

HOUSE BILL NO. 427

INTRODUCED BY S. KERNS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MILITARY AFFAIRS LAWS; PROVIDING THAT MEMBERS OF THE NATIONAL GUARD AND AIR NATIONAL GUARD ARE ENTITLED TO WORKERS' COMPENSATION WHILE ON STATE DUTY; PROVIDING THAT THE DEPARTMENT OF MILITARY AFFAIRS MUST COVER THE DIFFERENCE BETWEEN WORKERS' COMPENSATION BENEFITS AND THE INJURED MEMBER'S ~~CIVILIAN~~ FEDERAL COMPENSATION RATE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 10-3-312 AND 39-71-118, MCA."

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

NEW SECTION. Section 1. Benefits for national guard performing state military duty. (1) A

member of the army national guard or air national guard who suffers a covered injury or illness while serving on state military duty, as defined in 10-1-1003, is entitled to worker's compensation in the same manner as any other employee of the state.

(2) A member of the army national guard or air national guard who, as a result of an injury suffered while serving on state military duty, is temporarily unable to return to the civilian trade or business performed immediately before entering state military duty is entitled to a monthly payment from the department in an amount that is equivalent to the difference between the gross workers' compensation benefits received for the injury and the pay and allowances of the member provided by 10-1-502. Entitlement to this payment is personal to the member and terminates upon termination of workers' compensation benefits.

(3) A member of the army national guard or air national guard who, as a result of an injury suffered while serving on state military duty, is permanently disabled is entitled to a monthly payment from the department in an amount equal to the difference between the gross workers' compensation benefits received for the injury and the amount that would be paid to a similarly situated member of the armed forces of the United States for the same injury if it was incurred in the line of duty.

(4) A member of the army national guard or air national guard is not entitled to any benefits under

1 this section unless the injury or illness occurred while serving on state military duty. For the purpose of this
2 section, whether an injury or illness occurred while serving on state military duty as a member of the army
3 national guard or air national guard must be determined using the regulations, policies, and procedures
4 prescribed by the federal military services.

5 (5) Nothing in this section may be construed to prejudice or limit the provision of any other rights or
6 benefits to which the injured member is entitled. The benefits authorized by this section are in addition to any
7 workers' compensation benefits to which a member of the army national guard or air national guard would
8 otherwise be entitled.

9 (6) The department may use funds appropriated under 10-3-312 to pay benefits provided under
10 this section.

11 (7) The department may adopt rules necessary to implementing this section.

12

13 **Section 2.** Section 10-3-312, MCA, is amended to read:

14 **"10-3-312. Maximum expenditure by governor -- appropriation.** (1) Whenever a disaster or an
15 emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared
16 under 80-7-1013, is declared by the governor, or a member of the army national guard or air national guard is
17 entitled to benefits under [section 1], there is statutorily appropriated to the office of the governor, as provided in
18 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount
19 not to exceed \$16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same
20 biennium. The statutory appropriation in this subsection may be used by any state agency designated by the
21 governor.

22 (2) In the event of the recovery of money expended under this section, the spending authority must
23 be reinstated to a level reflecting the recovery.

24 (3) If a disaster is declared by the president of the United States, there is statutorily appropriated to
25 the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general
26 fund an amount not to exceed \$500,000 during the biennium to meet the state's share of the individuals and
27 households grant programs as provided in 42 U.S.C. 5174. The statutory appropriation in this subsection may
28 be used by any state agency designated by the governor.

1 (4) At the end of each biennium, an amount equal to the unexpended and unencumbered balance
2 of the \$16 million statutory appropriation in subsection (1), minus any amount appropriated pursuant to 10-3-
3 310 in the same biennium, must be transferred by the state treasurer from the state general fund to the fire
4 suppression account provided for in 76-13-150."

5

6 **Section 3.** Section 39-71-118, MCA, is amended to read:

7 **"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency care**
8 **provider defined -- election of coverage.** (1) As used in this chapter, the term "employee" or "worker" means:

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

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

20 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job
21 training under a state or federal vocational training program, whether or not under an appointment or contract of
22 hire with an employer, as defined in 39-71-117, and, except as provided in subsection (7), whether or not
23 receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in
24 vocational training programs, as outlined in this subsection, while they are on the premises of a public school or
25 community college.

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

27 (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community
28 service for a nonprofit organization or association or for a federal, state, or local government entity under a

1 court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not
2 under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving
3 payment from a third party. For a person covered by the definition in this subsection (1)(e):

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

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

10 (f) an inmate working in a federally certified prison industries program authorized under 53-30-
11 132;

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

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

27 (i) subject to subsection (11), a member of a religious corporation, religious organization, or
28 religious trust while performing services for the religious corporation, religious organization, or religious trust, as

1 described in 39-71-117(1)(d); and

2 (j) a member of the army national guard or air national guard while performing state military duty
3 as defined in 10-1-1003.

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

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

7 (b) performing services as a volunteer, except for a person who is otherwise entitled to coverage
8 under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs
9 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-
10 71-123.

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

16 (d) performing temporary agricultural work for an employer if the person performing the work is
17 otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with
18 respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-
19 401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417
20 because the person does not regularly perform agricultural work away from the person's own fixed business
21 location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-
22 101(1)(a).

23 (3) With the approval of the insurer, an employer may elect to include as an employee under the
24 provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-
25 33-4510.

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

1 or any member of the limited liability company devoting full time to the partnership, limited liability partnership,
2 proprietorship, or limited liability company business.

3 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
4 naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage
5 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
6 partner, sole proprietor, or member is not considered an employee within this chapter until notice has been
7 given.

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

10 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
11 the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the
12 determination of the weekly wage for weekly compensation benefits, the electing employer may elect an
13 amount of not less than \$900 a month and not more than 1½ times the state's average weekly wage.

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

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

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

23 (d) For the purposes of an election under this subsection (5), all weekly compensation benefits
24 must be based on the amount of elected wages, subject to the minimum and maximum limitations of this
25 subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly
26 compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more
27 than 1½ times the state's average weekly wage.

28 (6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services

1 are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or
2 corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to
3 be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-
4 117(3).

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

9 (b) An elementary or secondary student who is not paid wages by the business partner or the
10 educational institution in which the student is enrolled is a volunteer for whom coverage must be provided. The
11 business partner and the educational institution shall mutually determine and agree in writing whether the
12 business partner or the educational institution shall elect coverage for the student.

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

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

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

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

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

22 (i) nonresident employees are hired in Montana;

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

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

25 (iv) business records are maintained in Montana.

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

1 (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
2 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as
3 an employee within the provisions of this chapter a volunteer emergency care provider who serves public safety
4 through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer
5 nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers'
6 compensation coverage from any entity authorized to provide workers' compensation coverage under plan No.
7 1, 2, or 3 as provided in this chapter.

8 (b) If there is an election under subsection (10)(a), the employer shall report payroll for all
9 volunteer emergency care providers for premium and weekly benefit purposes based on the number of
10 volunteer hours of each emergency care provider, but no more than 60 hours, times the state's average weekly
11 wage divided by 40 hours.

12 (c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
13 nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as
14 described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has
15 elected not to be covered under this chapter, but who is covered as a volunteer emergency care provider
16 pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency
17 care provider, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at
18 an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If
19 the separate election is made as provided in this subsection (10), payroll information for those self-employed
20 sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

21 (d) A volunteer emergency care provider who receives workers' compensation coverage under this
22 section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a
23 volunteer firefighter.

24 (e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical
25 unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer
26 emergency care providers under the provisions of this section shall annually notify its volunteer emergency care
27 providers that coverage is not provided.

28 (f) (i) The term "volunteer emergency care provider" means a person who is licensed by the board

1 of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an
2 ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical
3 unit, as defined in 50-6-302, in service to a town, city, or county.

4 (ii) The term does not include a volunteer emergency care provider who serves an employer as
5 defined in 7-33-4510.

6 (g) The term "volunteer hours" means the time spent by a volunteer emergency care provider in
7 the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time,
8 response time, and time spent at the employer's premises.

9 (11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the
10 administrative purposes of this chapter and may not be interpreted or construed to create an employment
11 relationship in any other context."

12

13 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
14 integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [section 1].

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- END -