

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 69

CITIES AND TOWNS - Definition of "day of wage loss" for purposes of calculating eligibility for workers' compensation;
CITIES AND TOWNS - Relationship of workers' compensation laws to statute requiring city to compensate injured policemen;
POLICE - Definition of "day of wage loss" for purposes of calculating eligibility for workers' compensation;
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SALARIES - Definition of "day of wage loss" for purposes of calculating eligibility for workers' compensation;
SALARIES - Relationship of workers' compensation laws to statute requiring city to compensate injured policemen;
WORKERS' COMPENSATION - Definition of "day of wage loss" for purposes of calculating eligibility for;
WORKERS' COMPENSATION - Relationship of workers' compensation laws to statute requiring city to compensate injured policemen;
MONTANA CODE ANNOTATED - Sections 7-32-4131, 7-32-4132, 39-3-406(2)(p), 39-4-107(4), 39-71-736;
MONTANA CONSTITUTION - Article XII, section 2(2);
MONTANA LAWS OF 1987 - Chapter 464;
MONTANA LAWS OF 1979 - Chapter 290;
MONTANA LAWS OF 1977 - Chapter 451.

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- HELD: 1. Section 7-32-4132, MCA, requires a first- or second-class municipality to pay the full salary of a police officer injured while at work from the initial day of the injury.
2. Pursuant to section 39-71-736, MCA, a claimant is eligible for workers' compensation starting with the seventh day of wage loss; in the case of municipal and county employees, a day of wage loss is the loss of wages for eight hours of work.

24 February 1988

Jim Nugent
Missoula City Attorney
201 West Spruce
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Dear Mr. Nugent:

You have requested an opinion on the following questions:

1. Does section 7-32-4132, MCA, require a first- or second-class municipality to pay the full salary of a police officer who is injured while at work from the initial day of the injury or starting with the seventh day of wage loss, pursuant to section 39-71-736, MCA?
2. Pursuant to section 39-71-736, MCA, as amended by the 1987 Legislature, a claimant is eligible for workers' compensation starting with the seventh day of wage loss. What is the correct application of this provision to an employee who works a workweek other than five 8-hour shifts?

Section 7-32-4132, MCA, requires that an injured policeman who meets certain conditions "shall be paid by the municipality by which he is employed the difference between his full salary and the amount he receives from workers' compensation until his disability has ceased ... or for a period not to exceed 1 year, whichever shall first occur."

In order to answer your first question, I must examine both the Metropolitan Police Law (§§ 7-32-4131 to 4138,

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MCA) and recent revisions in Montana's workers' compensation laws (1987 Mont. Laws, ch. 464). Since 1927, Montana law has allowed cities and towns to compensate sick or injured policemen (§ 7-32-4131, MCA). In 1977, the Legislature supplemented that law with a statute requiring first- and second-class cities to compensate policemen injured in the performance of their duties, in the manner described above (§ 7-32-4132, MCA). Laws were also added which clarified the relationship of this law to workers' compensation, police retirement, transfer to light duty status, and injury while on probationary status (1977 Mont. Laws, ch. 451). In 1979, the statutes passed in 1977 were amended to emphasize that payments by municipalities do no more than supplement workers' compensation payments in this scheme. Also, a new statute was added, clarifying certain aspects of the law concerning contributions by injured policemen to public employees' retirement plans (1979 Mont. Laws, ch. 290).

The legislative history of the statutes passed in 1977 establishes that the Legislature intended that injured policemen should be fully compensated for up to one year after their injuries. See Minutes of the Montana House of Representatives Labor and Employment Relations Committee, Feb. 16, 1977, at 2; Minutes of the Montana Senate Local Government Committee, Mar. 21, 1977, at 3. I find no indication that the 1979 amendments alter in any way the Legislature's intentions of 1977. See Minutes of the Montana House of Representatives Judiciary Committee, Jan. 30, 1979, at 1; Minutes of the Montana Senate Labor and Employment Relations Committee, Feb. 15, 1979, at 1. I conclude that throughout the course of the changes it has made to Montana's laws regarding the compensation of disabled policemen, the Legislature has shown no alteration in its intent, expressed in 1977, that a policeman "who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties" shall be fully compensated as set forth in section 7-32-4132, MCA. Similarly, I find no indication that the Legislature intended that its recent changes to Montana's workers' compensation laws (1987 Mont. Laws, ch. 464) would alter this situation.

I believe that the concerns you have raised about the potential abuse of sections 7-32-4132, MCA, and the City of Missoula's sick leave policy for disabled policemen are best addressed in the context of collective bargaining. See §§ 39-31-305(2), 39-71-736(2), MCA.

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Your second question concerns section 39-71-736, MCA. That statute states in part: "No compensation may be paid for the first 6 days' loss of wages due to an injury." You ask if "6 days' loss of wages" means six working days or six calendar days. Although I find no legislative history directly on point, I believe, for several reasons, that it is the general intent of the Legislature that a day of wages contemplates eight hours of wages, rather than a "work day" or a "calendar day."

First, the Montana Constitution states in pertinent part:

A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising.

Mont. Const. art. XII, § 2(2). This section also gives the Legislature permission to change the maximum period to promote the general welfare.

It has been the Legislature's general policy to allow employers and employees in certain types of employment a degree of flexibility in setting the lengths of shifts and work days within a seven-day period. This is specifically the case with municipalities and municipal employees. §§ 39-3-406(2)(p), 39-4-107(4), MCA. Giving proper effect to the intent of the Legislature, as discerned from the plain language of these statutes, I conclude that flexibility in setting municipal work days is to be encouraged. Thiel v. Taurus Drilling Ltd. 1980-II, 42 St. Rptr. 1520, 1522, 710 P.2d 33, 35 (1985).

An interpretation of section 39-71-736, MCA, in terms of "work days" would frustrate this intent, and thus is not a favored interpretation. State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 525 P.2d 564 (1974). An interpretation of section 39-71-736, MCA, in terms of "calendar days" is logically inconsistent with a day of wages and would likewise not be favored. State Dept. of Highways v. Midland Materials Co., 40 St. Rptr. 666, 670, 662 P.2d 1322, 1325 (1983). I am aware that a strong argument can be made for an interpretation in terms of "calendar days" (see § 39-71-116(5), MCA). However, I find the legislative purpose of encouraging flexibility in setting municipal work hours to be more clearly expressed and thus more persuasive.

THEREFORE, IT IS MY OPINION:

1. Section 7-32-4132, MCA, requires a first- or second-class municipality to pay the full

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salary of a police officer injured while at work from the initial day of the injury.

2. Pursuant to section 39-71-736, MCA, a claimant is eligible for workers' compensation starting with the seventh day of wage loss; in the case of municipal and county employees, a day of wage loss is the loss of wages for eight hours of work.

Very truly yours,

MIKE GREELY
Attorney General