

SENATE BILL NO. 355

INTRODUCED BY D. WANZENRIED, HENRY, RASER, GRINDE, WINDY BOY, BIXBY, BRANAE,
 NOONAN, LARSON, KITZENBERG, MCALPIN, COCCHIARELLA, J. TROPILA, JACOBSON, VILLA,
 JOPEK, COHENOUR, BECKER, WILLIAMS, PHILLIPS, BERGREN, JAYNE, WILMER, MCCHESENEY,
 SQUIRES, JUNEAU, KEANE, SANDS, PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN SCHOOL EMPLOYEES TO APPLY FOR UNEMPLOYMENT INSURANCE BENEFITS BETWEEN ACADEMIC TERMS; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTION 39-51-2108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on services in public, charitable, or educational organizations -- conditions for and prohibitions against denial of benefits. (1) Benefits Except as provided in subsections SUBSECTION (2) and (3)(b), benefits based on services in employment defined in 39-51-203(5) and (6) are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other services subject to this chapter, except that benefits.

(2) Benefits based on services in an instructional capacity, a research capacity, or a principal administrative capacity for an educational institution OR EDUCATIONAL SERVICE AGENCY may not be paid to an individual:

(a) for any week of unemployment which that begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs the services in the first of the academic years or terms and if the individual has a contract to perform services or a reasonable assurance of performing services in any instructional, research, or principal administrative capacity for any educational institution in the second of the academic years or terms; OR

(2)(b) for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess and there is reasonable assurance that the individual will perform the service in the period immediately

following the vacation period or holiday recess; ~~or.~~

~~(c) who performed the services for an educational institution while in the employ of an educational service agency.~~

~~(3) (a) Benefits based on services in any other capacity for an educational institution must OR EDUCATIONAL SERVICE AGENCY may not be denied to any individual for any week which that commences during a period between 2 successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial provided for in this section.~~

~~(b) Benefits as described in subsection (3)(a) may be denied if denial is required as a condition for a full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C. 3301, et seq THE SCHOOL DISTRICT PROVIDES ALTERNATIVE WORK AT THE EMPLOYEE'S REGULAR WAGE THAT PROVIDES A PAYCHECK AT LEAST EQUIVALENT TO THE UNEMPLOYMENT BENEFITS FOR WHICH THE INDIVIDUAL OTHERWISE WOULD BE ELIGIBLE.~~

~~(4) IF AN INDIVIDUAL IS DENIED BENEFITS AND WAS NOT OFFERED AN OPPORTUNITY TO PERFORM THE SERVICES FOR THE EDUCATIONAL INSTITUTION OR EDUCATIONAL SERVICE AGENCY FOR THE SECOND OF THE ACADEMIC YEARS OR TERMS, THE INDIVIDUAL IS ENTITLED TO A RETROACTIVE PAYMENT OF THE BENEFITS FOR EACH WEEK FOR WHICH THE INDIVIDUAL FILED A TIMELY CLAIM FOR BENEFITS AND FOR WHICH BENEFITS WERE DENIED SOLELY BY REASON OF THE DENIAL PROVIDED FOR IN THIS SECTION.~~

~~(3) Benefits based on services described in subsections (1) and (2) of this section must be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess and there is reasonable assurance that the individual will perform the service in the period immediately following the vacation period or holiday recess.~~

~~(4) Benefits based on services described in subsections (1) and (2) to an individual who performed the services for an educational institution while in the employ of an educational service agency must be denied as specified in subsections (1) through (3). The term "educational~~

~~(4)(5) For the purposes of this section, the following definitions apply:~~

~~(a) "Educational service agency" means a governmental agency or governmental entity which that is established and operated exclusively for the purpose of providing the service to one or more educational~~

institutions.

(b) "Instructional capacity" means a service performed for an educational institution or educational service agency either on a full-time or part-time basis and consists of teaching in formal classroom or seminar situations, tutoring, or lecturing for the purpose of imparting knowledge or counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(c) "Principal administrative capacity" means the performance of services by an individual as a manager of an educational institution or one of its major divisions or departments. The services include but are not limited to:

(i) establishing and administering policies, rules, and regulations that have a major impact on the overall operation and function of the educational institution or one of its major divisions or departments; and

(ii) performing services under general direction and broad objectives and missions, with the authority to determine goals and the techniques and methods of operation of the educational institution or one of its major divisions or departments.

(d) "Research capacity" means a service performed by an individual that:

(i) consists of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles;

(ii) is performed in a predominantly intellectual field or artistic endeavor that is varied in character and requires the constant exercise of discretion and judgment in performance; and

(iii) requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study."

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

NEW SECTION. Section 3. Effective date -- applicability. [This act] is effective on passage and approval and applies to claims for benefits made on or after [the effective date of this act].

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