

HOUSE BILL NO. 198
INTRODUCED BY D. VILLA
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "STUDENT INTERN" IN THE CONTEXT OF STATE EMPLOYMENT, INCLUDING PAY, BENEFITS, AND OTHER EMPLOYEE RIGHTS AND RESPONSIBILITIES; AMENDING SECTIONS 2-18-101, 2-18-111, 2-18-601, 2-18-611, 2-18-701, 2-18-809, 2-18-1101, 2-18-1202, 2-18-1303, 39-29-101, AND 39-30-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(6) "Class series benchmark" means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class

series benchmark.

(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

(9) "Competencies" means sets of measurable and observable knowledge, skills, abilities, and behaviors that contribute to success in a job.

(10) "Department" means the department of administration created in 2-15-1001.

(11) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(b) The term does not include a student intern.

(12) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

(13) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(14) "Job sharing" means the sharing by two or more persons of a position.

(15) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.

(16) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(17) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

(18) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

(19) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(20) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(21) "Program" means a combination of planned efforts to provide a service.

(22) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits

accrued during the preceding season.

(23) "Short-term worker" means a person who:

- (a) is hired by an agency for an hourly wage established by the agency;
- (b) may not work for the agency for more than 90 days in a continuous 12-month period;
- (c) is not eligible for permanent status;
- (d) may not be hired into another position by the agency without a competitive selection process; and
- (e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter.

(24) "Student intern" means a person who:

- (a) has been accepted in or is currently enrolled in an accredited school, college, or university and is hired directly by an agency in a student intern position;
- (b) is not eligible for permanent status;
- (c) is not eligible to become a permanent employee without a competitive selection process;
- (d) must be covered by the hiring agency's workers' compensation insurance;
- (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and
- (f) may be discharged without cause.

~~(24)~~(25) "Temporary employee" means an employee who:

- (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;
- (b) performs temporary duties or permanent duties on a temporary basis;
- (c) is not eligible for permanent status;
- (d) is terminated at the end of the employment period; and
- (e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-111, MCA, is amended to read:

"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation

-- **rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

(3) For the purposes of this section, the following definitions apply:

(a) "Employment" means being employed as a permanent, temporary, or seasonal employee as defined in 2-18-101 for a state position. The term does not include:

- (i) a state elected official;
- (ii) appointment by an elected official to a body, such as a board, commission, committee, or council;
- (iii) appointment by an elected official to a public office if the appointment is provided for by law; ~~or~~
- (iv) engagement as an independent contractor or employment by an independent contractor; or
- (v) engagement as a student intern.

(b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(c) "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this state."

Section 3. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, ~~and~~ persons contracted as independent contractors or hired under personal services contracts, and student interns.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means a short-term worker as defined in 2-18-101.

(11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(12) "Student intern" means a student intern as defined in 2-18-101.

~~(12)~~(13) "Temporary employee" means a temporary employee as defined in 2-18-101.

~~(13)~~(14) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(14)~~(15) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 4. Section 2-18-611, MCA, is amended to read:

"2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker or a student intern, as both terms are defined in 2-18-101, may not earn vacation leave credits, and time worked as a short-term worker or as a student intern does not apply toward the person's rate of earning vacation leave credits."

Section 5. Section 2-18-701, MCA, is amended to read:

"2-18-701. Definitions. In this part, as it applies to a person employed in the executive, judicial, or

legislative branches of state government;

(1) "employee" means:

~~(1)~~(a) a permanent full-time employee, as provided in 2-18-601;

~~(2)~~(b) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

~~(3)~~(c) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(4)~~(d) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(5)~~(e) elected officials;

~~(6)~~(f) officers and permanent employees of the legislative branch;

~~(7)~~(g) judges and permanent employees of the judicial branch;

~~(8)~~(h) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

~~(9)~~(i) a temporary full-time employee, as provided in 2-18-601:

~~(a)~~(i) who is regularly scheduled to work more than 6 months a year;

~~(b)~~(ii) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

~~(c)~~(iii) whose temporary status is defined through collective bargaining;

~~(10)~~(j) a temporary part-time employee, as provided in 2-18-601:

~~(a)~~(i) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

~~(b)~~(ii) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

~~(c)~~(iii) whose temporary status is defined through collective bargaining; and

~~(11)~~(k) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

(2) "employee" does not include a student intern, as defined in 2-18-101."

Section 6. Section 2-18-809, MCA, is amended to read:

"2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Flexible spending account" means a funding and accounting arrangement allowed by federal law that:

(a) gives a state employee a choice between receiving taxable salary or having a part of the employee's salary withheld; and

(b) provides for depositing any portion of the state employee's salary withheld and any employer contribution designated by the employee into an account and receiving from that account nontaxable reimbursement for certain out-of-pocket medical expenses of the state employee or a dependent of the employee.

(4) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state, including flexible spending account benefits. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

(5) (a) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government.

(b) The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system or a student intern, as defined in 2-18-101."

Section 7. Section 2-18-1101, MCA, is amended to read:

"2-18-1101. Definitions. As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. The term includes the president or other person in charge of a public retirement board or a unit of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) (a) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

(b) The term does not include a student intern, as defined in 2-18-101.

(4) "Group or team of employees" means a group, team, or work unit of employees working cooperatively."

Section 8. Section 2-18-1202, MCA, is amended to read:

"2-18-1202. Definitions. As used in this part, the following definitions apply:

(1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) (a) "Employee" means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or officers and employees of the legislative branch and teachers under the authority of the department of corrections or department of public health and human services who have been employed for at least 6 continuous months.

(b) The term does not include a student intern, as defined in 2-18-101.

(3) "Privatization" means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency."

Section 9. Section 2-18-1303, MCA, is amended to read:

"2-18-1303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) "Employee" means a person employed by an employer but does not include an independent contractor, ~~or a~~ person hired by the employer under a personal services contract, or a student intern, as defined in 2-18-101.

(5) "Employer" means a legally constituted department, board, or commission of the state, a county, an incorporated city or town, or any political subdivision of the state, including a school district or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association

established under 2-18-1310.

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152."

Section 10. Section 39-29-101, MCA, is amended to read:

"39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Armed forces" means the:

- (a) United States army, navy, air force, marine corps, and coast guard;
- (b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and
- (c) Montana army and air national guard.

(2) "Disabled veteran" means a person:

- (a) whether or not the person is a veteran who was separated under honorable conditions from military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, a military department, or the state of Montana; or
- (b) who has received a purple heart medal.

(3) "Eligible relative" means:

- (a) the unmarried surviving spouse of a veteran or disabled veteran;
- (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;
- (c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:
 - (i) the mother's spouse is totally and permanently disabled; or
 - (ii) the mother is the widow of the father of the veteran and has not remarried;
- (d) the mother of a service-connected permanently and totally disabled veteran if:
 - (i) the mother's spouse is totally and permanently disabled; or
 - (ii) the mother is the widow of the father of the veteran and has not remarried.

(4) "Military duty" means duty with military pay and allowances in the armed forces.

(5) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer

other than the state.

(b) The term does not include:

(i) a state or local elected office;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law;

(iv) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; ~~or~~

(v) engagement as an independent contractor or employment by an independent contractor; or

(vi) a position occupied by a student intern, as defined in 2-18-101.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) as a member of a reserve component under an order of federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years of service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard."

Section 11. Section 39-30-103, MCA, is amended to read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

- (i) a department, as defined in 2-15-102, for a position within the executive branch;
- (ii) a legislative agency for a position within the legislative branch;
- (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;
- (iv) a city or town for a municipal position, including a city or municipal court position; and
- (v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such

as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor; or

(h) a position occupied by a student intern, as defined in 2-18-101.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

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