

SENATE BILL 415

Introduced by Keating, et al.

2/13	Introduced
2/13	Referred to Labor & Employment Relations
2/16	Hearing
2/17	Committee Report--Bill Passed
2/20	2nd Reading Passed
2/21	3rd Reading Failed

1 *Senate* BILL NO. *415*
2 INTRODUCED BY *Leahy, Smith, Boylan*
3 *Male*
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE TIPS FROM
5 WAGES SUBJECT TO PAYMENT OF WORKERS' COMPENSATION PREMIUMS
6 AND UNEMPLOYMENT INSURANCE TAX; AMENDING SECTIONS 39-51-201
7 AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE."
8

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

10 **Section 1.** Section 39-51-201, MCA, is amended to read:

11 "39-51-201. General definitions. As used in this
12 chapter, unless the context clearly requires otherwise, the
13 following definitions apply:

14 (1) "Annual payroll" means the total amount of wages
15 paid by an employer, regardless of the time of payment, for
16 employment during a calendar year.

17 (2) "Base period" means the first four of the last five
18 completed calendar quarters immediately preceding the first
19 day of an individual's benefit year. However, in the case of
20 a combined-wage claim pursuant to the arrangement approved
21 by the secretary of labor of the United States, the base
22 period shall be that applicable under the unemployment law
23 of the paying state. For an individual who fails to meet
24 the qualifications of 39-51-2105 due to a temporary total
25 disability as defined in 39-71-116 or a similar statute of

1 another state or the United States, the base period means
2 the first four quarters of the last five quarters preceding
3 the disability if a claim for unemployment benefits is filed
4 within 24 months of the date on which the individual's
5 disability was incurred.

6 (3) "Benefits" means the money payments payable to an
7 individual, as provided in this chapter, with respect to the
8 individual's unemployment.

9 (4) "Benefit year", with respect to any individual,
10 means the 52-consecutive-week period beginning with the
11 first day of the calendar week in which such individual
12 files a valid claim for benefits, except that the benefit
13 year shall be 53 weeks if filing a new valid claim would
14 result in overlapping any quarter of the base year of a
15 previously filed new claim. A subsequent benefit year may
16 not be established until the expiration of the current
17 benefit year. However, in the case of a combined-wage claim
18 pursuant to the arrangement approved by the secretary of
19 labor of the United States, the base period is the period
20 applicable under the unemployment law of the paying state.

21 (5) "Board" means the board of labor appeals provided
22 for in Title 2, chapter 15, part 17.

23 (6) "Calendar quarter" means the period of 3
24 consecutive calendar months ending on March 31, June 30,
25 September 30, or December 31.

1 (7) "Contributions" means the money payments to the
 2 state unemployment insurance fund required by this chapter
 3 but does not include assessments under 39-51-404(4).
 4 (8) "Department" means the department of labor and
 5 industry provided for in Title 2, chapter 15, part 17.
 6 (9) "Employing unit" means any individual or
 7 organization, including the state government, any of its
 8 political subdivisions or instrumentalities, any
 9 partnership, association, trust, estate, joint-stock
 10 company, insurance company, or corporation, whether domestic
 11 or foreign, or the receiver, trustee in bankruptcy, trustee
 12 or successor thereof, or the legal representative of a
 13 deceased person which has or had in its employ one or more
 14 individuals performing services for it within this state,
 15 except as provided under subsections (8) and (9) of
 16 39-51-203. All individuals performing services within this
 17 state for any employing unit which maintains two or more
 18 separate establishments within this state are considered to
 19 be employed by a single employing unit for all the purposes
 20 of this chapter. Each individual employed to perform or
 21 assist in performing the work of any agent or employee of an
 22 employing unit is deemed to be employed by such the
 23 employing unit for the purposes of this chapter, whether
 24 such the individual was hired or paid directly by such the
 25 employing unit or by such the agent or employee, provided

1 the employing unit has actual or constructive knowledge of
 2 the work.

3 (10) "Employment office" means a free public employment
 4 office or branch thereof operated by this state or
 5 maintained as a part of a state-controlled system of public
 6 employment offices or such other free public employment
 7 offices operated and maintained by the United States
 8 government or its instrumentalities as the department may
 9 approve.

10 (11) "Fund" means the unemployment insurance fund
 11 established by this chapter to which all contributions and
 12 payments in lieu of contributions are required to be paid
 13 and from which all benefits provided under this chapter
 14 shall be paid.

15 (12) "Gross misconduct" means a criminal act, other than
 16 a violation of a motor vehicle traffic law, for which an
 17 individual has been convicted in a criminal court or has
 18 admitted or conduct which demonstrates a flagrant and wanton
 19 disregard of and for the rights or title or interest of a
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21 (13) "Hospital" means an institution which has been
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23 (14) "Independent contractor" means an individual who
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25 (a) has been and will continue to be free from control

1 or direction over the performance of the services, both
2 under his contract and in fact; and

3 (b) is engaged in an independently established trade,
4 occupation, profession, or business.

5 (15) (a) "Institution of higher education", for the
6 purposes of this part, means an educational institution
7 which:

8 (i) admits as regular students only individuals having
9 a certificate of graduation from a high school or the
10 recognized equivalent of such a certificate;

11 (ii) is legally authorized in this state to provide a
12 program of education beyond high school;

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14 awards a bachelor's or higher degree or provides a program
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16 program of postgraduate or postdoctoral studies, or a
17 program of training to prepare students for gainful
18 employment in a recognized occupation; and

19 (iv) is a public or other nonprofit institution.

20 (b) Notwithstanding any of the foregoing provisions of
21 this subsection, all colleges and universities in this state
22 are institutions of higher education for purposes of this
23 part.

24 (16) "State" includes, in addition to the states of the
25 United States of America, the District of Columbia, Puerto

1 Rico, the Virgin Islands, and the Dominion of Canada.

2 (17) "Unemployment insurance administration fund" means
3 the unemployment insurance administration fund established
4 by this chapter from which administrative expenses under
5 this chapter shall be paid.

6 (18) (a) "Wages" means all remuneration payable for
7 personal services, including commissions and bonuses, the
8 cash value of all remuneration payable in any medium other
9 than cash, and backpay received pursuant to a dispute
10 related to employment. The reasonable cash value of
11 remuneration payable in any medium other than cash shall be
12 estimated and determined in accordance with rules prescribed
13 by the department.

14 (b) The term "wages" does not include:

15 (i) the amount of any payment made by the employer, if
16 the payment was made under a plan established for the
17 employees in general or for a specific class or classes of
18 employees, to or on behalf of the employee for:

19 (A) retirement;

20 (B) sickness or accident disability, but in the case of
21 payments made by an employer directly to an employee, only
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23 excluded from "wages";

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(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such the county welfare office; or

(iii) tips and other gratuities received by the employee.

(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(20) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

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(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods."

NEW SECTION. Section 3. Extension of authority. Any existing authority to make rules on the subject of the

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1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. **Section 4.** Effective date. [This act] is
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RELATIONS

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3 *State*

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 21 the four pay periods does not accurately reflect the
 22 claimant's employment history with the employer, in which
 23 case the insurer may use additional pay periods."

24 **NEW SECTION. Section 3. Extension of authority.** Any
 25 existing authority to make rules on the subject of the

LC 1480/01

1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. **Section 4.** Effective date. [This act] is
4 effective July 1, 1989.

-End-