

HOUSE BILL NO. 535

Introduced: 01/27/83

Referred to Committee on Labor & Employment Relations:
01/27/83

Hearing: 2/8/83

Report: 02/10/83, Do Not Pass

Bill Killed: 02/12/83

House BILL NO. *535*

INTRODUCED BY *Adley*

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE "MEDICAL DETERMINATION", "MEDICAL EVIDENCE", AND "MEDICAL CONDITION" FOR PURPOSES OF WORKERS' COMPENSATION STATUTES; AMENDING SECTION 39-71-116, MCA."

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

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is

dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.

(4) "Child" includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between

July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widow living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

~~(10) "Medical determination", "medical evidence", and "medical condition", mean, respectively, a determination made by evidence submitted by, or a condition identified by one or more licensed physicians, chiropractors, or physical therapists.~~

~~(10)(11) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.~~

~~(11)(12) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that~~

an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

~~(12)(13) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit. Disability shall be supported by a preponderance of medical evidence.~~

~~(13)(14) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market. Disability shall be supported by a preponderance of medical evidence.~~

~~(14)(15) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.~~

~~(15)(16) "The plant of the employer" includes the place~~

1 of business of a third person while the employer has access
2 to or control over such place of business for the purpose of
3 carrying on his usual trade, business, or occupation.

4 ~~(16)~~(17) "Public corporation" means the state or any
5 county, municipal corporation, school district, city, city
6 under commission form of government or special charter,
7 town, or village.

8 ~~(17)~~(18) "Reasonably safe place to work" means that the
9 place of employment has been made as free from danger to the
10 life or safety of the employee as the nature of the
11 employment will reasonably permit.

12 ~~(18)~~(19) "Reasonably safe tools and appliances" are
13 such tools and appliances as are adapted to and are
14 reasonably safe for use for the particular purpose for which
15 they are furnished.

16 ~~(19)~~(20) "Temporary total disability" means a condition
17 resulting from an injury as defined in this chapter that
18 results in total loss of wages and exists until the injured
19 worker is as far restored as the permanent character of the
20 injuries will permit. Disability shall be supported by a
21 preponderance of medical evidence.

22 ~~(20)~~(21) "Wages" means the average gross earnings
23 received by the employee at the time of the injury for the
24 usual hours of employment in a week, and overtime is not to
25 be considered. Sick leave benefits accrued by employees of

1 public corporations, as defined by subsection (16) of this
2 section, are considered wages.

3 ~~(21)~~(22) "Wife" or "widow" means only a wife or widow
4 living with or legally entitled to be supported by the
5 deceased at the time of the injury.

6 ~~(22)~~(23) "Year", unless otherwise specified, means
7 calendar year."

-End-