

1 HOUSE BILL NO. 146

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PERSON PLACED AS A PARTICIPANT IN A
6 PUBLIC ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53 INTO A WORK SETTING FOR THE PURPOSE
7 OF DEVELOPING EMPLOYMENT SKILLS AND CHILD FOSTER CARE PROVIDERS FROM WAGE AND HOUR,
8 UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION REQUIREMENTS; AMENDING
9 SECTIONS 39-3-406, 39-51-201, 39-51-204, 39-71-118, 39-71-401, AND 53-4-603, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 39-3-406, MCA, is amended to read:

15 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
16 to:

17 (a) students participating in a distributive education program established under the auspices of an
18 accredited educational agency;

19 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
20 mowing lawns, and cleaning sidewalks;

21 (c) persons employed directly by the head of a household to care for children dependent upon the
22 head of the household;

23 (d) immediate members of the family of an employer or persons dependent upon an employer for
24 half or more of their support in the customary sense of being a dependent;

25 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
26 services to a nonprofit organization on a fully or partially reimbursed basis;

27 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
28 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

29 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
30 30 days of their employment;

1 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
2 may not exceed 180 days from their initial date of employment and further provided that during this
3 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
4 in this part;

5 (i) retired or semiretired persons performing part-time incidental work as a condition of their
6 residence on a farm or ranch;

7 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
8 these terms are defined by regulations of the commissioner;

9 (k) any individual employed by the United States of America;

10 (l) resident managers employed in lodging establishments or personal care facilities who, under the
11 terms of their employment, live in the establishment or facility;

12 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
13 basis who is primarily employed in selling or marketing products or services in the food distribution industry
14 for a food broker, wholesaler, or association;

15 (n) a direct seller as defined in 26 U.S.C. 3508;

16 (o) a person placed as a participant in a public assistance program authorized by Title 53 into a work
17 setting for the purpose of developing employment skills. The placement may be with either a public or
18 private employer. The exclusion does not apply to an employment relationship formed in the work setting
19 outside the scope of the employment skills activities authorized by Title 53.

20 (p) a person serving as a foster parent, licensed as a foster care provider in accordance with
21 41-3-1141, and providing care without wage compensation to no more than six foster children in the
22 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
23 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
24 in the provision of in-home foster care.

25 (2) The provisions of 39-3-405 do not apply to:

26 (a) an employee with respect to whom the United States secretary of transportation has power to
27 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

28 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

29 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or
30 natural state;

1 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
2 selling advertising for a newspaper;

3 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
4 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
5 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
6 engaged in the business of selling the vehicles or implements to ultimate purchasers;

7 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
8 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
9 or aircraft to ultimate purchasers;

10 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
11 selling office supplies, computers, or other office equipment for an office equipment dealer;

12 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
13 advertising for a radio or television station employer;

14 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
15 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
16 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
17 maximum workweek applicable to them under 39-3-405;

18 (j) an employee employed in agriculture or in connection with the operation or maintenance of
19 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
20 basis and that are used exclusively for supply and storing of water for agricultural purposes;

21 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
22 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
23 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

24 (i) primarily employed during a workweek in agriculture by a farmer; and

25 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
26 than that prescribed by 39-3-404;

27 (l) an employee of an establishment commonly recognized as a country elevator, including an
28 establishment that sells products and services used in the operation of a farm, if no more than five
29 employees are employed by the establishment;

30 (m) a driver employed by an employer engaged in the business of operating taxicabs;

1 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
2 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
3 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
4 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
5 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
6 basis, at an annual rate of not less than \$10,000;

7 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
8 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
9 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
10 not exceed eight;

11 (p) an employee of a sheriff's department who is working under an established work period in lieu
12 of a workweek pursuant to 7-4-2509(1);

13 (q) an employee of a municipal or county government who is working under a work period not
14 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
15 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
16 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
17 period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

18 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
19 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
20 a 14-day period established through either a collective bargaining agreement when a collective bargaining
21 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
22 is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be
23 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

24 (s) a firefighter who is working under a work period established in a collective bargaining agreement
25 entered into between a public employer and a firefighters' organization or its exclusive representative;

26 (t) an officer or other employee of a police department in a city of the first or second class who
27 is working under a work period established by the chief of police under 7-32-4118;

28 (u) an employee of a department of public safety working under a work period established pursuant
29 to 7-32-115;

30 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times

1 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
2 than half of the employee's compensation for a period of not less than 1 month is derived from
3 commissions on goods and services;

4 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
5 as defined in 37-47-101;

6 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
7 a second- or third-class city or a town."

8

9 **Section 2.** Section 39-51-201, MCA, is amended to read:

10 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
11 otherwise, the following definitions apply:

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

14 (2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding
15 the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to
16 the arrangement approved by the secretary of labor of the United States, the base period is the period
17 applicable under the unemployment law of the paying state. For an individual who fails to meet the
18 qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability,
19 as defined in 39-71-116, or a similar statute of another state or the United States, the base period means
20 the first 4 quarters of the last 5 quarters preceding the disability if a claim for unemployment benefits is
21 filed within 24 months of the date on which the individual's disability was incurred.

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

24 (4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning
25 with the first day of the calendar week in which the individual files a valid claim for benefits, except that
26 the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base
27 year of a previously filed new claim. A subsequent benefit year may not be established until the expiration
28 of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement
29 approved by the secretary of labor of the United States, the base period is the period applicable under the
30 unemployment law of the paying state.

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

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

4 (7) "Contributions" means the money payments to the state unemployment insurance fund required
5 by this chapter but does not include assessments under 39-51-404(4).

6 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15,
7 part 17.

8 (9) "Employing unit" means any individual or organization (including the state government and any
9 of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint-stock company,
10 insurance company, limited liability company that has filed with the secretary of state, or corporation,
11 whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or
12 legal representative of a deceased person that has or had in its employ one or more individuals performing
13 services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals
14 performing services within this state for any employing unit that maintains two or more separate
15 establishments within this state are considered to be employed by a single employing unit for all the
16 purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent
17 or employee of an employing unit is considered to be employed by the employing unit for the purposes of
18 this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or
19 employee, provided that the employing unit has actual or constructive knowledge of the work.

20 (10) "Employment office" means a free public employment office or branch of an office operated
21 by this state or maintained as a part of a state-controlled system of public employment offices or such other
22 free public employment offices operated and maintained by the United States government or its
23 instrumentalities as the department may approve.

24 (11) "Fund" means the unemployment insurance fund established by this chapter to which all
25 contributions and payments in lieu of contributions are required to be paid and from which all benefits
26 provided under this chapter must be paid.

27 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
28 for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates
29 a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the
30 employer.

1 (13) "Hospital" means an institution that has been licensed, certified, or approved by the state as
2 a hospital.

3 (14) "Independent contractor" means an individual who renders service in the course of an
4 occupation and:

5 (a) has been and will continue to be free from control or direction over the performance of the
6 services, both under a contract and in fact; and

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

8 (15) (a) "Institution of higher education", for the purposes of this part, means an educational
9 institution that:

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

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

13 (iii) provides an educational program for which it awards a bachelor's or higher degree or provides
14 a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate
15 or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized
16 occupation; and

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

18 (b) Notwithstanding subsection (15)(a), all universities in this state are institutions of higher
19 education for purposes of this part.

20 (16) "State" includes, in addition to the states of the United States of America, the District of
21 Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

22 (17) "Taxes" means contributions and assessments required under this chapter but does not include
23 penalties or interest for past-due or unpaid contributions or assessments.

24 (18) "Unemployment insurance administration fund" means the unemployment insurance
25 administration fund established by this chapter from which administrative expenses under this chapter must
26 be paid.

27 (19) (a) "Wages" means all remuneration payable for personal services, including commissions and
28 bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received
29 pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any
30 medium other than cash must be estimated and determined pursuant to rules prescribed by the department.

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

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

5 (A) retirement;

6 (B) sickness or accident disability under a workers' compensation law;

7 (C) medical and hospitalization expenses in connection with sickness or accident disability; or

8 (D) death;

9 ~~(iii) remuneration paid by a county welfare office from public assistance funds for services performed
10 at the direction and request of the county welfare office; or~~

11 ~~(iii)(ii)~~ (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or
12 other expenses, as set forth in department rules.

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

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

16

17 **Section 3.** Section 39-51-204, MCA, is amended to read:

18 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
19 include:

20 (a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to
21 this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded
22 from coverage under this chapter if the employer:

23 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the
24 monetary amount or number of employees and days worked, for the subject wages attributable to
25 agricultural labor; and

26 (ii) keeps separate books and records to account for the employment of persons in agricultural
27 labor.

28 (b) household and domestic service in a private home, local college club, or local chapter of a
29 college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to
30 this chapter and has domestic service employment, all employees engaged in domestic service must be

1 excluded from coverage under this chapter if the employer:

2 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the
3 subject wages attributable to domestic service; and

4 (ii) keeps separate books and records to account for the employment of persons in domestic
5 service.

6 (c) service performed as an officer or member of the crew of a vessel on the navigable waters of
7 the United States;

8 (d) service performed by an individual in the employ of that individual's son, daughter, or spouse
9 and service performed by a child under the age of 21 in the employ of the child's father or mother;

10 (e) service performed in the employ of any other state or its political subdivisions or of the United
11 States government or of an instrumentality of any other state or states or their political subdivisions or of
12 the United States, except that national banks organized under the national banking law may not be entitled
13 to exemption under this subsection and are subject to this chapter the same as state banks, provided that
14 the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment
15 Tax Act (26 U.S.C. 3306(c)(7));

16 (f) service in which unemployment insurance is payable under an unemployment insurance system
17 established by an act of congress if the department enters into agreements with the proper agencies under
18 an act of congress and those agreements become effective in the manner prescribed in the Montana
19 Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who
20 have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment
21 insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance
22 under the act of congress, acquired rights to benefits under this chapter;

23 (g) services performed as a newspaper carrier or free-lance correspondent if the person performing
24 the services or a parent or guardian of the person performing the services in the case of a minor has
25 acknowledged in writing that the person performing the services and the services are not covered. As used
26 in this subsection:

27 (i) "free-lance correspondent" is a person who submits articles or photographs for publication and
28 is paid by the article or by the photograph; and

29 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
30 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to

1 the employee's main duties, carries or delivers papers.

2 (h) services performed by real estate, securities, and insurance salespeople paid solely by
3 commissions and without guarantee of minimum earnings;

4 (i) service performed in the employ of a school or university if the service is performed by a student
5 who is enrolled and is regularly attending classes at a school or university or by the spouse of a student
6 if the spouse is advised, at the time that the spouse commences to perform the service, that the
7 employment of the spouse to perform the service is provided under a program to provide financial
8 assistance to the student by the school or university and that the employment will not be covered by any
9 program of unemployment insurance;

10 (j) service performed by an individual who is enrolled at a nonprofit or public educational institution,
11 which normally maintains a regular faculty and curriculum and normally has a regularly organized body of
12 students in attendance at the place where its educational activities are carried on, as a student in a full-time
13 program taken for credit at an institution that combines academic instruction with work experience if the
14 service is an integral part of the program and the institution has certified that fact to the employer, except
15 that this subsection does not apply to service performed in a program established for or on behalf of an
16 employer or group of employers;

17 (k) service performed in the employ of a hospital if the service is performed by a patient of the
18 hospital;

19 (l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
20 who is licensed under Title 37, chapter 30, and:

21 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by
22 unemployment insurance and workers' compensation;

23 (ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined
24 in 37-30-101, which contract must show that the cosmetologist or barber:

25 (A) is free from all control and direction of the owner in the contract;

26 (B) receives payment for services from individual clientele; and

27 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or
28 knowledge; and

29 (iii) whose contract gives rise to an action for breach of contract in the event of contract
30 termination (the existence of a single license for the cosmetology salon or barbershop may not be construed

1 as a lack of freedom from control or direction under this subsection);

2 (m) casual labor not in the course of an employer's trade or business performed in any calendar
3 quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by
4 an individual who is regularly employed by the employer to perform the service. "Regularly employed"
5 means that the services are performed during at least 24 days in the same quarter.

6 (n) employment of sole proprietors, working members of a partnership, or members of a
7 member-managed limited liability company that has filed with the secretary of state;

8 (o) services performed for the installation of floor coverings if the installer:

9 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;

10 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

11 (iii) may perform services for anyone without limitation;

12 (iv) may accept or reject any job;

13 (v) furnishes substantially all tools and equipment necessary to provide the services; and

14 (vi) works under a written contract that:

15 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
16 contract obligations;

17 (B) states that the installer is not covered by unemployment insurance; and

18 (C) requires the installer to provide a current workers' compensation policy or to obtain an
19 exemption from workers' compensation requirements;

20 (p) employment of a direct seller as defined in 26 U.S.C. 3508;

21 (q) services performed by a petroleum land professional. As used in this subsection, "petroleum
22 land professional" means a person who:

23 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
24 negotiating a business agreement for the exploration or development of minerals;

25 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
26 than on an hourly wage basis; and

27 (iii) performs all services as an independent contractor pursuant to a written contract.

28 (2) Employment does not include elected public officials.

29 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

30 (a) in the employ of a church or convention or association of churches or an organization that is

1 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
2 supported by a church or convention or association of churches;

3 (b) by an ordained, commissioned, or licensed minister of a church in the exercise of the church's
4 ministry or by a member of a religious order in the exercise of duties required by the order;

5 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
6 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
7 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily
8 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

9 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
10 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
11 receiving work relief or work training; or

12 (e) for a state prison or other state correctional or custodial institution by an inmate of that
13 institution.

14 (4) An individual found to be an independent contractor by the department under the terms of
15 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
16 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
17 39-51-2402.

18 (5) This section does not apply to a state or local governmental entity or a nonprofit organization
19 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
20 employment as defined in the Federal Unemployment Tax Act."

21 (6) A person in either of the following circumstances is not considered to be employed for the
22 purposes of this chapter:

23 (a) a person placed as a participant in a public assistance program authorized by Title 53 into a
24 work setting for the purpose of developing employment skills. The placement may be with either a public
25 or private employer. The exclusion does not apply to an employment relationship formed in the work
26 setting outside the scope of the employment skills activities authorized by Title 53. The exclusion is only
27 to the extent permitted by any federal law governing the implementation of unemployment program
28 standards by a state.

29 (b) a person serving as a foster parent, licensed as a foster care provider in accordance with
30 41-3-1141, and providing care without wage compensation to no more than six foster children in the

1 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
2 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
3 in the provision of in-home foster care. The exclusion is only to the extent permitted by any federal law
4 governing the implementation of unemployment program standards by a state.

5
6 **Section 4.** Section 39-71-118, MCA, is amended to read:

7 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
8 "employee" or "worker" means:

9 (a) each person in this state, including a contractor other than an independent contractor, who is
10 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
11 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
12 employed, and all of the elected and appointed paid public officers and officers and members of boards of
13 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
14 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
15 included as employees if they are not otherwise covered by workers' compensation and if an employer has
16 elected to be bound by the provisions of the compensation law for these casual employments, as provided
17 in 39-71-401(2). Household or domestic employment is excluded.

18 (b) any juvenile performing work under authorization of a district court judge in a delinquency
19 prevention or rehabilitation program;

20 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
21 a state or federal vocational training program, whether or not under an appointment or contract of hire with
22 an employer, as defined in this chapter, and whether or not receiving payment from a third party. However,
23 this subsection does not apply to students enrolled in vocational training programs, as outlined in this
24 subsection, while they are on the premises of a public school or community college.

25 (d) an aircrew member or other person employed as a volunteer under 67-2-105;

26 (e) a person, other than a juvenile as defined in subsection (1)(b), performing community service
27 for a nonprofit organization or association or for a federal, state, or local government entity under a court
28 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
29 appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving
30 payment from a third party. For a person covered by the definition in this subsection (1)(e):

1 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
2 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
3 chapter 3, part 4, for a full-time employee at the time of the injury; and

4 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
5 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
6 service required under the order from the court or hearings officer.

7 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;
8 and

9 (g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109,
10 or a person who provides ambulance services under Title 7, chapter 34, part 1.

11 (2) The terms defined in subsection (1) do not include a person who is:

12 (a) participating in recreational activity and who at the time is relieved of and is not performing
13 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
14 permit, device, or other emolument of employment;

15 (b) performing voluntary service at a recreational facility and who receives no compensation for
16 those services other than meals, lodging, or the use of the recreational facilities; ~~or~~

17 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage
18 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs
19 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined
20 in 39-71-123,

21 (d) placed as a participant in a public assistance program authorized by Title 53 into a work setting
22 for the purpose of developing employment skills. The placement may be with either a public or private
23 employer. The exclusion does not apply to an employment relationship formed in the work setting outside
24 the scope of the employment skills activities authorized by Title 53.

25 (e) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and
26 providing care without wage compensation to no more than six foster children in the provider's own
27 residence. The person may receive reimbursement for providing room and board, obtaining training, respite
28 care, leisure and recreational activities, and providing for other needs and activities arising in the provision
29 of in-home foster care.

30 (3) With the approval of the insurer, an employer may elect to include as an employee under the

1 provisions of this chapter any volunteer as defined in subsection (2)(c).

2 (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member
3 of a fire company organized and funded by a county, a rural fire district, or a fire service area.

4 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service
5 of an employer, including but not limited to training time, response time, and time spent at the employer's
6 premises.

7 (5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability
8 company, the employer may elect to include as an employee within the provisions of this chapter any
9 member of the partnership, the owner of the sole proprietorship, or any member of the limited liability
10 company devoting full time to the partnership, proprietorship, or limited liability company business.

11 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
12 naming the partners, sole proprietor, or members to be covered and stating the level of compensation
13 coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection
14 (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice
15 has been given.

16 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
17 following notification.

18 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
19 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
20 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
21 than \$900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

22 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
23 liability company, the employer may elect to include as an employee within the provisions of this chapter
24 any corporate officer or manager exempted under 39-71-401(2).

25 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
26 naming the corporate officer or manager to be covered and stating the level of compensation coverage
27 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A
28 corporate officer or manager is not considered an employee within this chapter until notice has been given.

29 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
30 following notification.

1 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
2 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
3 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not
4 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

5 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,
6 or the county commissioners or trustees for a fire service area may elect to include as an employee within
7 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
8 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

9 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for
10 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the
11 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

12 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services
13 are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than
14 a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the
15 control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

16 (9) For purposes of this section, an "employee or worker in this state" means:

17 (a) a resident of Montana who is employed by an employer and whose employment duties are
18 primarily carried out or controlled within this state;

19 (b) a nonresident of Montana whose principal employment duties are conducted within this state
20 on a regular basis for an employer;

21 (c) a nonresident employee of an employer from another state engaged in the construction industry,
22 as defined in 39-71-116, within this state; or

23 (d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose
24 employer elects coverage with an insurer that allows an election for an employer whose:

25 (i) nonresident employees are hired in Montana;

26 (ii) nonresident employees' wages are paid in Montana;

27 (iii) nonresident employees are supervised in Montana; and

28 (iv) business records are maintained in Montana.

29 (10) An insurer may require coverage for all nonresident employees of a Montana employer who
30 do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under

1 subsection (9)(d)."

2

3 **Section 5.** Section 39-71-401, MCA, is amended to read:

4 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
5 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
6 all employees, as defined in 39-71-118. An employer who has any employee in service under any
7 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
8 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
9 Compensation Act is subject to and bound by the compensation plan that has been elected by the
10 employer.

11 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
12 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

13 (a) household and domestic employment;

14 (b) casual employment as defined in 39-71-116;

15 (c) employment of a dependent member of an employer's family for whom an exemption may be
16 claimed by the employer under the federal Internal Revenue Code;

17 (d) employment of sole proprietors, working members of a partnership, or working members of a
18 member-managed limited liability company, except as provided in subsection (3);

19 (e) employment of a broker or ~~salesman~~ salesperson performing under a license issued by the board
20 of realty regulation;

21 (f) employment of a direct seller as defined in 26 U.S.C. 3508;

22 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
23 under the laws of the United States;

24 (h) employment of a person performing services in return for aid or sustenance only, except
25 employment of a volunteer under 67-2-105;

26 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
27 work is included in and subject to the provisions of this chapter;

28 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
29 event, unless the person is otherwise employed by a school district;

30 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent

1 if the person performing the services or a parent or guardian of the person performing the services in the
2 case of a minor has acknowledged in writing that the person performing the services and the services are
3 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
4 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
5 "newspaper carrier":

6 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
7 bundles; but

8 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
9 carries or delivers papers.

10 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

11 (m) a person who is employed by an enrolled tribal member or an association, business,
12 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
13 business is conducted solely within the exterior boundaries of an Indian reservation;

14 (n) employment of a jockey performing under a license issued by the board of horseracing from the
15 time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed
16 out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of
17 horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services
18 as a jockey;

19 (o) employment of an employer's spouse for whom an exemption based on marital status may be
20 claimed by the employer under 26 U.S.C. 7703;

21 (p) a person who performs services as a petroleum land professional. As used in this subsection,
22 a "petroleum land professional" is a person who:

23 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
24 negotiating a business agreement for the exploration or development of minerals;

25 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
26 than on an hourly wage basis; and

27 (iii) performs all services as an independent contractor pursuant to a written contract.

28 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
29 liability company who qualifies under one or more of the following provisions:

30 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the

1 limited liability company and does not receive any pay from the corporation or the limited liability company
2 for performance of the duties;

3 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
4 limited liability company;

5 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
6 or owns 20% or more of the limited liability company; ~~or~~

7 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
8 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
9 number of shares of stock in the corporation or who owns 20% or more of the limited liability company;

10 (r) a person placed as a participant in a public assistance program authorized by Title 53 into a
11 work setting for the purpose of developing employment skills. The placement may be with either a public
12 or private employer. The exclusion does not apply to an employment relationship formed in the work
13 setting outside the scope of the employment skills activities authorized by Title 53.

14 (s) a person serving as a foster parent, licensed as a foster care provider in accordance with
15 41-3-1141, and providing care without wage compensation to no more than six foster children in the
16 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
17 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
18 in the provision of in-home foster care.

19 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
20 member-managed limited liability company who represents to the public that the person is an independent
21 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
22 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

23 (b) The application must be made in accordance with the rules adopted by the department. There
24 is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application
25 fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset
26 the costs of administering the program.

27 (c) When an application is approved by the department, it is conclusive as to the status of an
28 independent contractor and precludes the applicant from obtaining benefits under this chapter.

29 (d) The exemption, if approved, remains in effect for 1 year following the date of the department's
30 approval. To maintain the independent contractor status, an independent contractor shall annually submit

1 a renewal application. A renewal application must be submitted for all independent contractor exemptions
2 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
3 must be received by the department at least 30 days prior to the anniversary date of the previously
4 approved exemption.

5 (e) A person who makes a false statement or misrepresentation concerning that person's status
6 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
7 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
8 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

9 (f) If the department denies the application for exemption, the applicant may contest the denial by
10 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
11 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
12 the procedure established in 39-51-2403 and 39-51-2404.

13 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
14 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
15 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
16 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
17 manner:

18 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
19 delivering the notice to the board of directors of the corporation or to the management organization of the
20 manager-managed limited liability company; or

21 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
22 delivering the notice to the board of directors of the corporation or to the management organization of the
23 manager-managed limited liability company and to the insurer.

24 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
25 the employer shall again serve notice to its insurer and to its board of directors or the management
26 organization of the manager-managed limited liability company if the employer elects to be bound.

27 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
28 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
29 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
30 exemption from coverage.

1 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
2 are normally posted, informing employees about the employer's current provision of workers' compensation
3 insurance. A workplace is any location where an employee performs any work-related act in the course of
4 employment, regardless of whether the location is temporary or permanent, and includes the place of
5 business or property of a third person while the employer has access to or control over the place of
6 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
7 The sign must be provided by the department, distributed through insurers or directly by the department,
8 and posted by employers in accordance with rules adopted by the department. An employer who purposely
9 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
10

11 **Section 6.** Section 53-4-603, MCA, is amended to read:

12 **"53-4-603. FAIM project -- components.** (1) The aid to families with dependent children part of
13 the FAIM project consists of three components referred to as the job supplement program, pathways, and
14 the community services program.

15 (2) The job supplement program is an alternative to the components of the FAIM project that
16 provide cash assistance. An eligible family may receive assistance under the job supplement program
17 instead of receiving assistance under pathways or the community services program or may receive
18 assistance under the job supplement program either prior to or after receiving assistance under pathways
19 or the community services program.

20 (3) Services that may be provided to eligible individuals in the job supplement program include:

21 (a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid
22 benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by
23 the secretary of the U.S. department of health and human services that permit limited benefits. However,
24 a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

25 (b) child-care assistance, as provided in 53-4-611 and as specified by the department by rule;

26 (c) assistance in obtaining child support; and

27 (d) a one-time only cash payment to meet special employment-related needs of the family. In order
28 to receive a one-time cash payment, the family is required to agree not to apply for or receive cash
29 assistance for a period of time based on the size of the one-time cash payment received.

30 (4) (a) Pathways may provide eligible individuals with job training and education; resource referrals;

1 assistance in obtaining child support; one-time cash payments for special employment-related needs;
2 child-care assistance, as provided in 53-4-611 and as specified by department rule; cash assistance
3 payments; full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid
4 benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by
5 the secretary of the U.S. department of health and human services that permit limited benefits. However,
6 a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

7 (b) A specified caretaker relative in a single-parent family may receive assistance under pathways
8 for a maximum of 24 months. The 24 months do not need to be consecutive.

9 (c) Specified caretaker relatives in a two-parent family may receive assistance under pathways for
10 a maximum of 18 months. The 18 months do not need to be consecutive.

11 (5) In the community services program, a specified caretaker relative who has received the
12 maximum number of months of assistance allowable under pathways may continue to receive assistance
13 for the specified caretaker relative's needs if the specified caretaker relative performs community service
14 work as required by the department. A specified caretaker relative who performs community service work
15 as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid
16 benefits, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S.
17 department of health and human services that permit limited benefits. However, a specified caretaker
18 relative who is pregnant is entitled to full medicaid benefits. Job training and education, resource referrals,
19 and assistance in obtaining child support may also be provided if determined by the department to be
20 appropriate. Child-care assistance may be provided as set forth in 53-4-611 and as specified by department
21 rule.

22 (6) Failure of a caretaker relative to participate in community service work as required must result
23 in the needs of the specified caretaker relative being removed from the cash assistance payment.

24 (7) A dependent child who meets all eligibility requirements for aid to families with dependent
25 children may receive assistance under any component of the FAIM project without any time limits.

26 ~~(8) The department shall furnish workers' compensation coverage, as provided in 39-71-118, for~~
27 ~~recipients in any component of the FAIM project who perform community service work or who participate~~
28 ~~in a work experience program."~~

29
30 **NEW SECTION. Section 7. Saving clause.** [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
2 act].

3

4 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

5

-END-

1 HOUSE BILL NO. 146

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PERSON PLACED AS A PARTICIPANT IN A
6 PUBLIC ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53 INTO A WORK SETTING FOR THE PURPOSE
7 OF DEVELOPING EMPLOYMENT SKILLS AND CHILD FOSTER CARE PROVIDERS FROM WAGE AND HOUR,
8 ~~UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION~~ REQUIREMENTS; AMENDING
9 SECTIONS 39-3-406, ~~39-51-201, 39-51-204~~, 39-71-118, ~~39-71-401~~, AND 53-4-603, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:13
14 **Section 1.** Section 39-3-406, MCA, is amended to read:15 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
16 to:17 (a) students participating in a distributive education program established under the auspices of an
18 accredited educational agency;19 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
20 mowing lawns, and cleaning sidewalks;21 (c) persons employed directly by the head of a household to care for children dependent upon the
22 head of the household;23 (d) immediate members of the family of an employer or persons dependent upon an employer for
24 half or more of their support in the customary sense of being a dependent;25 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
26 services to a nonprofit organization on a fully or partially reimbursed basis;27 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
28 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;29 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
30 30 days of their employment;

1 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
2 may not exceed 180 days from their initial date of employment and further provided that during this
3 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
4 in this part;

5 (i) retired or semiretired persons performing part-time incidental work as a condition of their
6 residence on a farm or ranch;

7 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
8 these terms are defined by regulations of the commissioner;

9 (k) any individual employed by the United States of America;

10 (l) resident managers employed in lodging establishments or personal care facilities who, under the
11 terms of their employment, live in the establishment or facility;

12 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
13 basis who is primarily employed in selling or marketing products or services in the food distribution industry
14 for a food broker, wholesaler, or association;

15 (n) a direct seller as defined in 26 U.S.C. 3508;

16 (o) a person placed as a participant in a public assistance program authorized by Title 53 into a work
17 setting for the purpose of developing employment skills. The placement may be with either a public or
18 private employer. The exclusion does not apply to an employment relationship formed in the work setting
19 outside the scope of the employment skills activities authorized by Title 53.

20 (p) a person serving as a foster parent, licensed as a foster care provider in accordance with
21 41-3-1141, and providing care without wage compensation to no more than six foster children in the
22 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
23 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
24 in the provision of in-home foster care.

25 (2) The provisions of 39-3-405 do not apply to:

26 (a) an employee with respect to whom the United States secretary of transportation has power to
27 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

28 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

29 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or
30 natural state;

1 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
2 selling advertising for a newspaper;

3 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
4 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
5 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
6 engaged in the business of selling the vehicles or implements to ultimate purchasers;

7 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
8 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
9 or aircraft to ultimate purchasers;

10 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
11 selling office supplies, computers, or other office equipment for an office equipment dealer;

12 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
13 advertising for a radio or television station employer;

14 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
15 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
16 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
17 maximum workweek applicable to them under 39-3-405;

18 (j) an employee employed in agriculture or in connection with the operation or maintenance of
19 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
20 basis and that are used exclusively for supply and storing of water for agricultural purposes;

21 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
22 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
23 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

24 (i) primarily employed during a workweek in agriculture by a farmer; and

25 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
26 than that prescribed by 39-3-404;

27 (l) an employee of an establishment commonly recognized as a country elevator, including an
28 establishment that sells products and services used in the operation of a farm, if no more than five
29 employees are employed by the establishment;

30 (m) a driver employed by an employer engaged in the business of operating taxicabs;

1 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
2 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
3 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
4 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
5 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
6 basis, at an annual rate of not less than \$10,000;

7 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
8 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
9 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
10 not exceed eight;

11 (p) an employee of a sheriff's department who is working under an established work period in lieu
12 of a workweek pursuant to 7-4-2509(1);

13 (q) an employee of a municipal or county government who is working under a work period not
14 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
15 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
16 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
17 period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

18 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
19 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
20 a 14-day period established through either a collective bargaining agreement when a collective bargaining
21 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
22 is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be
23 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

24 (s) a firefighter who is working under a work period established in a collective bargaining agreement
25 entered into between a public employer and a firefighters' organization or its exclusive representative;

26 (t) an officer or other employee of a police department in a city of the first or second class who
27 is working under a work period established by the chief of police under 7-32-4118;

28 (u) an employee of a department of public safety working under a work period established pursuant
29 to 7-32-115;

30 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times

1 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
 2 than half of the employee's compensation for a period of not less than 1 month is derived from
 3 commissions on goods and services;

4 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
 5 as defined in 37-47-101;

6 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
 7 a second- or third-class city or a town."

8

9 ~~Section 2. Section 39-51-201, MCA, is amended to read:~~

10 ~~"39-51-201. General definitions. As used in this chapter, unless the context clearly requires~~
 11 ~~otherwise, the following definitions apply:~~

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

14 (2) ~~"Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding~~
 15 ~~the first day of an individual's benefit year. However, in the case of a combined wage claim pursuant to~~
 16 ~~the arrangement approved by the secretary of labor of the United States, the base period is the period~~
 17 ~~applicable under the unemployment law of the paying state. For an individual who fails to meet the~~
 18 ~~qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability,~~
 19 ~~as defined in 39-71-116, or a similar statute of another state or the United States, the base period means~~
 20 ~~the first 4 quarters of the last 5 quarters preceding the disability if a claim for unemployment benefits is~~
 21 ~~filed within 24 months of the date on which the individual's disability was incurred.~~

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

24 (4) ~~"Benefit year", with respect to any individual, means the 52 consecutive week period beginning~~
 25 ~~with the first day of the calendar week in which the individual files a valid claim for benefits, except that~~
 26 ~~the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base~~
 27 ~~year of a previously filed new claim. A subsequent benefit year may not be established until the expiration~~
 28 ~~of the current benefit year. However, in the case of a combined wage claim pursuant to the arrangement~~
 29 ~~approved by the secretary of labor of the United States, the base period is the period applicable under the~~
 30 ~~unemployment law of the paying state.~~

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

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

4 ~~(7) "Contributions" means the money payments to the state unemployment insurance fund required~~
5 ~~by this chapter but does not include assessments under 39-51-404(4).~~

6 ~~(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15,~~
7 ~~part 17.~~

8 ~~(9) "Employing unit" means any individual or organization (including the state government and any~~
9 ~~of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint stock company,~~
10 ~~insurance company, limited liability company that has filed with the secretary of state, or corporation,~~
11 ~~whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or~~
12 ~~legal representative of a deceased person that has or had in its employ one or more individuals performing~~
13 ~~services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals~~
14 ~~performing services within this state for any employing unit that maintains two or more separate~~
15 ~~establishments within this state are considered to be employed by a single employing unit for all the~~
16 ~~purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent~~
17 ~~or employee of an employing unit is considered to be employed by the employing unit for the purposes of~~
18 ~~this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or~~
19 ~~employee, provided that the employing unit has actual or constructive knowledge of the work.~~

20 ~~(10) "Employment office" means a free public employment office or branch of an office operated~~
21 ~~by this state or maintained as a part of a state controlled system of public employment offices or such other~~
22 ~~free public employment offices operated and maintained by the United States government or its~~
23 ~~instrumentalities as the department may approve.~~

24 ~~(11) "Fund" means the unemployment insurance fund established by this chapter to which all~~
25 ~~contributions and payments in lieu of contributions are required to be paid and from which all benefits~~
26 ~~provided under this chapter must be paid.~~

27 ~~(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,~~
28 ~~for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates~~
29 ~~a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the~~
30 ~~employer.~~

1 ~~(13) "Hospital" means an institution that has been licensed, certified, or approved by the state as~~
2 ~~a hospital.~~

3 ~~(14) "Independent contractor" means an individual who renders service in the course of an~~
4 ~~occupation and:~~

5 ~~(a) has been and will continue to be free from control or direction over the performance of the~~
6 ~~services, both under a contract and in fact; and~~

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

8 ~~(15) (a) "Institution of higher education", for the purposes of this part, means an educational~~
9 ~~institution that:~~

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

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

13 ~~(iii) provides an educational program for which it awards a bachelor's or higher degree or provides~~
14 ~~a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate~~
15 ~~or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized~~
16 ~~occupation; and~~

17 ~~(iv) is a public or other nonprofit institution.~~

18 ~~(b) Notwithstanding subsection (15)(a), all universities in this state are institutions of higher~~
19 ~~education for purposes of this part.~~

20 ~~(16) "State" includes, in addition to the states of the United States of America, the District of~~
21 ~~Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.~~

22 ~~(17) "Taxes" means contributions and assessments required under this chapter but does not include~~
23 ~~penalties or interest for past due or unpaid contributions or assessments.~~

24 ~~(18) "Unemployment insurance administration fund" means the unemployment insurance~~
25 ~~administration fund established by this chapter from which administrative expenses under this chapter must~~
26 ~~be paid.~~

27 ~~(19) (a) "Wages" means all remuneration payable for personal services, including commissions and~~
28 ~~bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received~~
29 ~~pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any~~
30 ~~medium other than cash must be estimated and determined pursuant to rules prescribed by the department.~~

1 ~~(b) The term "wages" does not include:~~

2 ~~(i) the amount of any payment made by the employer, if the payment was made under a plan~~
 3 ~~established for the employees in general or for a specific class or classes of employees, to or on behalf of~~
 4 ~~the employee for:~~

5 ~~(A) retirement;~~

6 ~~(B) sickness or accident disability under a workers' compensation law;~~

7 ~~(C) medical and hospitalization expenses in connection with sickness or accident disability; or~~

8 ~~(D) death;~~

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

11 ~~(iii)(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or~~
 12 ~~other expenses, as set forth in department rules.~~

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

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

16

17 ~~Section 3. Section 39-51-204, MCA, is amended to read:~~

18 ~~"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not~~
 19 ~~include:~~

20 ~~(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to~~
 21 ~~this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded~~
 22 ~~from coverage under this chapter if the employer:~~

23 ~~(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the~~
 24 ~~monetary amount or number of employees and days worked, for the subject wages attributable to~~
 25 ~~agricultural labor; and~~

26 ~~(ii) keeps separate books and records to account for the employment of persons in agricultural~~
 27 ~~labor.~~

28 ~~(b) household and domestic service in a private home, local college club, or local chapter of a~~
 29 ~~college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to~~
 30 ~~this chapter and has domestic service employment, all employees engaged in domestic service must be~~

1 ~~excluded from coverage under this chapter if the employer:~~

2 ~~(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the~~
3 ~~subject wages attributable to domestic service; and~~

4 ~~(ii) keeps separate books and records to account for the employment of persons in domestic~~
5 ~~service.~~

6 ~~(c) service performed as an officer or member of the crew of a vessel on the navigable waters of~~
7 ~~the United States;~~

8 ~~(d) service performed by an individual in the employ of that individual's son, daughter, or spouse~~
9 ~~and service performed by a child under the age of 21 in the employ of the child's father or mother;~~

10 ~~(e) service performed in the employ of any other state or its political subdivisions or of the United~~
11 ~~States government or of an instrumentality of any other state or states or their political subdivisions or of~~
12 ~~the United States, except that national banks organized under the national banking law may not be entitled~~
13 ~~to exemption under this subsection and are subject to this chapter the same as state banks, provided that~~
14 ~~the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment~~
15 ~~Tax Act (26 U.S.C. 3306(c)(7));~~

16 ~~(f) service in which unemployment insurance is payable under an unemployment insurance system~~
17 ~~established by an act of congress if the department enters into agreements with the proper agencies under~~
18 ~~an act of congress and those agreements become effective in the manner prescribed in the Montana~~
19 ~~Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who~~
20 ~~have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment~~
21 ~~insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance~~
22 ~~under the act of congress, acquired rights to benefits under this chapter;~~

23 ~~(g) services performed as a newspaper carrier or free lance correspondent if the person performing~~
24 ~~the services or a parent or guardian of the person performing the services in the case of a minor has~~
25 ~~acknowledged in writing that the person performing the services and the services are not covered. As used~~
26 ~~in this subsection:~~

27 ~~(i) "free lance correspondent" is a person who submits articles or photographs for publication and~~
28 ~~is paid by the article or by the photograph; and~~

29 ~~(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering~~
30 ~~newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to~~

1 ~~the employee's main duties, carries or delivers papers.~~

2 ~~(h) services performed by real estate, securities, and insurance salespeople paid solely by~~
3 ~~commissions and without guarantee of minimum earnings;~~

4 ~~(i) service performed in the employ of a school or university if the service is performed by a student~~
5 ~~who is enrolled and is regularly attending classes at a school or university or by the spouse of a student~~
6 ~~if the spouse is advised, at the time that the spouse commences to perform the service, that the~~
7 ~~employment of the spouse to perform the service is provided under a program to provide financial~~
8 ~~assistance to the student by the school or university and that the employment will not be covered by any~~
9 ~~program of unemployment insurance;~~

10 ~~(j) service performed by an individual who is enrolled at a nonprofit or public educational institution,~~
11 ~~which normally maintains a regular faculty and curriculum and normally has a regularly organized body of~~
12 ~~students in attendance at the place where its educational activities are carried on, as a student in a full-time~~
13 ~~program taken for credit at an institution that combines academic instruction with work experience if the~~
14 ~~service is an integral part of the program and the institution has certified that fact to the employer, except~~
15 ~~that this subsection does not apply to service performed in a program established for or on behalf of an~~
16 ~~employer or group of employers;~~

17 ~~(k) service performed in the employ of a hospital if the service is performed by a patient of the~~
18 ~~hospital;~~

19 ~~(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber~~
20 ~~who is licensed under Title 37, chapter 30, and:~~

21 ~~(i) who has acknowledged in writing that the cosmetologist or barber is not covered by~~
22 ~~unemployment insurance and workers' compensation;~~

23 ~~(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined~~
24 ~~in 37-30-101, which contract must show that the cosmetologist or barber:~~

25 ~~(A) is free from all control and direction of the owner in the contract;~~

26 ~~(B) receives payment for services from individual clientele; and~~

27 ~~(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or~~
28 ~~knowledge; and~~

29 ~~(iii) whose contract gives rise to an action for breach of contract in the event of contract~~
30 ~~termination (the existence of a single license for the cosmetology salon or barbershop may not be construed~~

1 ~~as a lack of freedom from control or direction under this subsection);~~

2 ~~(m) casual labor not in the course of an employer's trade or business performed in any calendar~~
 3 ~~quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by~~
 4 ~~an individual who is regularly employed by the employer to perform the service. "Regularly employed"~~
 5 ~~means that the services are performed during at least 24 days in the same quarter.~~

6 ~~(n) employment of sole proprietors, working members of a partnership, or members of a~~
 7 ~~member-managed limited liability company that has filed with the secretary of state;~~

8 ~~(o) services performed for the installation of floor coverings if the installer:~~

9 ~~(i) bids or negotiates a contract price based upon work performed by the yard or by the job;~~

10 ~~(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;~~

11 ~~(iii) may perform services for anyone without limitation;~~

12 ~~(iv) may accept or reject any job;~~

13 ~~(v) furnishes substantially all tools and equipment necessary to provide the services; and~~

14 ~~(vi) works under a written contract that:~~

15 ~~(A) gives rise to a breach of contract action if the installer or any other party fails to perform the~~
 16 ~~contract obligations;~~

17 ~~(B) states that the installer is not covered by unemployment insurance; and~~

18 ~~(C) requires the installer to provide a current workers' compensation policy or to obtain an~~
 19 ~~exemption from workers' compensation requirements;~~

20 ~~(p) employment of a direct seller as defined in 26 U.S.C. 3508;~~

21 ~~(q) services performed by a petroleum land professional. As used in this subsection, "petroleum~~
 22 ~~land professional" means a person who:~~

23 ~~(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in~~
 24 ~~negotiating a business agreement for the exploration or development of minerals;~~

25 ~~(ii) is paid for services that are directly related to the completion of a contracted specific task rather~~
 26 ~~than on an hourly wage basis; and~~

27 ~~(iii) performs all services as an independent contractor pursuant to a written contract.~~

28 ~~(2) Employment does not include elected public officials.~~

29 ~~(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:~~

30 ~~(a) in the employ of a church or convention or association of churches or an organization that is~~

1 ~~operated primarily for religious purposes and that is operated, supervised, controlled, or principally~~
 2 ~~supported by a church or convention or association of churches;~~

3 ~~(b) by an ordained, commissioned, or licensed minister of a church in the exercise of the church's~~
 4 ~~ministry or by a member of a religious order in the exercise of duties required by the order;~~

5 ~~(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals~~
 6 ~~whose earning capacity is impaired by age or physical or mental deficiency or injury or providing~~
 7 ~~remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily~~
 8 ~~absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;~~

9 ~~(d) as part of an unemployment work relief or work training program assisted or financed in whole~~
 10 ~~or in part by a federal agency or any agency of a state or political subdivision of the state by an individual~~
 11 ~~receiving work relief or work training; or~~

12 ~~(e) for a state prison or other state correctional or custodial institution by an inmate of that~~
 13 ~~institution.~~

14 ~~(4) An individual found to be an independent contractor by the department under the terms of~~
 15 ~~39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent~~
 16 ~~contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to~~
 17 ~~39-51-2402.~~

18 ~~(5) This section does not apply to a state or local governmental entity or a nonprofit organization~~
 19 ~~defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from~~
 20 ~~employment as defined in the Federal Unemployment Tax Act."~~

21 ~~(6) A person in either of the following circumstances is not considered to be employed for the~~
 22 ~~purposes of this chapter:~~

23 ~~(a) a person placed as a participant in a public assistance program authorized by Title 53 into a~~
 24 ~~work setting for the purpose of developing employment skills. The placement may be with either a public~~
 25 ~~or private employer. The exclusion does not apply to an employment relationship formed in the work~~
 26 ~~setting outside the scope of the employment skills activities authorized by Title 53. The exclusion is only~~
 27 ~~to the extent permitted by any federal law governing the implementation of unemployment program~~
 28 ~~standards by a state.~~

29 ~~(b) a person serving as a foster parent, licensed as a foster care provider in accordance with~~
 30 ~~41-3-1141, and providing care without wage compensation to no more than six foster children in the~~

~~1 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
2 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
3 in the provision of in-home foster care. The exclusion is only to the extent permitted by any federal law
4 governing the implementation of unemployment program standards by a state.~~

5
6 **Section 2.** Section 39-71-118, MCA, is amended to read:

7 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
8 "employee" or "worker" means:

9 (a) each person in this state, including a contractor other than an independent contractor, who is
10 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
11 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
12 employed, and all of the elected and appointed paid public officers and officers and members of boards of
13 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
14 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
15 included as employees if they are not otherwise covered by workers' compensation and if an employer has
16 elected to be bound by the provisions of the compensation law for these casual employments, as provided
17 in 39-71-401(2). Household or domestic employment is excluded.

18 (b) any juvenile performing work under authorization of a district court judge in a delinquency
19 prevention or rehabilitation program;

20 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
21 a state or federal vocational training program, whether or not under an appointment or contract of hire with
22 an employer, as defined in this chapter, and whether or not receiving payment from a third party. However,
23 this subsection does not apply to students enrolled in vocational training programs, as outlined in this
24 subsection, while they are on the premises of a public school or community college.

25 (d) an aircrew member or other person employed as a volunteer under 67-2-105;

26 (e) a person, other than a juvenile as defined in subsection (1)(b), performing community service
27 for a nonprofit organization or association or for a federal, state, or local government entity under a court
28 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
29 appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving
30 payment from a third party. For a person covered by the definition in this subsection (1)(e):

1 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
2 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
3 chapter 3, part 4, for a full-time employee at the time of the injury; and

4 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
5 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
6 service required under the order from the court or hearings officer.

7 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;
8 and

9 (g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109,
10 or a person who provides ambulance services under Title 7, chapter 34, part 1.

11 (2) The terms defined in subsection (1) do not include a person who is:

12 (a) participating in recreational activity and who at the time is relieved of and is not performing
13 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
14 permit, device, or other emolument of employment;

15 (b) performing voluntary service at a recreational facility and who receives no compensation for
16 those services other than meals, lodging, or the use of the recreational facilities; or

17 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage
18 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs
19 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined
20 in 39-71-123,

21 (d) placed as a participant in a public assistance program authorized by Title 53 into a work setting
22 for the purpose of developing employment skills. The placement may be with either a public or private
23 employer. The exclusion does not apply to an employment relationship formed in the work setting outside
24 the scope of the employment skills activities authorized by Title 53.

25 (e) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and
26 providing care without wage compensation to no more than six foster children in the provider's own
27 residence. The person may receive reimbursement for providing room and board, obtaining training, respite
28 care, leisure and recreational activities, and providing for other needs and activities arising in the provision
29 of in-home foster care.

30 (3) With the approval of the insurer, an employer may elect to include as an employee under the

1 provisions of this chapter any volunteer as defined in subsection (2)(c).

2 (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member
3 of a fire company organized and funded by a county, a rural fire district, or a fire service area.

4 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service
5 of an employer, including but not limited to training time, response time, and time spent at the employer's
6 premises.

7 (5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability
8 company, the employer may elect to include as an employee within the provisions of this chapter any
9 member of the partnership, the owner of the sole proprietorship, or any member of the limited liability
10 company devoting full time to the partnership, proprietorship, or limited liability company business.

11 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
12 naming the partners, sole proprietor, or members to be covered and stating the level of compensation
13 coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection
14 (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice
15 has been given.

16 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
17 following notification.

18 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
19 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
20 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
21 than \$900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

22 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
23 liability company, the employer may elect to include as an employee within the provisions of this chapter
24 any corporate officer or manager exempted under 39-71-401(2).

25 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
26 naming the corporate officer or manager to be covered and stating the level of compensation coverage
27 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A
28 corporate officer or manager is not considered an employee within this chapter until notice has been given.

29 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
30 following notification.

1 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
2 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
3 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not
4 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

5 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,
6 or the county commissioners or trustees for a fire service area may elect to include as an employee within
7 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
8 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

9 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for
10 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the
11 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

12 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services
13 are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than
14 a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the
15 control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

16 (9) For purposes of this section, an "employee or worker in this state" means:

17 (a) a resident of Montana who is employed by an employer and whose employment duties are
18 primarily carried out or controlled within this state;

19 (b) a nonresident of Montana whose principal employment duties are conducted within this state
20 on a regular basis for an employer;

21 (c) a nonresident employee of an employer from another state engaged in the construction industry,
22 as defined in 39-71-116, within this state; or

23 (d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose
24 employer elects coverage with an insurer that allows an election for an employer whose:

25 (i) nonresident employees are hired in Montana;

26 (ii) nonresident employees' wages are paid in Montana;

27 (iii) nonresident employees are supervised in Montana; and

28 (iv) business records are maintained in Montana.

29 (10) An insurer may require coverage for all nonresident employees of a Montana employer who
30 do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under

1 subsection (9)(d)."

2

3 ~~Section 5. Section 39-71-401, MCA, is amended to read:~~

4 ~~"39-71-401. Employments covered and employments exempted. (1) Except as provided in~~
 5 ~~subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to~~
 6 ~~all employees, as defined in 39-71-118. An employer who has any employee in service under any~~
 7 ~~appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the~~
 8 ~~provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'~~
 9 ~~Compensation Act is subject to and bound by the compensation plan that has been elected by the~~
 10 ~~employer.~~

11 ~~(2) Unless the employer elects coverage for these employments under this chapter and an insurer~~
 12 ~~allows an election, the Workers' Compensation Act does not apply to any of the following employments:~~

13 ~~(a) household and domestic employment;~~

14 ~~(b) casual employment as defined in 39-71-116;~~

15 ~~(c) employment of a dependent member of an employer's family for whom an exemption may be~~
 16 ~~claimed by the employer under the federal Internal Revenue Code;~~

17 ~~(d) employment of sole proprietors, working members of a partnership, or working members of a~~
 18 ~~member-managed limited liability company, except as provided in subsection (3);~~

19 ~~(e) employment of a broker or salesman salesperson performing under a license issued by the board~~
 20 ~~of realty regulation;~~

21 ~~(f) employment of a direct seller as defined in 26 U.S.C. 3508;~~

22 ~~(g) employment for which a rule of liability for injury, occupational disease, or death is provided~~
 23 ~~under the laws of the United States;~~

24 ~~(h) employment of a person performing services in return for aid or sustenance only, except~~
 25 ~~employment of a volunteer under 67-2-106;~~

26 ~~(i) employment with a railroad engaged in interstate commerce, except that railroad construction~~
 27 ~~work is included in and subject to the provisions of this chapter;~~

28 ~~(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic~~
 29 ~~event, unless the person is otherwise employed by a school district;~~

30 ~~(k) employment of a person performing services as a newspaper carrier or free lance correspondent~~

1 if the person performing the services or a parent or guardian of the person performing the services in the
 2 case of a minor has acknowledged in writing that the person performing the services and the services are
 3 not covered. As used in this subsection, "free lance correspondent" is a person who submits articles or
 4 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
 5 "newspaper carrier":

6 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
 7 bundles; but

8 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
 9 carries or delivers papers.

10 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

11 (m) a person who is employed by an enrolled tribal member or an association, business,
 12 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
 13 business is conducted solely within the exterior boundaries of an Indian reservation;

14 (n) employment of a jockey performing under a license issued by the board of horseracing from the
 15 time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed
 16 out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of
 17 horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services
 18 as a jockey;

19 (o) employment of an employer's spouse for whom an exemption based on marital status may be
 20 claimed by the employer under 26 U.S.C. 7703;

21 (p) a person who performs services as a petroleum land professional. As used in this subsection,
 22 a "petroleum land professional" is a person who:

23 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
 24 negotiating a business agreement for the exploration or development of minerals;

25 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
 26 than on an hourly wage basis; and

27 (iii) performs all services as an independent contractor pursuant to a written contract.

28 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
 29 liability company who qualifies under one or more of the following provisions:

30 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the

1 limited liability company and does not receive any pay from the corporation or the limited liability company
2 for performance of the duties;

3 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
4 limited liability company;

5 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
6 or owns 20% or more of the limited liability company; or

7 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son in law,
8 daughter in law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
9 number of shares of stock in the corporation or who owns 20% or more of the limited liability company;

10 ~~(f) a person placed as a participant in a public assistance program authorized by Title 53 into a~~
11 ~~work setting for the purpose of developing employment skills. The placement may be with either a public~~
12 ~~or private employer. The exclusion does not apply to an employment relationship formed in the work~~
13 ~~setting outside the scope of the employment skills activities authorized by Title 53.~~

14 ~~(g) a person serving as a foster parent, licensed as a foster care provider in accordance with~~
15 ~~41-3-1141, and providing care without wage compensation to no more than six foster children in the~~
16 ~~provider's own residence. The person may receive reimbursement for providing room and board, obtaining~~
17 ~~training, respite care, leisure and recreational activities, and providing for other needs and activities arising~~
18 ~~in the provision of in-home foster care.~~

19 (3) (a) ~~A sole proprietor, a working member of a partnership, or a working member of a~~
20 ~~member managed limited liability company who represents to the public that the person is an independent~~
21 ~~contractor shall elect to be bound personally and individually by the provisions of compensation plan No.~~
22 ~~1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.~~

23 (b) ~~The application must be made in accordance with the rules adopted by the department. There~~
24 ~~is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application~~
25 ~~fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset~~
26 ~~the costs of administering the program.~~

27 (c) ~~When an application is approved by the department, it is conclusive as to the status of an~~
28 ~~independent contractor and precludes the applicant from obtaining benefits under this chapter.~~

29 (d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's~~
30 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~

1 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
2 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
3 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
4 ~~approved exemption.~~

5 ~~(e) A person who makes a false statement or misrepresentation concerning that person's status~~
6 ~~as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose~~
7 ~~the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured~~
8 ~~employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.~~

9 ~~(f) If the department denies the application for exemption, the applicant may contest the denial by~~
10 ~~petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An~~
11 ~~applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with~~
12 ~~the procedure established in 39-51-2403 and 39-51-2404.~~

13 ~~(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its~~
14 ~~employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private~~
15 ~~corporation, or a manager-managed limited liability company may elect coverage for its corporate officers~~
16 ~~or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following~~
17 ~~manner:~~

18 ~~(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by~~
19 ~~delivering the notice to the board of directors of the corporation or to the management organization of the~~
20 ~~manager-managed limited liability company; or~~

21 ~~(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by~~
22 ~~delivering the notice to the board of directors of the corporation or to the management organization of the~~
23 ~~manager-managed limited liability company and to the insurer.~~

24 ~~(b) If the employer changes plans or insurers, the employer's previous election is not effective and~~
25 ~~the employer shall again serve notice to its insurer and to its board of directors or the management~~
26 ~~organization of the manager-managed limited liability company if the employer elects to be bound.~~

27 ~~(5) The appointment or election of an employee as an officer of a corporation, a partner in a~~
28 ~~partnership, or a member in or a manager of a limited liability company for the purpose of exempting the~~
29 ~~employee from coverage under this chapter does not entitle the officer, partner, member, or manager to~~
30 ~~exemption from coverage.~~

1 ~~(6) Each employer shall post a sign in the workplace at the locations where notices to employees~~
 2 ~~are normally posted, informing employees about the employer's current provision of workers' compensation~~
 3 ~~insurance. A workplace is any location where an employee performs any work related act in the course of~~
 4 ~~employment, regardless of whether the location is temporary or permanent, and includes the place of~~
 5 ~~business or property of a third person while the employer has access to or control over the place of~~
 6 ~~business or property for the purpose of carrying on the employer's usual trade, business, or occupation.~~
 7 ~~The sign must be provided by the department, distributed through insurers or directly by the department,~~
 8 ~~and posted by employers in accordance with rules adopted by the department. An employer who purposely~~
 9 ~~or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."~~

10
 11 **Section 3.** Section 53-4-603, MCA, is amended to read:

12 "**53-4-603. FAIM project -- components.** (1) The aid to families with dependent children part of
 13 the FAIM project consists of three components referred to as the job supplement program, pathways, and
 14 the community services program.

15 (2) The job supplement program is an alternative to the components of the FAIM project that
 16 provide cash assistance. An eligible family may receive assistance under the job supplement program
 17 instead of receiving assistance under pathways or the community services program or may receive
 18 assistance under the job supplement program either prior to or after receiving assistance under pathways
 19 or the community services program.

20 (3) Services that may be provided to eligible individuals in the job supplement program include:

21 (a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid
 22 benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by
 23 the secretary of the U.S. department of health and human services that permit limited benefits. However,
 24 a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

25 (b) child-care assistance, as provided in 53-4-611 and as specified by the department by rule;

26 (c) assistance in obtaining child support; and

27 (d) a one-time only cash payment to meet special employment-related needs of the family. In order
 28 to receive a one-time cash payment, the family is required to agree not to apply for or receive cash
 29 assistance for a period of time based on the size of the one-time cash payment received.

30 (4) (a) Pathways may provide eligible individuals with job training and education; resource referrals;

1 assistance in obtaining child support; one-time cash payments for special employment-related needs;
 2 child-care assistance, as provided in 53-4-611 and as specified by department rule; cash assistance
 3 payments; full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid
 4 benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by
 5 the secretary of the U.S. department of health and human services that permit limited benefits. However,
 6 a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

7 (b) A specified caretaker relative in a single-parent family may receive assistance under pathways
 8 for a maximum of 24 months. The 24 months do not need to be consecutive.

9 (c) Specified caretaker relatives in a two-parent family may receive assistance under pathways for
 10 a maximum of 18 months. The 18 months do not need to be consecutive.

11 (5) In the community services program, a specified caretaker relative who has received the
 12 maximum number of months of assistance allowable under pathways may continue to receive assistance
 13 for the specified caretaker relative's needs if the specified caretaker relative performs community service
 14 work as required by the department. A specified caretaker relative who performs community service work
 15 as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid
 16 benefits, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S.
 17 department of health and human services that permit limited benefits. However, a specified caretaker
 18 relative who is pregnant is entitled to full medicaid benefits. Job training and education, resource referrals,
 19 and assistance in obtaining child support may also be provided if determined by the department to be
 20 appropriate. Child-care assistance may be provided as set forth in 53-4-611 and as specified by department
 21 rule.

22 (6) Failure of a caretaker relative to participate in community service work as required must result
 23 in the needs of the specified caretaker relative being removed from the cash assistance payment.

24 (7) A dependent child who meets all eligibility requirements for aid to families with dependent
 25 children may receive assistance under any component of the FAIM project without any time limits.

26 ~~(8) The department shall furnish workers' compensation coverage, as provided in 39-71-118, for~~
 27 ~~recipients in any component of the FAIM project who perform community service work or who participate~~
 28 ~~in a work experience program.~~

29 (8) A PRIVATE EMPLOYER SHALL INCLUDE IN THE EMPLOYER'S WORKERS' COMPENSATION
 30 COVERAGE A PERSON PLACED AT THE EMPLOYER'S WORK SITE AS A PARTICIPANT IN A PUBLIC

1 ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53.

2 (9) THE DEPARTMENT MAY ENTER INTO AN AGREEMENT TO REIMBURSE A PRIVATE EMPLOYER
3 FOR THE PREMIUM COST OF WORKERS' COMPENSATION COVERAGE FOR A PARTICIPANT OF THE
4 PROGRAM WHO IS PLACED AT THE EMPLOYER'S WORK SITE FOR JOB TRAINING IF THE EMPLOYER
5 HAS ELECTED COVERAGE AS ALLOWED IN 39-71-118.

6 (10) A STATE AGENCY SHALL ELECT WORKERS' COMPENSATION COVERAGE AS ALLOWED
7 IN 39-71-118 FOR A PARTICIPANT IN THE PROGRAM WHO IS PLACED AT THE AGENCY'S WORK SITE
8 FOR JOB TRAINING."

9

10 NEW SECTION. Section 4. Saving clause. [This act] does not affect rights and duties that
11 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
12 act].

13

14 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

15

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0146, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills and child foster care providers from wage and hour requirements.

ASSUMPTIONS:

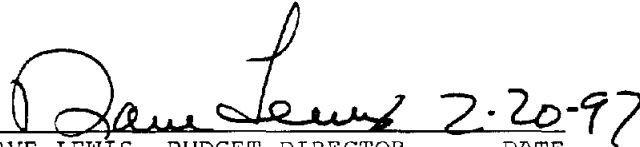
1. Under the new welfare reform law, 30% of families in fiscal 1998 and 35% of families in fiscal 1999 who are receiving assistance from the new Temporary Assistance for Needy Families (TANF) block grant must participate in 20 hours of work activities each week in fiscal 1998 and 25 hours in fiscal 1999.
2. In order to achieve these participation rates, at least half of the estimated cash assistance recipients must be involved in work activities--4,720 participants in fiscal 1998 and 4,704 in fiscal 1999.
3. The average worker's compensation premium is estimated to be \$5.30 per \$100 based on the minimum wage of \$5.15 per hour.
4. It is assumed that 5% of the caseload each year will be employed by state agencies, which will absorb the cost of worker's compensation coverage and another 5% of the participants will be in work activities where other employers fund the cost of worker's compensation coverage or work-related activities that do not require worker's compensation coverage.
5. The remaining premium costs may be reimbursed from the federal TANF block grant.

FISCAL IMPACT:

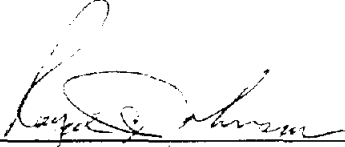
	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Benefit Costs	\$1,205,871	\$1,502,070
<u>Funding:</u>		
Federal Funds (TANF Block Grant)	\$1,205,871	\$1,502,070

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

If counties provide work experience for some TANF participants and decide to pay the worker's compensation premiums, they could incur minimal cost.



DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



ROYAL JOHNSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0146, second reading

HB 146

1 HOUSE BILL NO. 146

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PERSON PLACED AS A PARTICIPANT IN A
6 PUBLIC ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53 INTO A WORK SETTING FOR THE PURPOSE
7 OF DEVELOPING EMPLOYMENT SKILLS AND CHILD FOSTER CARE PROVIDERS FROM WAGE AND HOUR,
8 ~~UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION~~ REQUIREMENTS; AMENDING
9 SECTIONS 39-3-406, ~~39-61-201, 39-61-204,~~ 39-71-118, ~~39-71-401,~~ AND 53-4-603, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 HOUSE BILL NO. 146

2 INTRODUCED BY R. JOHNSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PERSON PLACED AS A PARTICIPANT IN A
6 PUBLIC ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53 INTO A WORK SETTING FOR THE PURPOSE
7 OF DEVELOPING EMPLOYMENT SKILLS ~~AND CHILD FOSTER CARE PROVIDERS~~ FROM WAGE AND HOUR,
8 ~~UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION~~ REQUIREMENTS; EXEMPTING CHILD
9 FOSTER CARE PROVIDERS FROM WAGE AND HOUR AND WORKERS' COMPENSATION REQUIREMENTS;
10 DEFINING A PERSON PLACED AS A PARTICIPANT IN A PUBLIC ASSISTANCE PROGRAM AUTHORIZED
11 UNDER TITLE 53 INTO A WORK SETTING AS AN EMPLOYEE FOR WORKERS' COMPENSATION PURPOSES
12 ONLY AND REQUIRING WORKERS' COMPENSATION COVERAGE; ALLOWING THE DEPARTMENT OF
13 PUBLIC HEALTH AND HUMAN SERVICES TO REIMBURSE PRIVATE AND LOCAL GOVERNMENTAL
14 EMPLOYERS FOR THE COSTS OF WORKERS' COMPENSATION COVERAGE; AMENDING SECTIONS
15 39-3-406, ~~39-51-201, 39-51-204,~~ 39-71-118, ~~39-71-401,~~ AND 53-4-603, MCA; AND PROVIDING AN
16 IMMEDIATE EFFECTIVE DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1920 **Section 1.** Section 39-3-406, MCA, is amended to read:21 "**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
22 to:23 (a) students participating in a distributive education program established under the auspices of an
24 accredited educational agency;25 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
26 mowing lawns, and cleaning sidewalks;27 (c) persons employed directly by the head of a household to care for children dependent upon the
28 head of the household;29 (d) immediate members of the family of an employer or persons dependent upon an employer for
30 half or more of their support in the customary sense of being a dependent;

1 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
2 services to a nonprofit organization on a fully or partially reimbursed basis;

3 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
4 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

5 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
6 30 days of their employment;

7 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
8 may not exceed 180 days from their initial date of employment and further provided that during this
9 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
10 in this part;

11 (i) retired or semiretired persons performing part-time incidental work as a condition of their
12 residence on a farm or ranch;

13 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
14 these terms are defined by regulations of the commissioner;

15 (k) any individual employed by the United States of America;

16 (l) resident managers employed in lodging establishments or personal care facilities who, under the
17 terms of their employment, live in the establishment or facility;

18 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
19 basis who is primarily employed in selling or marketing products or services in the food distribution industry
20 for a food broker, wholesaler, or association;

21 (n) a direct seller as defined in 26 U.S.C. 3508;

22 (o) a person placed as a participant in a public assistance program authorized by Title 53 into a work
23 setting for the purpose of developing employment skills. The placement may be with either a public or
24 private employer. The exclusion does not apply to an employment relationship formed in the work setting
25 outside the scope of the employment skills activities authorized by Title 53.

26 (p) a person serving as a foster parent, licensed as a foster care provider in accordance with
27 41-3-1141, and providing care without wage compensation to no more than six foster children in the
28 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
29 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
30 in the provision of in-home foster care.

1 (2) The provisions of 39-3-405 do not apply to:

2 (a) an employee with respect to whom the United States secretary of transportation has power to
3 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

4 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

5 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or
6 natural state;

7 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
8 selling advertising for a newspaper;

9 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
10 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
11 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
12 engaged in the business of selling the vehicles or implements to ultimate purchasers;

13 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
14 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
15 or aircraft to ultimate purchasers;

16 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
17 selling office supplies, computers, or other office equipment for an office equipment dealer;

18 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
19 advertising for a radio or television station employer;

20 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
21 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
22 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
23 maximum workweek applicable to them under 39-3-405;

24 (j) an employee employed in agriculture or in connection with the operation or maintenance of
25 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
26 basis and that are used exclusively for supply and storing of water for agricultural purposes;

27 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
28 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
29 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

30 (i) primarily employed during a workweek in agriculture by a farmer; and

1 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
2 than that prescribed by 39-3-404;

3 (l) an employee of an establishment commonly recognized as a country elevator, including an
4 establishment that sells products and services used in the operation of a farm, if no more than five
5 employees are employed by the establishment;

6 (m) a driver employed by an employer engaged in the business of operating taxicabs;

7 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
8 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
9 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
10 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
11 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
12 basis, at an annual rate of not less than \$10,000;

13 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
14 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
15 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
16 not exceed eight;

17 (p) an employee of a sheriff's department who is working under an established work period in lieu
18 of a workweek pursuant to 7-4-2509(1);

19 (q) an employee of a municipal or county government who is working under a work period not
20 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
21 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
22 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
23 period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

24 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
25 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
26 a 14-day period established through either a collective bargaining agreement when a collective bargaining
27 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
28 is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be
29 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

30 (s) a firefighter who is working under a work period established in a collective bargaining agreement

1 entered into between a public employer and a firefighters' organization or its exclusive representative;

2 (t) an officer or other employee of a police department in a city of the first or second class who
3 is working under a work period established by the chief of police under 7-32-4118;

4 (u) an employee of a department of public safety working under a work period established pursuant
5 to 7-32-115;

6 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
7 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
8 than half of the employee's compensation for a period of not less than 1 month is derived from
9 commissions on goods and services;

10 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
11 as defined in 37-47-101;

12 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
13 a second- or third-class city or a town."

14
15 ~~Section 2. Section 39-51-201, MCA, is amended to read:~~

16 ~~"39-51-201. General definitions. As used in this chapter, unless the context clearly requires~~
17 ~~otherwise, the following definitions apply:~~

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

20 (2) ~~"Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding~~
21 ~~the first day of an individual's benefit year. However, in the case of a combined wage claim pursuant to~~
22 ~~the arrangement approved by the secretary of labor of the United States, the base period is the period~~
23 ~~applicable under the unemployment law of the paying state. For an individual who fails to meet the~~
24 ~~qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability,~~
25 ~~as defined in 39-71-116, or a similar statute of another state or the United States, the base period means~~
26 ~~the first 4 quarters of the last 5 quarters preceding the disability if a claim for unemployment benefits is~~
27 ~~filed within 24 months of the date on which the individual's disability was incurred.~~

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

30 (4) ~~"Benefit year", with respect to any individual, means the 52 consecutive week period beginning~~

1 with the first day of the calendar week in which the individual files a valid claim for benefits, except that
2 the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base
3 year of a previously filed new claim. A subsequent benefit year may not be established until the expiration
4 of the current benefit year. However, in the case of a combined wage claim pursuant to the arrangement
5 approved by the secretary of labor of the United States, the base period is the period applicable under the
6 unemployment law of the paying state.

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

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

10 (7) ~~"Contributions" means the money payments to the state unemployment insurance fund required
11 by this chapter but does not include assessments under 39-51-404(4).~~

12 (8) ~~"Department" means the department of labor and industry provided for in Title 2, chapter 15,
13 part 17.~~

14 (9) ~~"Employing unit" means any individual or organization (including the state government and any
15 of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint stock company,
16 insurance company, limited liability company that has filed with the secretary of state, or corporation,
17 whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or
18 legal representative of a deceased person that has or had in its employ one or more individuals performing
19 services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals
20 performing services within this state for any employing unit that maintains two or more separate
21 establishments within this state are considered to be employed by a single employing unit for all the
22 purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent
23 or employee of an employing unit is considered to be employed by the employing unit for the purposes of
24 this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or
25 employee, provided that the employing unit has actual or constructive knowledge of the work.~~

26 (10) ~~"Employment office" means a free public employment office or branch of an office operated
27 by this state or maintained as a part of a state-controlled system of public employment offices or such other
28 free public employment offices operated and maintained by the United States government or its
29 instrumentalities as the department may approve.~~

30 (11) ~~"Fund" means the unemployment insurance fund established by this chapter to which all~~

1 ~~contributions and payments in lieu of contributions are required to be paid and from which all benefits~~
2 ~~provided under this chapter must be paid.~~

3 ~~(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,~~
4 ~~for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates~~
5 ~~a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the~~
6 ~~employer.~~

7 ~~(13) "Hospital" means an institution that has been licensed, certified, or approved by the state as~~
8 ~~a hospital.~~

9 ~~(14) "Independent contractor" means an individual who renders service in the course of an~~
10 ~~occupation and:~~

11 ~~(a) has been and will continue to be free from control or direction over the performance of the~~
12 ~~services, both under a contract and in fact; and~~

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

14 ~~(15) (a) "Institution of higher education", for the purposes of this part, means an educational~~
15 ~~institution that:~~

16 ~~(i) admits as regular students only individuals having a certificate of graduation from a high school~~
17 ~~or the recognized equivalent of a certificate;~~

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

19 ~~(iii) provides an educational program for which it awards a bachelor's or higher degree or provides~~
20 ~~a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate~~
21 ~~or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized~~
22 ~~occupation; and~~

23 ~~(iv) is a public or other nonprofit institution.~~

24 ~~(b) Notwithstanding subsection (15)(a), all universities in this state are institutions of higher~~
25 ~~education for purposes of this part.~~

26 ~~(16) "State" includes, in addition to the states of the United States of America, the District of~~
27 ~~Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.~~

28 ~~(17) "Taxes" means contributions and assessments required under this chapter but does not include~~
29 ~~penalties or interest for past due or unpaid contributions or assessments.~~

30 ~~(18) "Unemployment insurance administration fund" means the unemployment insurance~~

1 administration fund established by this chapter from which administrative expenses under this chapter must
2 be paid.

3 ~~(19) (a) "Wages" means all remuneration payable for personal services, including commissions and~~
4 ~~bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received~~
5 ~~pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any~~
6 ~~medium other than cash must be estimated and determined pursuant to rules prescribed by the department.~~

7 ~~(b) The term "wages" does not include:~~

8 ~~(i) the amount of any payment made by the employer, if the payment was made under a plan~~
9 ~~established for the employees in general or for a specific class or classes of employees, to or on behalf of~~
10 ~~the employee for:~~

11 ~~(A) retirement;~~

12 ~~(B) sickness or accident disability under a workers' compensation law;~~

13 ~~(C) medical and hospitalization expenses in connection with sickness or accident disability; or~~

14 ~~(D) death;~~

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

17 ~~(iii)(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or~~
18 ~~other expenses, as set forth in department rules.~~

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

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

22

23 ~~Section 3. Section 39-51-204, MCA, is amended to read:~~

24 ~~"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not~~
25 ~~include:~~

26 ~~(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to~~
27 ~~this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded~~
28 ~~from coverage under this chapter if the employer:~~

29 ~~(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the~~
30 ~~monetary amount or number of employees and days worked, for the subject wages attributable to~~

- 1 agricultural labor; and
- 2 ~~(ii) keeps separate books and records to account for the employment of persons in agricultural~~
- 3 ~~labor.~~
- 4 ~~(b) household and domestic service in a private home, local college club, or local chapter of a~~
- 5 ~~college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to~~
- 6 ~~this chapter and has domestic service employment, all employees engaged in domestic service must be~~
- 7 ~~excluded from coverage under this chapter if the employer:~~
- 8 ~~(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the~~
- 9 ~~subject wages attributable to domestic service; and~~
- 10 ~~(ii) keeps separate books and records to account for the employment of persons in domestic~~
- 11 ~~service.~~
- 12 ~~(c) service performed as an officer or member of the crew of a vessel on the navigable waters of~~
- 13 ~~the United States;~~
- 14 ~~(d) service performed by an individual in the employ of that individual's son, daughter, or spouse~~
- 15 ~~and service performed by a child under the age of 21 in the employ of the child's father or mother;~~
- 16 ~~(e) service performed in the employ of any other state or its political subdivisions or of the United~~
- 17 ~~States government or of an instrumentality of any other state or states or their political subdivisions or of~~
- 18 ~~the United States, except that national banks organized under the national banking law may not be entitled~~
- 19 ~~to exemption under this subsection and are subject to this chapter the same as state banks, provided that~~
- 20 ~~the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment~~
- 21 ~~Tax Act (26 U.S.C. 3306(c)(7));~~
- 22 ~~(f) service in which unemployment insurance is payable under an unemployment insurance system~~
- 23 ~~established by an act of congress if the department enters into agreements with the proper agencies under~~
- 24 ~~an act of congress and these agreements become effective in the manner prescribed in the Montana~~
- 25 ~~Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who~~
- 26 ~~have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment~~
- 27 ~~insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance~~
- 28 ~~under the act of congress, acquired rights to benefits under this chapter;~~
- 29 ~~(g) services performed as a newspaper carrier or free lance correspondent if the person performing~~
- 30 ~~the services or a parent or guardian of the person performing the services in the case of a minor has~~

1 ~~acknowledged in writing that the person performing the services and the services are not covered. As used~~
2 ~~in this subsection:~~

3 ~~(i) "free lance correspondent" is a person who submits articles or photographs for publication and~~
4 ~~is paid by the article or by the photograph; and~~

5 ~~(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering~~
6 ~~newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to~~
7 ~~the employee's main duties, carries or delivers papers.~~

8 ~~(h) services performed by real estate, securities, and insurance salespeople paid solely by~~
9 ~~commissions and without guarantee of minimum earnings;~~

10 ~~(i) service performed in the employ of a school or university if the service is performed by a student~~
11 ~~who is enrolled and is regularly attending classes at a school or university or by the spouse of a student~~
12 ~~if the spouse is advised, at the time that the spouse commences to perform the service, that the~~
13 ~~employment of the spouse to perform the service is provided under a program to provide financial~~
14 ~~assistance to the student by the school or university and that the employment will not be covered by any~~
15 ~~program of unemployment insurance;~~

16 ~~(j) service performed by an individual who is enrolled at a nonprofit or public educational institution,~~
17 ~~which normally maintains a regular faculty and curriculum and normally has a regularly organized body of~~
18 ~~students in attendance at the place where its educational activities are carried on, as a student in a full-time~~
19 ~~program taken for credit at an institution that combines academic instruction with work experience if the~~
20 ~~service is an integral part of the program and the institution has certified that fact to the employer, except~~
21 ~~that this subsection does not apply to service performed in a program established for or on behalf of an~~
22 ~~employer or group of employers;~~

23 ~~(k) service performed in the employ of a hospital if the service is performed by a patient of the~~
24 ~~hospital;~~

25 ~~(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber~~
26 ~~who is licensed under Title 37, chapter 30, and:~~

27 ~~(i) who has acknowledged in writing that the cosmetologist or barber is not covered by~~
28 ~~unemployment insurance and workers' compensation;~~

29 ~~(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined~~
30 ~~in 37-30-101, which contract must show that the cosmetologist or barber;~~

- 1 ~~(A) is free from all control and direction of the owner in the contract;~~
- 2 ~~(B) receives payment for services from individual clientele; and~~
- 3 ~~(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or~~
 4 ~~knowledge; and~~
- 5 ~~(iii) whose contract gives rise to an action for breach of contract in the event of contract~~
 6 ~~termination (the existence of a single license for the cosmetology salon or barbershop may not be construed~~
 7 ~~as a lack of freedom from control or direction under this subsection);~~
- 8 ~~(m) casual labor not in the course of an employer's trade or business performed in any calendar~~
 9 ~~quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by~~
 10 ~~an individual who is regularly employed by the employer to perform the service. "Regularly employed"~~
 11 ~~means that the services are performed during at least 24 days in the same quarter.~~
- 12 ~~(n) employment of sole proprietors, working members of a partnership, or members of a~~
 13 ~~member managed limited liability company that has filed with the secretary of state;~~
- 14 ~~(o) services performed for the installation of floor coverings if the installer:~~
- 15 ~~(i) bids or negotiates a contract price based upon work performed by the yard or by the job;~~
- 16 ~~(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;~~
- 17 ~~(iii) may perform services for anyone without limitation;~~
- 18 ~~(iv) may accept or reject any job;~~
- 19 ~~(v) furnishes substantially all tools and equipment necessary to provide the services; and~~
- 20 ~~(vi) works under a written contract that:~~
- 21 ~~(A) gives rise to a breach of contract action if the installer or any other party fails to perform the~~
 22 ~~contract obligations;~~
- 23 ~~(B) states that the installer is not covered by unemployment insurance; and~~
- 24 ~~(C) requires the installer to provide a current workers' compensation policy or to obtain an~~
 25 ~~exemption from workers' compensation requirements;~~
- 26 ~~(p) employment of a direct seller as defined in 26 U.S.C. 3508;~~
- 27 ~~(q) services performed by a petroleum land professional. As used in this subsection, "petroleum~~
 28 ~~land professional" means a person who:~~
- 29 ~~(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in~~
 30 ~~negotiating a business agreement for the exploration or development of minerals;~~

1 ~~(ii) is paid for services that are directly related to the completion of a contracted specific task rather~~
2 ~~than on an hourly wage basis; and~~

3 ~~(iii) performs all services as an independent contractor pursuant to a written contract.~~

4 ~~(2) Employment does not include elected public officials.~~

5 ~~(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:~~

6 ~~(a) in the employ of a church or convention or association of churches or an organization that is~~
7 ~~operated primarily for religious purposes and that is operated, supervised, controlled, or principally~~
8 ~~supported by a church or convention or association of churches;~~

9 ~~(b) by an ordained, commissioned, or licensed minister of a church in the exercise of the church's~~
10 ~~ministry or by a member of a religious order in the exercise of duties required by the order;~~

11 ~~(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals~~
12 ~~whose earning capacity is impaired by age or physical or mental deficiency or injury or providing~~
13 ~~remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily~~
14 ~~absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;~~

15 ~~(d) as part of an unemployment work-relief or work-training program assisted or financed in whole~~
16 ~~or in part by a federal agency or any agency of a state or political subdivision of the state by an individual~~
17 ~~receiving work relief or work training; or~~

18 ~~(e) for a state prison or other state correctional or custodial institution by an inmate of that~~
19 ~~institution.~~

20 ~~(4) An individual found to be an independent contractor by the department under the terms of~~
21 ~~39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent~~
22 ~~contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to~~
23 ~~39-51-2402.~~

24 ~~(5) This section does not apply to a state or local governmental entity or a nonprofit organization~~
25 ~~defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from~~
26 ~~employment as defined in the Federal Unemployment Tax Act."~~

27 ~~(6) A person in either of the following circumstances is not considered to be employed for the~~
28 ~~purposes of this chapter:~~

29 ~~(a) a person placed as a participant in a public assistance program authorized by Title 53 into a~~
30 ~~work setting for the purpose of developing employment skills. The placement may be with either a public~~

~~1 or private employer. The exclusion does not apply to an employment relationship formed in the work
2 setting outside the scope of the employment skills activities authorized by Title 53. The exclusion is only
3 to the extent permitted by any federal law governing the implementation of unemployment program
4 standards by a state.~~

~~5 (b) a person serving as a foster parent, licensed as a foster care provider in accordance with
6 41-3-1141, and providing care without wage compensation to no more than six foster children in the
7 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
8 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
9 in the provision of in-home foster care. The exclusion is only to the extent permitted by any federal law
10 governing the implementation of unemployment program standards by a state.~~

11
12 **Section 2.** Section 39-71-118, MCA, is amended to read:

13 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
14 "employee" or "worker" means:

15 (a) each person in this state, including a contractor other than an independent contractor, who is
16 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
17 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
18 employed, and all of the elected and appointed paid public officers and officers and members of boards of
19 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
20 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
21 included as employees if they are not otherwise covered by workers' compensation and if an employer has
22 elected to be bound by the provisions of the compensation law for these casual employments, as provided
23 in 39-71-401(2). Household or domestic employment is excluded.

24 (b) any juvenile performing work under authorization of a district court judge in a delinquency
25 prevention or rehabilitation program;

26 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
27 a state or federal vocational training program, whether or not under an appointment or contract of hire with
28 an employer, as defined in this chapter, and whether or not receiving payment from a third party. However,
29 this subsection does not apply to students enrolled in vocational training programs, as outlined in this
30 subsection, while they are on the premises of a public school or community college.

1 (d) an aircrew member or other person employed as a volunteer under 67-2-105;

2 (e) a person, other than a juvenile as defined in subsection (1)(b), performing community service
3 for a nonprofit organization or association or for a federal, state, or local government entity under a court
4 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
5 appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving
6 payment from a third party. For a person covered by the definition in this subsection (1)(e):

7 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
8 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
9 chapter 3, part 4, for a full-time employee at the time of the injury; and

10 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
11 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
12 service required under the order from the court or hearings officer.

13 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

14 ~~and~~

15 (g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109,
16 or a person who provides ambulance services under Title 7, chapter 34, part 1; AND

17 (H) A PERSON PLACED AT THE EMPLOYER'S WORKSITE AS A PARTICIPANT IN A PUBLIC
18 ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53, CHAPTER 4, PARTS 6 AND 7, FOR WORKERS'
19 COMPENSATION PURPOSES ONLY. A PERSON PLACED AT AN EMPLOYER'S WORKSITE UNDER TITLE
20 53, CHAPTER 4, PARTS 6 AND 7, MAY NOT BE CONSIDERED AN INDEPENDENT CONTRACTOR UNDER
21 39-71-120. AN EMPLOYER MAY BE REIMBURSED FOR THE PREMIUM COST AS PROVIDED IN 53-4-603.

22 (2) The terms defined in subsection (1) do not include a person who is:

23 (a) participating in recreational activity and who at the time is relieved of and is not performing
24 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
25 permit, device, or other emolument of employment;

26 (b) performing voluntary service at a recreational facility and who receives no compensation for
27 those services other than meals, lodging, or the use of the recreational facilities; ~~or~~

28 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage
29 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs
30 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined

1 in 39-71-123.

2 ~~(d) placed as a participant in a public assistance program authorized by Title 53 into a work setting~~
3 ~~for the purpose of developing employment skills. The placement may be with either a public or private~~
4 ~~employer. The exclusion does not apply to an employment relationship formed in the work setting outside~~
5 ~~the scope of the employment skills activities authorized by Title 53.~~

6 ~~(e)(D) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141,~~
7 ~~and providing care without wage compensation to no more than six foster children in the provider's own~~
8 ~~residence. The person may receive reimbursement for providing room and board, obtaining training, respite~~
9 ~~care, leisure and recreational activities, and providing for other needs and activities arising in the provision~~
10 ~~of in-home foster care.~~

11 (3) With the approval of the insurer, an employer may elect to include as an employee under the
12 provisions of this chapter any volunteer as defined in subsection (2)(c).

13 (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member
14 of a fire company organized and funded by a county, a rural fire district, or a fire service area.

15 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service
16 of an employer, including but not limited to training time, response time, and time spent at the employer's
17 premises.

18 (5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability
19 company, the employer may elect to include as an employee within the provisions of this chapter any
20 member of the partnership, the owner of the sole proprietorship, or any member of the limited liability
21 company devoting full time to the partnership, proprietorship, or limited liability company business.

22 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
23 naming the partners, sole proprietor, or members to be covered and stating the level of compensation
24 coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection
25 (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice
26 has been given.

27 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
28 following notification.

29 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
30 the minimum and maximum limitations of this subsection. For premium ratemaking and for the

1 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
2 than \$900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

3 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
4 liability company, the employer may elect to include as an employee within the provisions of this chapter
5 any corporate officer or manager exempted under 39-71-401(2).

6 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
7 naming the corporate officer or manager to be covered and stating the level of compensation coverage
8 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A
9 corporate officer or manager is not considered an employee within this chapter until notice has been given.

10 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
11 following notification.

12 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
13 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
14 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not
15 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

16 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,
17 or the county commissioners or trustees for a fire service area may elect to include as an employee within
18 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
19 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

20 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for
21 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the
22 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

23 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services
24 are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than
25 a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the
26 control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

27 (9) For purposes of this section, an "employee or worker in this state" means:

28 (a) a resident of Montana who is employed by an employer and whose employment duties are
29 primarily carried out or controlled within this state;

30 (b) a nonresident of Montana whose principal employment duties are conducted within this state

1 on a regular basis for an employer;

2 (c) a nonresident employee of an employer from another state engaged in the construction industry,
3 as defined in 39-71-116, within this state; or

4 (d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose
5 employer elects coverage with an insurer that allows an election for an employer whose:

6 (i) nonresident employees are hired in Montana;

7 (ii) nonresident employees' wages are paid in Montana;

8 (iii) nonresident employees are supervised in Montana; and

9 (iv) business records are maintained in Montana.

10 (10) An insurer may require coverage for all nonresident employees of a Montana employer who
11 do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under
12 subsection (9)(d)."

13

14 ~~Section 5. Section 39-71-401, MCA, is amended to read:~~

15 ~~"39-71-401. Employments covered and employments exempted. (1) Except as provided in~~
16 ~~subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to~~
17 ~~all employees, as defined in 39-71-118. An employer who has any employee in service under any~~
18 ~~appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the~~
19 ~~provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'~~
20 ~~Compensation Act is subject to and bound by the compensation plan that has been elected by the~~
21 ~~employer.~~

22 ~~(2) Unless the employer elects coverage for these employments under this chapter and an insurer~~
23 ~~allows an election, the Workers' Compensation Act does not apply to any of the following employments:~~

24 ~~(a) household and domestic employment;~~

25 ~~(b) casual employment as defined in 39-71-116;~~

26 ~~(c) employment of a dependent member of an employer's family for whom an exemption may be~~
27 ~~claimed by the employer under the federal Internal Revenue Code;~~

28 ~~(d) employment of sole proprietors, working members of a partnership, or working members of a~~
29 ~~member-managed limited liability company, except as provided in subsection (3);~~

30 ~~(e) employment of a broker or salesman salesperson performing under a license issued by the board~~

- 1 ~~of realty regulation;~~
- 2 ~~(f) employment of a direct seller as defined in 26 U.S.C. 3508;~~
- 3 ~~(g) employment for which a rule of liability for injury, occupational disease, or death is provided~~
- 4 ~~under the laws of the United States;~~
- 5 ~~(h) employment of a person performing services in return for aid or sustenance only, except~~
- 6 ~~employment of a volunteer under 67-2-106;~~
- 7 ~~(i) employment with a railroad engaged in interstate commerce, except that railroad construction~~
- 8 ~~work is included in and subject to the provisions of this chapter;~~
- 9 ~~(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic~~
- 10 ~~event, unless the person is otherwise employed by a school district;~~
- 11 ~~(k) employment of a person performing services as a newspaper carrier or free-lance correspondent~~
- 12 ~~if the person performing the services or a parent or guardian of the person performing the services in the~~
- 13 ~~case of a minor has acknowledged in writing that the person performing the services and the services are~~
- 14 ~~not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or~~
- 15 ~~photographs for publication and is paid by the article or by the photograph. As used in this subsection,~~
- 16 ~~"newspaper carrier":~~
- 17 ~~(i) is a person who provides a newspaper with the service of delivering newspapers singly or in~~
- 18 ~~bundles; but~~
- 19 ~~(ii) does not include an employee of the paper who, incidentally to the employee's main duties,~~
- 20 ~~carries or delivers papers.~~
- 21 ~~(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);~~
- 22 ~~(m) a person who is employed by an enrolled tribal member or an association, business,~~
- 23 ~~corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose~~
- 24 ~~business is conducted solely within the exterior boundaries of an Indian reservation;~~
- 25 ~~(n) employment of a jockey performing under a license issued by the board of horseracing from the~~
- 26 ~~time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed~~
- 27 ~~out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of~~
- 28 ~~horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services~~
- 29 ~~as a jockey;~~
- 30 ~~(o) employment of an employer's spouse for whom an exemption based on marital status may be~~

- 1 ~~claimed by the employer under 26 U.S.C. 7703;~~
- 2 ~~(p) a person who performs services as a petroleum land professional. As used in this subsection,~~
3 ~~a "petroleum land professional" is a person who:~~
- 4 ~~(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in~~
5 ~~negotiating a business agreement for the exploration or development of minerals;~~
- 6 ~~(ii) is paid for services that are directly related to the completion of a contracted specific task rather~~
7 ~~than on an hourly wage basis; and~~
- 8 ~~(iii) performs all services as an independent contractor pursuant to a written contract.~~
- 9 ~~(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited~~
10 ~~liability company who qualifies under one or more of the following provisions:~~
- 11 ~~(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the~~
12 ~~limited liability company and does not receive any pay from the corporation or the limited liability company~~
13 ~~for performance of the duties;~~
- 14 ~~(ii) the officer or manager is engaged primarily in household employment for the corporation or the~~
15 ~~limited liability company;~~
- 16 ~~(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation~~
17 ~~or owns 20% or more of the limited liability company; or~~
- 18 ~~(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,~~
19 ~~daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the~~
20 ~~number of shares of stock in the corporation or who owns 20% or more of the limited liability company;~~
- 21 ~~(r) a person placed as a participant in a public assistance program authorized by Title 53 into a~~
22 ~~work setting for the purpose of developing employment skills. The placement may be with either a public~~
23 ~~or private employer. The exclusion does not apply to an employment relationship formed in the work~~
24 ~~setting outside the scope of the employment skills activities authorized by Title 53.~~
- 25 ~~(s) a person serving as a foster parent, licensed as a foster care provider in accordance with~~
26 ~~41-3-1141, and providing care without wage compensation to no more than six foster children in the~~
27 ~~provider's own residence. The person may receive reimbursement for providing room and board, obtaining~~
28 ~~training, respite care, leisure and recreational activities, and providing for other needs and activities arising~~
29 ~~in the provision of in-home foster care.~~
- 30 ~~(3) (a) A sole proprietor, a working member of a partnership, or a working member of a~~

1 ~~member managed limited liability company who represents to the public that the person is an independent~~
2 ~~contractor shall elect to be bound personally and individually by the provisions of compensation plan No.~~
3 ~~1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.~~

4 ~~(b) The application must be made in accordance with the rules adopted by the department. There~~
5 ~~is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application~~
6 ~~fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset~~
7 ~~the costs of administering the program.~~

8 ~~(c) When an application is approved by the department, it is conclusive as to the status of an~~
9 ~~independent contractor and precludes the applicant from obtaining benefits under this chapter.~~

10 ~~(d) The exemption, if approved, remains in effect for 1 year following the date of the department's~~
11 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
12 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
13 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
14 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
15 ~~approved exemption.~~

16 ~~(e) A person who makes a false statement or misrepresentation concerning that person's status~~
17 ~~as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose~~
18 ~~the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured~~
19 ~~employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.~~

20 ~~(f) If the department denies the application for exemption, the applicant may contest the denial by~~
21 ~~petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An~~
22 ~~applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with~~
23 ~~the procedure established in 39-51-2403 and 39-51-2404.~~

24 ~~(4) (a) A corporation or a manager managed limited liability company shall provide coverage for its~~
25 ~~employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private~~
26 ~~corporation, or a manager managed limited liability company may elect coverage for its corporate officers~~
27 ~~or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following~~
28 ~~manner:~~

29 ~~(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by~~
30 ~~delivering the notice to the board of directors of the corporation or to the management organization of the~~

1 ~~manager-managed limited liability company; or~~

2 ~~(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by~~
 3 ~~delivering the notice to the board of directors of the corporation or to the management organization of the~~
 4 ~~manager-managed limited liability company and to the insurer.~~

5 ~~(b) If the employer changes plans or insurers, the employer's previous election is not effective and~~
 6 ~~the employer shall again serve notice to its insurer and to its board of directors or the management~~
 7 ~~organization of the manager-managed limited liability company if the employer elects to be bound.~~

8 ~~(5) The appointment or election of an employee as an officer of a corporation, a partner in a~~
 9 ~~partnership, or a member in or a manager of a limited liability company for the purpose of exempting the~~
 10 ~~employee from coverage under this chapter does not entitle the officer, partner, member, or manager to~~
 11 ~~exemption from coverage.~~

12 ~~(6) Each employer shall post a sign in the workplace at the locations where notices to employees~~
 13 ~~are normally posted, informing employees about the employer's current provision of workers' compensation~~
 14 ~~insurance. A workplace is any location where an employee performs any work-related act in the course of~~
 15 ~~employment, regardless of whether the location is temporary or permanent, and includes the place of~~
 16 ~~business or property of a third person while the employer has access to or control over the place of~~
 17 ~~business or property for the purpose of carrying on the employer's usual trade, business, or occupation.~~
 18 ~~The sign must be provided by the department, distributed through insurers or directly by the department,~~
 19 ~~and posted by employers in accordance with rules adopted by the department. An employer who purposely~~
 20 ~~or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."~~

21

22 **Section 3.** Section 53-4-603, MCA, is amended to read:

23 **"53-4-603. FAIM project -- components.** (1) The aid to families with dependent children part of
 24 the FAIM project consists of three components referred to as the job supplement program, pathways, and
 25 the community services program.

26 (2) The job supplement program is an alternative to the components of the FAIM project that
 27 provide cash assistance. An eligible family may receive assistance under the job supplement program
 28 instead of receiving assistance under pathways or the community services program or may receive
 29 assistance under the job supplement program either prior to or after receiving assistance under pathways
 30 or the community services program.

1 (3) Services that may be provided to eligible individuals in the job supplement program include:

2 (a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid
3 benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by
4 the secretary of the U.S. department of health and human services that permit limited benefits. However,
5 a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

6 (b) child-care assistance, as provided in 53-4-611 and as specified by the department by rule;

7 (c) assistance in obtaining child support; and

8 (d) a one-time only cash payment to meet special employment-related needs of the family. In order
9 to receive a one-time cash payment, the family is required to agree not to apply for or receive cash
10 assistance for a period of time based on the size of the one-time cash payment received.

11 (4) (a) Pathways may provide eligible individuals with job training and education; resource referrals;
12 assistance in obtaining child support; one-time cash payments for special employment-related needs;
13 child-care assistance, as provided in 53-4-611 and as specified by department rule; cash assistance
14 payments; full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid
15 benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by
16 the secretary of the U.S. department of health and human services that permit limited benefits. However,
17 a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

18 (b) A specified caretaker relative in a single-parent family may receive assistance under pathways
19 for a maximum of 24 months. The 24 months do not need to be consecutive.

20 (c) Specified caretaker relatives in a two-parent family may receive assistance under pathways for
21 a maximum of 18 months. The 18 months do not need to be consecutive.

22 (5) In the community services program, a specified caretaker relative who has received the
23 maximum number of months of assistance allowable under pathways may continue to receive assistance
24 for the specified caretaker relative's needs if the specified caretaker relative performs community service
25 work as required by the department. A specified caretaker relative who performs community service work
26 as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid
27 benefits, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S.
28 department of health and human services that permit limited benefits. However, a specified caretaker
29 relative who is pregnant is entitled to full medicaid benefits. Job training and education, resource referrals,
30 and assistance in obtaining child support may also be provided if determined by the department to be

1 appropriate. Child-care assistance may be provided as set forth in 53-4-611 and as specified by department
2 rule.

3 (6) Failure of a caretaker relative to participate in community service work as required must result
4 in the needs of the specified caretaker relative being removed from the cash assistance payment.

5 (7) A dependent child who meets all eligibility requirements for aid to families with dependent
6 children may receive assistance under any component of the FAIM project without any time limits.

7 ~~(8) The department shall furnish workers' compensation coverage, as provided in 39-71-118, for~~
8 ~~recipients in any component of the FAIM project who perform community service work or who participate~~
9 ~~in a work experience program.~~

10 ~~(8) A PRIVATE EMPLOYER SHALL INCLUDE IN THE EMPLOYER'S WORKERS' COMPENSATION~~
11 ~~COVERAGE A PERSON PLACED AT THE EMPLOYER'S WORK SITE AS A PARTICIPANT IN A PUBLIC~~
12 ~~ASSISTANCE PROGRAM AUTHORIZED BY TITLE 63.~~

13 ~~(8)(8) THE DEPARTMENT MAY ENTER INTO AN AGREEMENT TO REIMBURSE A PRIVATE OR~~
14 ~~LOCAL GOVERNMENTAL EMPLOYER FOR THE PREMIUM COST OF WORKERS' COMPENSATION~~
15 ~~COVERAGE FOR A PARTICIPANT OF THE PROGRAM WHO IS PLACED AT THE EMPLOYER'S WORK SITE~~
16 ~~FOR JOB TRAINING IF THE EMPLOYER HAS ELECTED COVERAGE AS ALLOWED IN 39-71-118 WORKSITE~~
17 ~~FOR DEVELOPING EMPLOYMENT SKILLS.~~

18 ~~(10) A STATE AGENCY SHALL ELECT WORKERS' COMPENSATION COVERAGE AS ALLOWED~~
19 ~~IN 39-71-118 FOR A PARTICIPANT IN THE PROGRAM WHO IS PLACED AT THE AGENCY'S WORK SITE~~
20 ~~FOR JOB TRAINING."~~

21
22 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that
23 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
24 act].

25
26 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

27 -END-

HOUSE BILL NO. 146

INTRODUCED BY R. JOHNSON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PERSON PLACED AS A PARTICIPANT IN A PUBLIC ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53 INTO A WORK SETTING FOR THE PURPOSE OF DEVELOPING EMPLOYMENT SKILLS AND CHILD FOSTER CARE PROVIDERS FROM WAGE AND HOUR, UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION REQUIREMENTS; EXEMPTING CHILD FOSTER CARE PROVIDERS FROM WAGE AND HOUR AND WORKERS' COMPENSATION REQUIREMENTS; DEFINING A PERSON PLACED AS A PARTICIPANT IN A PUBLIC ASSISTANCE PROGRAM AUTHORIZED UNDER TITLE 53 INTO A WORK SETTING AS AN EMPLOYEE FOR WORKERS' COMPENSATION PURPOSES ONLY AND REQUIRING WORKERS' COMPENSATION COVERAGE; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REIMBURSE PRIVATE AND LOCAL GOVERNMENTAL EMPLOYERS FOR THE COSTS OF WORKERS' COMPENSATION COVERAGE; AMENDING SECTIONS 39-3-406, ~~39-51-201, 39-51-204,~~ 39-71-118, ~~39-71-401,~~ AND 53-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

1 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
2 services to a nonprofit organization on a fully or partially reimbursed basis;

3 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
4 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

5 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
6 30 days of their employment;

7 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
8 may not exceed 180 days from their initial date of employment and further provided that during this
9 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
10 in this part;

11 (i) retired or semiretired persons performing part-time incidental work as a condition of their
12 residence on a farm or ranch;

13 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
14 these terms are defined by regulations of the commissioner;

15 (k) any individual employed by the United States of America;

16 (l) resident managers employed in lodging establishments or personal care facilities who, under the
17 terms of their employment, live in the establishment or facility;

18 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
19 basis who is primarily employed in selling or marketing products or services in the food distribution industry
20 for a food broker, wholesaler, or association;

21 (n) a direct seller as defined in 26 U.S.C. 3508;

22 (o) a person placed as a participant in a public assistance program authorized by Title 53 into a work
23 setting for the purpose of developing employment skills. The placement may be with either a public or
24 private employer. The exclusion does not apply to an employment relationship formed in the work setting
25 outside the scope of the employment skills activities authorized by Title 53.

26 (p) a person serving as a foster parent, licensed as a foster care provider in accordance with
27 41-3-1141, and providing care without wage compensation to no more than six foster children in the
28 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
29 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
30 in the provision of in-home foster care.

- 1 (2) The provisions of 39-3-405 do not apply to:
- 2 (a) an employee with respect to whom the United States secretary of transportation has power to
- 3 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;
- 4 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;
- 5 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or
- 6 natural state;
- 7 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
- 8 selling advertising for a newspaper;
- 9 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
- 10 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
- 11 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
- 12 engaged in the business of selling the vehicles or implements to ultimate purchasers;
- 13 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
- 14 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
- 15 or aircraft to ultimate purchasers;
- 16 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
- 17 selling office supplies, computers, or other office equipment for an office equipment dealer;
- 18 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
- 19 advertising for a radio or television station employer;
- 20 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
- 21 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
- 22 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
- 23 maximum workweek applicable to them under 39-3-405;
- 24 (j) an employee employed in agriculture or in connection with the operation or maintenance of
- 25 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
- 26 basis and that are used exclusively for supply and storing of water for agricultural purposes;
- 27 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
- 28 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
- 29 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:
- 30 (i) primarily employed during a workweek in agriculture by a farmer; and

1 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
2 than that prescribed by 39-3-404;

3 (l) an employee of an establishment commonly recognized as a country elevator, including an
4 establishment that sells products and services used in the operation of a farm, if no more than five
5 employees are employed by the establishment;

6 (m) a driver employed by an employer engaged in the business of operating taxicabs;

7 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
8 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
9 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
10 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
11 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
12 basis, at an annual rate of not less than \$10,000;

13 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
14 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
15 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
16 not exceed eight;

17 (p) an employee of a sheriff's department who is working under an established work period in lieu
18 of a workweek pursuant to 7-4-2509(1);

19 (q) an employee of a municipal or county government who is working under a work period not
20 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
21 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
22 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
23 period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

24 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
25 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
26 a 14-day period established through either a collective bargaining agreement when a collective bargaining
27 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
28 is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be
29 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

30 (s) a firefighter who is working under a work period established in a collective bargaining agreement

1 entered into between a public employer and a firefighters' organization or its exclusive representative;

2 (t) an officer or other employee of a police department in a city of the first or second class who
3 is working under a work period established by the chief of police under 7-32-4118;

4 (u) an employee of a department of public safety working under a work period established pursuant
5 to 7-32-115;

6 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
7 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
8 than half of the employee's compensation for a period of not less than 1 month is derived from
9 commissions on goods and services;

10 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
11 as defined in 37-47-101;

12 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
13 a second- or third-class city or a town."

14
15 ~~Section 2. Section 39-51-201, MCA, is amended to read:~~

16 ~~"39-51-201. General definitions. As used in this chapter, unless the context clearly requires~~
17 ~~otherwise, the following definitions apply:~~

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

20 ~~(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding~~
21 ~~the first day of an individual's benefit year. However, in the case of a combined wage claim pursuant to~~
22 ~~the arrangement approved by the secretary of labor of the United States, the base period is the period~~
23 ~~applicable under the unemployment law of the paying state. For an individual who fails to meet the~~
24 ~~qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability,~~
25 ~~as defined in 39-71-116, or a similar statute of another state or the United States, the base period means~~
26 ~~the first 4 quarters of the last 5 quarters preceding the disability if a claim for unemployment benefits is~~
27 ~~filed within 24 months of the date on which the individual's disability was incurred.~~

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

30 ~~(4) "Benefit year", with respect to any individual, means the 52 consecutive week period beginning~~

1 with the first day of the calendar week in which the individual files a valid claim for benefits, except that
2 the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base
3 year of a previously filed new claim. A subsequent benefit year may not be established until the expiration
4 of the current benefit year. However, in the case of a combined wage claim pursuant to the arrangement
5 approved by the secretary of labor of the United States, the base period is the period applicable under the
6 unemployment law of the paying state.

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

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

10 (7) "Contributions" means the money payments to the state unemployment insurance fund required
11 by this chapter but does not include assessments under 39-51-404(4).

12 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15,
13 part 17.

14 (9) "Employing unit" means any individual or organization (including the state government and any
15 of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint stock company,
16 insurance company, limited liability company that has filed with the secretary of state, or corporation,
17 whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or
18 legal representative of a deceased person that has or had in its employ one or more individuals performing
19 services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals
20 performing services within this state for any employing unit that maintains two or more separate
21 establishments within this state are considered to be employed by a single employing unit for all the
22 purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent
23 or employee of an employing unit is considered to be employed by the employing unit for the purposes of
24 this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or
25 employee, provided that the employing unit has actual or constructive knowledge of the work.

26 (10) "Employment office" means a free public employment office or branch of an office operated
27 by this state or maintained as a part of a state-controlled system of public employment offices or such other
28 free public employment offices operated and maintained by the United States government or its
29 instrumentalities as the department may approve.

30 (11) "Fund" means the unemployment insurance fund established by this chapter to which all

1 ~~contributions and payments in lieu of contributions are required to be paid and from which all benefits~~
2 ~~provided under this chapter must be paid.~~

3 ~~(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,~~
4 ~~for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates~~
5 ~~a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the~~
6 ~~employer.~~

7 ~~(13) "Hospital" means an institution that has been licensed, certified, or approved by the state as~~
8 ~~a hospital.~~

9 ~~(14) "Independent contractor" means an individual who renders service in the course of an~~
10 ~~occupation and:~~

11 ~~(a) has been and will continue to be free from control or direction over the performance of the~~
12 ~~services, both under a contract and in fact; and~~

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

14 ~~(15) (a) "Institution of higher education", for the purposes of this part, means an educational~~
15 ~~institution that:~~

16 ~~(i) admits as regular students only individuals having a certificate of graduation from a high school~~
17 ~~or the recognized equivalent of a certificate;~~

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

19 ~~(iii) provides an educational program for which it awards a bachelor's or higher degree or provides~~
20 ~~a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate~~
21 ~~or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized~~
22 ~~occupation; and~~

23 ~~(iv) is a public or other nonprofit institution.~~

24 ~~(b) Notwithstanding subsection (15)(a), all universities in this state are institutions of higher~~
25 ~~education for purposes of this part.~~

26 ~~(16) "State" includes, in addition to the states of the United States of America, the District of~~
27 ~~Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.~~

28 ~~(17) "Taxes" means contributions and assessments required under this chapter but does not include~~
29 ~~penalties or interest for past due or unpaid contributions or assessments.~~

30 ~~(18) "Unemployment insurance administration fund" means the unemployment insurance~~

1 ~~administration fund established by this chapter from which administrative expenses under this chapter must~~
2 ~~be paid.~~

3 ~~(19) (a) "Wages" means all remuneration payable for personal services, including commissions and~~
4 ~~bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received~~
5 ~~pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any~~
6 ~~medium other than cash must be estimated and determined pursuant to rules prescribed by the department.~~

7 ~~(b) The term "wages" does not include:~~

8 ~~(i) the amount of any payment made by the employer, if the payment was made under a plan~~
9 ~~established for the employees in general or for a specific class or classes of employees, to or on behalf of~~
10 ~~the employee for:~~

11 ~~(A) retirement;~~

12 ~~(B) sickness or accident disability under a workers' compensation law;~~

13 ~~(C) medical and hospitalization expenses in connection with sickness or accident disability; or~~

14 ~~(D) death;~~

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

17 ~~(iii)(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or~~
18 ~~other expenses, as set forth in department rules.~~

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

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

22

23 ~~Section 3. Section 39-51-204, MCA, is amended to read:~~

24 ~~"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not~~
25 ~~include:~~

26 ~~(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to~~
27 ~~this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded~~
28 ~~from coverage under this chapter if the employer:~~

29 ~~(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the~~
30 ~~monetary amount or number of employees and days worked, for the subject wages attributable to~~

1 agricultural labor; and

2 ~~(ii) keeps separate books and records to account for the employment of persons in agricultura-~~
3 ~~labor.~~

4 ~~(b) household and domestic service in a private home, local college club, or local chapter of a~~
5 ~~college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to~~
6 ~~this chapter and has domestic service employment, all employees engaged in domestic service must be~~
7 ~~excluded from coverage under this chapter if the employer:~~

8 ~~(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the~~
9 ~~subject wages attributable to domestic service; and~~

10 ~~(iii) keeps separate books and records to account for the employment of persons in domestic~~
11 ~~service.~~

12 ~~(c) service performed as an officer or member of the crew of a vessel on the navigable waters of~~
13 ~~the United States;~~

14 ~~(d) service performed by an individual in the employ of that individual's son, daughter, or spouse~~
15 ~~and service performed by a child under the age of 21 in the employ of the child's father or mother;~~

16 ~~(e) service performed in the employ of any other state or its political subdivisions or of the United~~
17 ~~States government or of an instrumentality of any other state or states or their political subdivisions, except~~
18 ~~the United States, except that national banks organized under the national banking law may not be entitled~~
19 ~~to exemption under this subsection and are subject to this chapter the same as state banks, provided that~~
20 ~~the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment~~
21 ~~Tax Act (26 U.S.C. 3306(c)(7));~~

22 ~~(f) service in which unemployment insurance is payable under an unemployment insurance system~~
23 ~~established by an act of congress if the department enters into agreements with the proper agencies under~~
24 ~~an act of congress and these agreements become effective in the manner prescribed in the Montana~~
25 ~~Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who~~
26 ~~have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment~~
27 ~~insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance~~
28 ~~under the act of congress, acquired rights to benefits under this chapter;~~

29 ~~(g) services performed as a newspaper carrier or free lance correspondent if the person performing~~
30 ~~the services or a parent or guardian of the person performing the services in the case of a minor has~~

1 ~~acknowledged in writing that the person performing the services and the services are not covered. As used~~
2 ~~in this subsection:~~

3 ~~(i) "free lance correspondent" is a person who submits articles or photographs for publication and~~
4 ~~is paid by the article or by the photograph; and~~

5 ~~(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering~~
6 ~~newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to~~
7 ~~the employee's main duties, carries or delivers papers.~~

8 ~~(h) services performed by real estate, securities, and insurance salespeople paid solely by~~
9 ~~commissions and without guarantee of minimum earnings;~~

10 ~~(i) service performed in the employ of a school or university if the service is performed by a student~~
11 ~~who is enrolled and is regularly attending classes at a school or university or by the spouse of a student~~
12 ~~if the spouse is advised, at the time that the spouse commences to perform the service, that the~~
13 ~~employment of the spouse to perform the service is provided under a program to provide financial~~
14 ~~assistance to the student by the school or university and that the employment will not be covered by any~~
15 ~~program of unemployment insurance;~~

16 ~~(j) service performed by an individual who is enrolled at a nonprofit or public educational institution,~~
17 ~~which normally maintains a regular faculty and curriculum and normally has a regularly organized body of~~
18 ~~students in attendance at the place where its educational activities are carried on, as a student in a full-time~~
19 ~~program taken for credit at an institution that combines academic instruction with work experience if the~~
20 ~~service is an integral part of the program and the institution has certified that fact to the employer, except~~
21 ~~that this subsection does not apply to service performed in a program established for or on behalf of an~~
22 ~~employer or group of employers;~~

23 ~~(k) service performed in the employ of a hospital if the service is performed by a patient of the~~
24 ~~hospital;~~

25 ~~(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber~~
26 ~~who is licensed under Title 37, chapter 30, and;~~

27 ~~(i) who has acknowledged in writing that the cosmetologist or barber is not covered by~~
28 ~~unemployment insurance and workers' compensation;~~

29 ~~(iii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined~~
30 ~~in 37-30-101, which contract must show that the cosmetologist or barber:~~

- 1 ~~(A) is free from all control and direction of the owner in the contract;~~
- 2 ~~(B) receives payment for services from individual clientele; and~~
- 3 ~~(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or~~
4 ~~knowledge; and~~
- 5 ~~(iii) whose contract gives rise to an action for breach of contract in the event of contract~~
6 ~~termination (the existence of a single license for the cosmetology salon or barbershop may not be construed~~
7 ~~as a lack of freedom from control or direction under this subsection);~~
- 8 ~~(m) casual labor not in the course of an employer's trade or business performed in any calendar~~
9 ~~quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by~~
10 ~~an individual who is regularly employed by the employer to perform the service. "Regularly employed"~~
11 ~~means that the services are performed during at least 24 days in the same quarter.~~
- 12 ~~(n) employment of sole proprietors, working members of a partnership, or members of a~~
13 ~~member-managed limited liability company that has filed with the secretary of state;~~
- 14 ~~(o) services performed for the installation of floor coverings if the installer:~~
- 15 ~~(i) bids or negotiates a contract price based upon work performed by the yard or by the job;~~
- 16 ~~(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;~~
- 17 ~~(iii) may perform services for anyone without limitation;~~
- 18 ~~(iv) may accept or reject any job;~~
- 19 ~~(v) furnishes substantially all tools and equipment necessary to provide the services; and~~
- 20 ~~(vi) works under a written contract that:~~
- 21 ~~(A) gives rise to a breach of contract action if the installer or any other party fails to perform the~~
22 ~~contract obligations;~~
- 23 ~~(B) states that the installer is not covered by unemployment insurance; and~~
- 24 ~~(C) requires the installer to provide a current workers' compensation policy or to obtain an~~
25 ~~exemption from workers' compensation requirements;~~
- 26 ~~(p) employment of a direct seller as defined in 26 U.S.C. 3508;~~
- 27 ~~(q) services performed by a petroleum land professional. As used in this subsection, "petroleum~~
28 ~~land professional" means a person who:~~
- 29 ~~(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in~~
30 ~~negotiating a business agreement for the exploration or development of minerals;~~

1 (iii) is paid for services that are directly related to the completion of a contracted specific task rather
2 than on an hourly wage basis; and

3 (iii) performs all services as an independent contractor pursuant to a written contract.

4 (2) ~~Employment does not include elected public officials.~~

5 (3) ~~For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:~~

6 (a) ~~in the employ of a church or convention or association of churches or an organization that is~~
7 ~~operated primarily for religious purposes and that is operated, supervised, controlled, or principally~~
8 ~~supported by a church or convention or association of churches;~~

9 (b) ~~by an ordained, commissioned, or licensed minister of a church in the exercise of the church's~~
10 ~~ministry or by a member of a religious order in the exercise of duties required by the order;~~

11 (c) ~~in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals~~
12 ~~whose earning capacity is impaired by age or physical or mental deficiency or injury or providing~~
13 ~~remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily~~
14 ~~absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;~~

15 (d) ~~as part of an unemployment work relief or work training program assisted or financed in whole~~
16 ~~or in part by a federal agency or any agency of a state or political subdivision of the state by an individual~~
17 ~~receiving work relief or work training; or~~

18 (e) ~~for a state prison or other state correctional or custodial institution by an inmate of that~~
19 ~~institution.~~

20 (4) ~~An individual found to be an independent contractor by the department under the terms of~~
21 ~~39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent~~
22 ~~contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to~~
23 ~~39-51-24(2).~~

24 (5) ~~This section does not apply to a state or local governmental entity or a nonprofit organization~~
25 ~~defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from~~
26 ~~employment as defined in the Federal Unemployment Tax Act."~~

27 (6) ~~A person in either of the following circumstances is not considered to be employed for the~~
28 ~~purposes of this chapter:~~

29 (a) ~~a person placed as a participant in a public assistance program authorized by Title 53 into a~~
30 ~~work setting for the purpose of developing employment skills. The placement may be with either a public~~

~~1 or private employer. The exclusion does not apply to an employment relationship formed in the work
2 setting outside the scope of the employment skills activities authorized by Title 53. The exclusion is only
3 to the extent permitted by any federal law governing the implementation of unemployment program
4 standards by a state.~~

~~5 (b) a person serving as a foster parent, licensed as a foster care provider in accordance with
6 41-3-1141, and providing care without wage compensation to no more than six foster children in the
7 provider's own residence. The person may receive reimbursement for providing room and board, obtaining
8 training, respite care, leisure and recreational activities, and providing for other needs and activities arising
9 in the provision of in-home foster care. The exclusion is only to the extent permitted by any federal law
10 governing the implementation of unemployment program standards by a state.~~

11
12 **Section 2.** Section 39-71-118, MCA, is amended to read:

13 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
14 "employee" or "worker" means:

15 (a) each person in this state, including a contractor other than an independent contractor, who is
16 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
17 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
18 employed, and all of the elected and appointed paid public officers and officers and members of boards of
19 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
20 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
21 included as employees if they are not otherwise covered by workers' compensation and if an employer has
22 elected to be bound by the provisions of the compensation law for these casual employments, as provided
23 in 39-71-401(2). Household or domestic employment is excluded.

24 (b) any juvenile performing work under authorization of a district court judge in a delinquency
25 prevention or rehabilitation program;

26 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
27 a state or federal vocational training program, whether or not under an appointment or contract of hire with
28 an employer, as defined in this chapter, and whether or not receiving payment from a third party. However,
29 this subsection does not apply to students enrolled in vocational training programs, as outlined in this
30 subsection, while they are on the premises of a public school or community college.

1 (d) an aircrew member or other person employed as a volunteer under 67-2-105;

2 (e) a person, other than a juvenile as defined in subsection (1)(b), performing community service
3 for a nonprofit organization or association or for a federal, state, or local government entity under a court
4 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
5 appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving
6 payment from a third party. For a person covered by the definition in this subsection (1)(e):

7 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
8 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
9 chapter 3, part 4, for a full-time employee at the time of the injury; and

10 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
11 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
12 service required under the order from the court or hearings officer.

13 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

14 ~~and~~

15 (g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109,
16 or a person who provides ambulance services under Title 7, chapter 34, part 1; AND

17 (H) A PERSON PLACED AT THE EMPLOYER'S WORKSITE AS A PARTICIPANT IN A PUBLIC
18 ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53, CHAPTER 4, PARTS 6 AND 7, FOR WORKERS'
19 COMPENSATION PURPOSES ONLY. A PERSON PLACED AT AN EMPLOYER'S WORKSITE UNDER TITLE
20 53, CHAPTER 4, PARTS 6 AND 7, MAY NOT BE CONSIDERED AN INDEPENDENT CONTRACTOR UNDER
21 39-71-120. AN EMPLOYER MAY BE REIMBURSED FOR THE PREMIUM COST AS PROVIDED IN 53-4-603.

22 (2) The terms defined in subsection (1) do not include a person who is:

23 (a) participating in recreational activity and who at the time is relieved of and is not performing
24 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
25 permit, device, or other emolument of employment;

26 (b) performing voluntary service at a recreational facility and who receives no compensation for
27 those services other than meals, lodging, or the use of the recreational facilities; ~~or~~

28 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage
29 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs
30 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined

1 in 39-71-123.

2 ~~(d) placed as a participant in a public assistance program authorized by Title 53 into a work setting~~
3 ~~for the purpose of developing employment skills. The placement may be with either a public or private~~
4 ~~employer. The exclusion does not apply to an employment relationship formed in the work setting outside~~
5 ~~the scope of the employment skills activities authorized by Title 53.~~

6 ~~(e)(D) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141~~
7 ~~and providing care without wage compensation to no more than six foster children in the provider's own~~
8 ~~residence. The person may receive reimbursement for providing room and board, obtaining training, respite~~
9 ~~care, leisure and recreational activities, and providing for other needs and activities arising in the provision~~
10 ~~of in-home foster care.~~

11 (3) With the approval of the insurer, an employer may elect to include as an employee under the
12 provisions of this chapter any volunteer as defined in subsection (2)(c).

13 (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member
14 of a fire company organized and funded by a county, a rural fire district, or a fire service area.

15 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service
16 of an employer, including but not limited to training time, response time, and time spent at the employer's
17 premises.

18 (5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability
19 company, the employer may elect to include as an employee within the provisions of this chapter any
20 member of the partnership, the owner of the sole proprietorship, or any member of the limited liability
21 company devoting full time to the partnership, proprietorship, or limited liability company business.

22 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
23 naming the partners, sole proprietor, or members to be covered and stating the level of compensation
24 coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection
25 (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice
26 has been given.

27 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
28 following notification.

29 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
30 the minimum and maximum limitations of this subsection. For premium ratemaking and for the

1 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
2 than \$900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

3 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
4 liability company, the employer may elect to include as an employee within the provisions of this chapter
5 any corporate officer or manager exempted under 39-71-401(2).

6 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
7 naming the corporate officer or manager to be covered and stating the level of compensation coverage
8 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A
9 corporate officer or manager is not considered an employee within this chapter until notice has been given.

10 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
11 following notification.

12 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
13 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
14 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not
15 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

16 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,
17 or the county commissioners or trustees for a fire service area may elect to include as an employee within
18 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
19 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

20 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for
21 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the
22 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

23 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services
24 are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than
25 a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the
26 control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

27 (9) For purposes of this section, an "employee or worker in this state" means:

28 (a) a resident of Montana who is employed by an employer and whose employment duties are
29 primarily carried out or controlled within this state;

30 (b) a nonresident of Montana whose principal employment duties are conducted within this state

1 on a regular basis for an employer;

2 (c) a nonresident employee of an employer from another state engaged in the construction industry,
3 as defined in 39-71-116, within this state; or

4 (d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose
5 employer elects coverage with an insurer that allows an election for an employer whose:

6 (i) nonresident employees are hired in Montana;

7 (ii) nonresident employees' wages are paid in Montana;

8 (iii) nonresident employees are supervised in Montana; and

9 (iv) business records are maintained in Montana.

10 (10) An insurer may require coverage for all nonresident employees of a Montana employer who
11 do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under
12 subsection (9)(d)."

13

14 ~~Section 5. Section 39-71-401, MCA, is amended to read:~~

15 ~~"39-71-401. Employments covered and employments exempted. (1) Except as provided in~~
16 ~~subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to~~
17 ~~all employees, as defined in 39-71-118. An employer who has any employee in service under any~~
18 ~~appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the~~
19 ~~provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'~~
20 ~~Compensation Act is subject to and bound by the compensation plan that has been elected by the~~
21 ~~employer.~~

22 ~~(2) Unless the employer elects coverage for these employments under this chapter and an insurer~~
23 ~~allows an election, the Workers' Compensation Act does not apply to any of the following employments:~~

24 ~~(a) household and domestic employment;~~

25 ~~(b) casual employment as defined in 39-71-116;~~

26 ~~(c) employment of a dependent member of an employer's family for whom an exemption may be~~
27 ~~claimed by the employer under the federal Internal Revenue Code;~~

28 ~~(d) employment of sole proprietors, working members of a partnership, or working members of a~~
29 ~~member-managed limited liability company, except as provided in subsection (3);~~

30 ~~(e) employment of a broker or salesman salesperson performing under a license issued by the board~~

1 of realty regulation;

2 ~~(f) employment of a direct seller as defined in 26 U.S.C. 3508;~~

3 ~~(g) employment for which a rule of liability for injury, occupational disease, or death is provided~~
4 ~~under the laws of the United States;~~

5 ~~(h) employment of a person performing services in return for aid or sustenance only, except~~
6 ~~employment of a volunteer under 67-2-105;~~

7 ~~(i) employment with a railroad engaged in interstate commerce, except that railroad construction~~
8 ~~work is included in and subject to the provisions of this chapter;~~

9 ~~(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic~~
10 ~~event, unless the person is otherwise employed by a school district;~~

11 ~~(k) employment of a person performing services as a newspaper carrier or free lance correspondent~~
12 ~~if the person performing the services or a parent or guardian of the person performing the services in the~~
13 ~~case of a minor has acknowledged in writing that the person performing the services and the services are~~
14 ~~not covered. As used in this subsection, "free lance correspondent" is a person who submits articles or~~
15 ~~photographs for publication and is paid by the article or by the photograph. As used in this subsection,~~
16 ~~"newspaper carrier";~~

17 ~~(i) is a person who provides a newspaper with the service of delivering newspapers singly or in~~
18 ~~bundles; but~~

19 ~~(ii) does not include an employee of the paper who, incidentally to the employee's main duties,~~
20 ~~carries or delivers papers.~~

21 ~~(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);~~

22 ~~(m) a person who is employed by an enrolled tribal member or an association, business,~~
23 ~~corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose~~
24 ~~business is conducted solely within the exterior boundaries of an Indian reservation;~~

25 ~~(n) employment of a jockey performing under a license issued by the board of horseracing from the~~
26 ~~time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed~~
27 ~~out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of~~
28 ~~horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services~~
29 ~~as a jockey;~~

30 ~~(o) employment of an employer's spouse for whom an exemption based on marital status may be~~

1 ~~claimed by the employer under 26 U.S.C. 7703;~~

2 ~~(p) a person who performs services as a petroleum land professional. As used in this subsection,~~
3 ~~a "petroleum land professional" is a person who:~~

4 ~~(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in~~
5 ~~negotiating a business agreement for the exploration or development of minerals;~~

6 ~~(ii) is paid for services that are directly related to the completion of a contracted specific task rather~~
7 ~~than on an hourly wage basis; and~~

8 ~~(iii) performs all services as an independent contractor pursuant to a written contract.~~

9 ~~(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited~~
10 ~~liability company who qualifies under one or more of the following provisions:~~

11 ~~(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the~~
12 ~~limited liability company and does not receive any pay from the corporation or the limited liability company~~
13 ~~for performance of the duties;~~

14 ~~(ii) the officer or manager is engaged primarily in household employment for the corporation or the~~
15 ~~limited liability company;~~

16 ~~(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation~~
17 ~~or owns 20% or more of the limited liability company; or~~

18 ~~(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,~~
19 ~~daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the~~
20 ~~number of shares of stock in the corporation or who owns 20% or more of the limited liability company;~~

21 ~~(r) a person placed as a participant in a public assistance program authorized by Title 53 into a~~
22 ~~work setting for the purpose of developing employment skills. The placement may be with either a public~~
23 ~~or private employer. The exclusion does not apply to an employment relationship formed in the work~~
24 ~~setting outside the scope of the employment skills activities authorized by Title 53.~~

25 ~~(s) a person serving as a foster parent, licensed as a foster care provider in accordance with~~
26 ~~41-3-1141, and providing care without wage compensation to no more than six foster children in the~~
27 ~~provider's own residence. The person may receive reimbursement for providing room and board, obtaining~~
28 ~~training, respite care, leisure and recreational activities, and providing for other needs and activities arising~~
29 ~~in the provision of in-home foster care.~~

30 ~~(3) (a) A sole proprietor, a working member of a partnership, or a working member of a~~

1 ~~member-managed limited liability company who represents to the public that the person is an independent~~
2 ~~contractor shall elect to be bound personally and individually by the provisions of compensation plan No.~~
3 ~~1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.~~

4 ~~(b) The application must be made in accordance with the rules adopted by the department. There~~
5 ~~is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application~~
6 ~~fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset~~
7 ~~the costs of administering the program.~~

8 ~~(c) When an application is approved by the department, it is conclusive as to the status of an~~
9 ~~independent contractor and precludes the applicant from obtaining benefits under this chapter.~~

10 ~~(d) The exemption, if approved, remains in effect for 1 year following the date of the department's~~
11 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
12 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
13 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
14 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
15 ~~approved exemption.~~

16 ~~(e) A person who makes a false statement or misrepresentation concerning that person's status~~
17 ~~as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose~~
18 ~~the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured~~
19 ~~employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.~~

20 ~~(f) If the department denies the application for exemption, the applicant may contest the denial by~~
21 ~~petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An~~
22 ~~applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with~~
23 ~~the procedure established in 39-51-2403 and 39-51-2404.~~

24 ~~(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its~~
25 ~~employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private~~
26 ~~corporation, or a manager-managed limited liability company may elect coverage for its corporate officers~~
27 ~~or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following~~
28 ~~manner:~~

29 ~~(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by~~
30 ~~delivering the notice to the board of directors of the corporation or to the management organization of the~~

1 ~~manager-managed limited liability company; or~~

2 ~~(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by~~
 3 ~~delivering the notice to the board of directors of the corporation or to the management organization of the~~
 4 ~~manager-managed limited liability company and to the insurer.~~

5 ~~(b) If the employer changes plans or insurers, the employer's previous election is not effective and~~
 6 ~~the employer shall again serve notice to its insurer and to its board of directors or the management~~
 7 ~~organization of the manager-managed limited liability company if the employer elects to be bound.~~

8 ~~(5) The appointment or election of an employee as an officer of a corporation, a partner in a~~
 9 ~~partnership, or a member in or a manager of a limited liability company for the purpose of exempting the~~
 10 ~~employee from coverage under this chapter does not entitle the officer, partner, member, or manager to~~
 11 ~~exemption from coverage.~~

12 ~~(6) Each employer shall post a sign in the workplace at the locations where notices to employees~~
 13 ~~are normally posted, informing employees about the employer's current provision of workers' compensation~~
 14 ~~insurance. A workplace is any location where an employee performs any work-related act in the course of~~
 15 ~~employment, regardless of whether the location is temporary or permanent, and includes the place of~~
 16 ~~business or property of a third person while the employer has access to or control over the place of~~
 17 ~~business or property for the purpose of carrying on the employer's usual trade, business, or occupation.~~
 18 ~~The sign must be provided by the department, distributed through insurers or directly by the department,~~
 19 ~~and posted by employers in accordance with rules adopted by the department. An employer who purposely~~
 20 ~~or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."~~

21

22 **Section 3.** Section 53-4-603, MCA, is amended to read:

23 **"53-4-603. FAIM project -- components.** (1) The aid to families with dependent children part of
 24 the FAIM project consists of three components referred to as the job supplement program, pathways, and
 25 the community services program.

26 (2) The job supplement program is an alternative to the components of the FAIM project that
 27 provide cash assistance. An eligible family may receive assistance under the job supplement program
 28 instead of receiving assistance under pathways or the community services program or may receive
 29 assistance under the job supplement program either prior to or after receiving assistance under pathways
 30 or the community services program.

1 (3) Services that may be provided to eligible individuals in the job supplement program include:

2 (a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid
3 benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by
4 the secretary of the U.S. department of health and human services that permit limited benefits. However,
5 a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

6 (b) child-care assistance, as provided in 53-4-611 and as specified by the department by rule;

7 (c) assistance in obtaining child support; and

8 (d) a one-time only cash payment to meet special employment-related needs of the family. In order
9 to receive a one-time cash payment, the family is required to agree not to apply for or receive cash
10 assistance for a period of time based on the size of the one-time cash payment received.

11 (4) (a) Pathways may provide eligible individuals with job training and education; resource referrals;
12 assistance in obtaining child support; one-time cash payments for special employment-related needs;
13 child-care assistance, as provided in 53-4-611 and as specified by department rule; cash assistance
14 payments; full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid
15 benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by
16 the secretary of the U.S. department of health and human services that permit limited benefits. However,
17 a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

18 (b) A specified caretaker relative in a single-parent family may receive assistance under pathways
19 for a maximum of 24 months. The 24 months do not need to be consecutive.

20 (c) Specified caretaker relatives in a two-parent family may receive assistance under pathways for
21 a maximum of 18 months. The 18 months do not need to be consecutive.

22 (5) In the community services program, a specified caretaker relative who has received the
23 maximum number of months of assistance allowable under pathways may continue to receive assistance
24 for the specified caretaker relative's needs if the specified caretaker relative performs community service
25 work as required by the department. A specified caretaker relative who performs community service work
26 as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid
27 benefits, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S.
28 department of health and human services that permit limited benefits. However, a specified caretaker
29 relative who is pregnant is entitled to full medicaid benefits. Job training and education, resource referrals,
30 and assistance in obtaining child support may also be provided if determined by the department to be

1 appropriate. Child-care assistance may be provided as set forth in 53-4-611 and as specified by department
2 rule.

3 (6) Failure of a caretaker relative to participate in community service work as required must result
4 in the needs of the specified caretaker relative being removed from the cash assistance payment.

5 (7) A dependent child who meets all eligibility requirements for aid to families with dependent
6 children may receive assistance under any component of the FAIM project without any time limits.

7 ~~(8) The department shall furnish workers' compensation coverage, as provided in 39-71-118, for~~
8 ~~recipients in any component of the FAIM project who perform community service work or who participate~~
9 ~~in a work experience program.~~

10 ~~(8) A PRIVATE EMPLOYER SHALL INCLUDE IN THE EMPLOYER'S WORKERS' COMPENSATION~~
11 ~~COVERAGE A PERSON PLACED AT THE EMPLOYER'S WORK SITE AS A PARTICIPANT IN A PUBLIC~~
12 ~~ASSISTANCE PROGRAM AUTHORIZED BY TITLE 63.~~

13 ~~(9)(8) THE DEPARTMENT MAY ENTER INTO AN AGREEMENT TO REIMBURSE A PRIVATE OR~~
14 ~~LOCAL GOVERNMENTAL EMPLOYER FOR THE PREMIUM COST OF WORKERS' COMPENSATION~~
15 ~~COVERAGE FOR A PARTICIPANT OF THE PROGRAM WHO IS PLACED AT THE EMPLOYER'S WORK SITE~~
16 ~~FOR JOB TRAINING IF THE EMPLOYER HAS ELECTED COVERAGE AS ALLOWED IN 39-71-118 WORKSITE~~
17 ~~FOR DEVELOPING EMPLOYMENT SKILLS.~~

18 ~~(10) A STATE AGENCY SHALL ELECT WORKERS' COMPENSATION COVERAGE AS ALLOWED~~
19 ~~IN 39-71-118 FOR A PARTICIPANT IN THE PROGRAM WHO IS PLACED AT THE AGENCY'S WORK SITE~~
20 ~~FOR JOB TRAINING."~~

21

22 NEW SECTION. Section 4. Saving clause. [This act] does not affect rights and duties that
23 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
24 act].

25

26 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

27

-END-