control, upon joint application by the employers, the  
 30 successor's successor employer's rate is the rate applicable assigned to the predecessor employer with respect

1 ~~to the period immediately preceding as of~~ the date of acquisition, ~~but if~~. If there was more than one predecessor  
2 ~~employer~~, the ~~successor's~~ successor employer's rate must be a ~~newly~~ computed rate based on the combined  
3 experience of the ~~predecessors~~ predecessor employers and ~~becomes~~, becoming effective immediately after the  
4 date of acquisition and ~~remaining~~ remains in effect for the balance of the rate year.

5 (4) The transfer of all or part of an employer's workforce to another employer must be considered a  
6 transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer  
7 performing the trade or business with respect to the transferred workforce and the trade or business is performed  
8 by the employer to which the workforce is transferred.

9 (5) (a) The experience rating record of a predecessor trade or business may not be transferred to a  
10 person acquiring the trade or business if:

11 (i) the person is not otherwise an employer at the time of the acquisition; and

12 (ii) the department finds that the person acquired the trade or business solely or primarily for the purpose  
13 of obtaining a lower rate of contributions.

14 (b) A person subject to the provisions of subsection (5)(a) must be assigned the applicable new  
15 employer rate pursuant to 39-51-1217.

16 (6) Factors that the department may consider in determining if a person acquired a trade or business  
17 solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:

18 (a) the cost of acquisition;

19 (b) whether the person continued the trade or business operation;

20 (c) the length of time that the trade or business operation was continued after acquisition; and

21 (d) whether a substantial number of new employees were to perform duties unrelated to the trade or  
22 business operations conducted prior to the acquisition.

23 (7) A person who knowingly violates, attempts to violate, or provides advice on violating the provisions  
24 of this section is subject to the following penalties:

25 (a) If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's  
26 average annual taxable wages used in computing the employer's most recent year's experience rating record.  
27 The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

28 (b) If the person is not an employer, the person is subject to a civil penalty of not more than \$5,000.  
29 The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

30 (c) In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a

1 provision of this section:

2 (i) is subject to any other penalties prescribed by this chapter;

3 (ii) may be subject to a criminal penalty pursuant to 39-51-3204; and

4 (iii) may be charged with any other applicable criminal violations provided by law.

5 (8) For the purposes of this section, the following definitions apply:

6 (a) "Knowingly" means having actual knowledge of, acting with deliberate ignorance of, or reckless  
7 disregard for the prohibitions established in this section.

8 (b) "Person" includes an individual, trust, estate, partnership, association, company, or corporation.

9 (c) "Trade or business" includes an employer's workforce.

10 (9) The department shall establish procedures to identify the transfer or acquisition of a trade or  
11 business for the purposes of this section.

12 (10) This section must be interpreted and applied in a manner that meets the minimum requirements  
13 contained in any guidance or regulations issued by the United States department of labor."

14

15 **Section 10.** Section 39-51-1301, MCA, is amended to read:

16 **"39-51-1301. Penalty and interest on past-due reports and taxes.** (1) Failure to file reports and  
17 payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an  
18 employer to penalty and interest, as provided ~~by 15-30-209~~ in subsection (2).

19 (2) The department may assess penalties and interest under this section as follows:

20 (a) a penalty of \$25 for the failure to file reports or make payments in a timely manner;

21 (b) in addition to the late penalty provided in subsection (2)(a), a penalty of \$50 if the department issues  
22 a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an  
23 employer's refusal or failure to provide requested information;

24 (c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of \$100 for failure to comply  
25 with a subpoena; and

26 (d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection  
27 (2) that are not paid in a timely manner.

28 (3) The department may waive all or any portion of any penalties and interest assessed pursuant to  
29 subsection (2).

30 ~~(2)(4)~~ (4) There is an account in the federal special revenue fund. Penalties and interest collected for

1 unemployment insurance obligations must be deposited in that account. Money deposited in that account and  
 2 appropriated to the department ~~or transferred by the department to its delegate, pursuant to 39-51-301(5)~~; may  
 3 ~~only~~ be used by the department ~~or its delegate~~ only to administer this chapter, including the detection and  
 4 collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than  
 5 amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be  
 6 transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

7 ~~(3)(5)~~ All money accruing to the unemployment insurance trust fund from interest and penalties  
 8 collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment  
 9 insurance benefits and may not be used for any other purpose."

10

11 **Section 11.** Section 39-51-1303, MCA, is amended to read:

12 **"39-51-1303. Collection of unpaid taxes.** (1) The department, ~~or its delegate pursuant to 39-51-301(5)~~,  
 13 ~~has authority to~~ may enter into payment agreements with an employer to resolve unpaid taxes, penalty, and  
 14 interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement  
 15 is entered into and ~~adhered to~~ followed. Failure to meet the terms of the payment agreement voids the penalty  
 16 and interest abatement, and the penalty and interest must be recomputed from the due date of the unpaid tax.

17 (2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited  
 18 liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment  
 19 of taxes, penalties, or interest on the taxes and penalties, the department, ~~or its delegate pursuant to~~  
 20 ~~39-51-301(5)~~, may initiate a civil action in the name of the state to collect the amount due, and the employer,  
 21 liable corporate officer, liable member or manager of a limited liability company ~~referred to in 39-51-1105~~, or  
 22 partner in a limited liability partnership adjudged in default shall pay the costs of the action.

23 (3) An action for the collection of taxes due must be brought within 5 years from the date the original  
 24 or amended report was filed or the assessment became due, whichever is later, or ~~if~~ the action is barred.

25 (4) The department, ~~or its delegate pursuant to 39-51-301(5)~~, may pursue its remedy under 39-51-1304,  
 26 or this section, or both."

27

28 **Section 12.** Section 39-51-2102, MCA, is amended to read:

29 **"39-51-2102. Week Commencement of week of unemployment -- when deemed to commence.**

30 An individual's week of unemployment ~~shall be deemed to commence~~ commences only after his registration at

1 ~~an unemployment office~~ the individual files a claim for unemployment insurance benefits with the unemployment  
 2 insurance division and has registered for work with the individual's local job service, except as the department  
 3 may by ~~regulation~~ rule otherwise prescribe."

4

5 **Section 13.** Section 39-51-2104, MCA, is amended to read:

6 **"39-51-2104. General benefit eligibility conditions.** (1) An unemployed individual is eligible to receive  
 7 benefits for any week of total unemployment within the individual's benefit year only if the department finds that  
 8 the individual:

9 (a) has filed a claim ~~at and has continued to report at an employment office~~ filed continued claims in  
 10 accordance with rules that the department may prescribe, ~~except that the department may by rule prescribe that~~  
 11 ~~in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an~~  
 12 ~~unemployed individual may file a claim and report for work by mail or through other governmental agencies;~~

13 (b) is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in  
 14 any week of unemployment for failure to comply with the provisions of this subsection if the failure is because  
 15 of:

16 (i) an illness or disability that occurs after the claimant has ~~registered for work~~ filed or reopened a claim  
 17 for unemployment insurance benefits and suitable work has not been offered to the claimant after the beginning  
 18 of the illness or disability; or

19 (ii) enrollment as a student as provided in 39-51-2307.

20 (c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a  
 21 waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this  
 22 subsection:

23 (i) if benefits have been paid for that week;

24 (ii) unless the individual was eligible for benefits during the week;

25 (iii) unless it occurs within the benefit year of the claimant;

26 (iv) unless it occurs after benefits first could become payable to any individual under this chapter.

27 (d) has registered for work with the individual's local job service office unless the individual is excused  
 28 by department rule from registering for work.

29 (2) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust  
 30 their regular benefits and who are in need of reemployment services.

1 (b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection  
2 (2)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

3 (c) The requirement for participation in reemployment services may be waived if the department  
4 determines that:

5 (i) the individual has completed reemployment services; or

6 (ii) the individual's failure to participate in reemployment services is justifiable."  
7

8 **Section 14.** Section 39-51-2402, MCA, is amended to read:

9 **"39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the  
10 department and referred to as a deputy shall promptly examine ~~the~~ a claim for benefits, and; on the basis of the  
11 deputy's findings of fact ~~facts the deputy has found~~, the deputy shall determine whether or not the claim is valid.  
12 If the claim is valid, the deputy ~~will~~ shall determine the week the benefits commence, the weekly benefit amount  
13 payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim  
14 to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed  
15 in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the~~  
16 ~~issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals,~~  
17 ~~as prescribed in 15-2-302 and 15-30-257 during the time that the department delegated the duties associated~~  
18 ~~with the administration of unemployment insurance contributions to the department of revenue pursuant to~~  
19 ~~39-51-304.~~ The deputy shall promptly notify the claimant and any other interested party of the decision and the  
20 reasons for reaching the decision.

21 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and  
22 other interested parties of the amended decision and the reasons for the decision.

23 ~~(3) A determination or redetermination of an initial or additional claim may not be made under this~~  
24 ~~section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is~~  
25 ~~mailed to each interested party.~~

26 ~~(4)~~(3) A determination or redetermination is final unless an interested party entitled to notice of the  
27 decision applies for reconsideration of the determination or appeals the decision within 10 days after the  
28 notification was mailed to the interested party's last-known address. The 10-day period may be extended for  
29 good cause.

30 ~~(5)~~(4) Except as provided in subsection ~~(6)~~ (5), a redetermination of a claim for benefits may not be

1 made after 2 years from the date of the initial determination.

2 ~~(6)~~(5) A redetermination may be made within 3 years from the date of the initial determination of a claim  
3 if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact  
4 by the claimant or the employer."

5  
6 COORDINATION SECTION. SECTION 15. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 760 AND  
7 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 118] OF HOUSE BILL NO. 760, AMENDING 39-51-1301, IS VOID.

8  
9 NEW SECTION. Section 16. Effective dates. (1) [Sections 1 through 8, sections 10 through ~~14~~ 15,  
10 and this section] are effective on passage and approval.

11 (2) [Section 9] is effective January 1, 2006.

12 - END -