

SENATE BILL NO. 151

INTRODUCED BY

Barrett Lynch HARP Benedict
Emm Lanner Hubbard

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER; AND 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) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

- (a) the investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "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 department prior to July 1 of each year.

(3) "Beneficiary" means:

- (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;
- (b) an unmarried child under the age of 18 years;
- (c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;
- (d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

1 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
2 beneficiary, as defined in subsections (3)(a) through (3)(d), does not exist; and

3 (f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the
4 time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections
5 (3)(a) through (3)(e), does not exist.

6 (4) "Casual employment" means employment not in the usual course of trade, business, profession,
7 or occupation of the employer.

8 (5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
9 to the injury.

10 (6) "Construction industry" means the major group of general contractors and operative builders,
11 heavy construction (other than building construction) contractors, and special trade contractors, listed in
12 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not
13 include office workers, design professionals, salespersons, estimators, or any other related employment that
14 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation
15 site.

16 (7) "Days" means calendar days, unless otherwise specified.

17 (8) "Department" means the department of labor and industry.

18 (9) "Disability" means a condition in which a worker's ability to engage in gainful employment is
19 diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined
20 with factors, such as the worker's age, education, work history, and other factors that affect the worker's
21 ability to engage in gainful employment. Disability does not mean a purely medical condition.

22 (10) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

23 (11) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
24 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

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

26 (13) "Maintenance care" means treatment designed to provide the optimum state of health while
27 minimizing recurrence of the clinical status.

28 (14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the
29 healing process when further material improvement would not be reasonably expected from primary medical
30 treatment.

1 (15) "Order" means any decision, rule, direction, requirement, or standard of the department or any
2 other determination arrived at or decision made by the department.

3 (16) "Palliative care" means treatment designed to reduce or ease symptoms without curing the
4 underlying cause of the symptoms.

5 (17) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual
6 payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or
7 any length of time during the calendar year, 12 times the average monthly payroll for the current year.
8 However, an estimate may be made by the department for any employer starting in business if average
9 payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund
10 by the department, as the case may actually be, on December 31 of the current year. An employer's payroll
11 must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

12 (18) "Permanent partial disability" means a condition, after a worker has reached maximum medical
13 healing, in which a worker:

14 (a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119;
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16 (b) is able to return to work in some capacity but the physical restriction impairs the worker's
17 ability to work.

18 (19) "Permanent total disability" means a condition resulting from injury, as defined in this chapter,
19 after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect
20 of physically performing regular employment. Regular employment means work on a recurring basis
21 performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of
22 immediate job openings is not a factor to be considered in determining if a worker is permanently totally
23 disabled.

24 (20) The "plant of the employer" includes the place of business of a third person while the employer
25 has access to or control over the place of business for the purpose of carrying on the employer's usual
26 trade, business, or occupation.

27 (21) "Primary medical services" means treatment prescribed by a treating physician, for conditions
28 resulting from the injury, necessary for achieving medical stability.

29 (22) "Public corporation" means the state or any county, municipal corporation, school district, city,
30 city under commission form of government or special charter, town, or village.

1 (23) "Reasonably safe place to work" means that the place of employment has been made as free
2 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

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9 rehabilitation facilities.

10 (26) "Temporary partial disability" means a condition resulting from an injury, as defined in
11 39-71-119, in which a worker, prior to maximum healing:

12 (a) is temporarily unable to return to the position held at the time of injury because of a medically
13 determined physical restriction;

14 (b) returns to work in a modified or alternative employment; and

15 (c) suffers a partial wage loss.

16 (27) "Temporary service contractor" means ~~any~~ a person, firm, association, partnership, or
17 corporation conducting business that ~~employs individuals directly for the purpose of furnishing the services~~
18 ~~of those individuals on a part-time or temporary basis to others~~ hires its own employees and assigns them
19 to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce
20 in situations resulting from employee absences, skill shortages, seasonal workloads, and special
21 assignments and projects.

22 (28) "Temporary total disability" means a condition resulting from an injury, as defined in this
23 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
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25 (29) "Temporary worker" means a worker whose services are furnished to another on a part-time
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30 (30) "Treating physician" means a person who is primarily responsible for the treatment of a

1 worker's compensable injury and is:

2 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
3 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

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5 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
6 there is not a physician, as defined in subsection (30)(a), in the area where the physician assistant-certified
7 is located;

8 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

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10 (31) "Year", unless otherwise specified, means calendar year."

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