

SENATE BILL NO. 496

INTRODUCED BY S. O'BRIEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS TO PROVIDE THAT THE DEPARTMENT OF LABOR AND INDUSTRY SHALL ANNUALLY REVISE ITS RULES DEFINING WAGES PERTAINING TO LODGING; AND AMENDING SECTION 39-71-123, MCA."

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

**Section 1.** Section 39-71-123, MCA, is amended to read:

**"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

- (a) monetary commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;
  - (b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
  - (c) tips or other gratuities received by the employee to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;
  - (d) income or payment in the form of a draw, wage, net profit, or money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;
  - (e) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement;
  - (f) board if it constitutes a part of the employee's remuneration and is based on its actual value;
- and
- (g) lodging, rent, or housing if it constitutes part of the employee's remuneration and is based on a value as set by administrative rule. The values set by administrative rule must be updated annually and address

1 the general geographic proximity to available housing and may consider other reasonable factors that affect  
2 value.

3 (2) The term "wages" does not include any of the following:

4 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and  
5 other expenses, as set forth in department rules;

6 (b) the amount of the payment made by the employer for employees, if the payment was made for:

7 (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the  
8 Internal Revenue Code;

9 (ii) sickness or accident disability under a workers' compensation policy;

10 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including  
11 health insurance for the employee or the employee's immediate family;

12 (iv) death, including life insurance for the employee or the employee's immediate family;

13 (c) vacation or sick leave benefits accrued but not paid;

14 (d) special monetary rewards for individual invention or discovery; or

15 (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-  
16 201.

17 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average  
18 actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that  
19 if the term of employment for the same employer is less than four pay periods, the employee's wages are the  
20 hourly rate times the number of hours in a week for which the employee was hired to work.

21 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the  
22 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for  
23 an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that  
24 period, including periods of idleness or seasonal fluctuations.

25 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent  
26 employments, the average actual wages must be calculated as provided in subsection (3). As used in this  
27 subsection, "concurrent employment" means employment in which the employee was actually employed at the  
28 time of the injury and would have continued to be employed without a break in the term of employment if not for

1 the injury.

2 (b) Except as provided in 39-71-118(10)(c), the compensation benefits for a covered volunteer  
3 must be based on the average actual monetary wages in the volunteer's regular employment, except self-  
4 employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled  
5 by the injury incurred.

6 (c) The compensation benefits for an employee working at two or more concurrent remunerated  
7 employments must be based on the aggregate of average actual monetary wages of all employments, except  
8 for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected  
9 not to be covered, from which the employee is disabled by the injury incurred.

10 (5) For the purposes of calculating compensation benefits for an employee working for an  
11 employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages  
12 must be based upon all hours worked multiplied by the mean hourly wage by area, as published by the  
13 department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the  
14 department, that is in effect as of the date of injury or for the period in which the premium is due."

15 - END -