

1 investigation by the department; or

2 (e) requested by a hiring entity that relied on a person's misrepresentations relating to independent
3 contractor exemption status.

4

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

6 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
7 otherwise, the following definitions apply:

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

10 (2) "Base period" means:

11 (a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an
12 individual's benefit year;

13 (b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4
14 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

15 (c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of
16 labor of the United States, the period applicable under the unemployment law of the paying state; or

17 (d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another
18 state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the
19 United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for
20 unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

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

28 (4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with

1 respect to the individual's unemployment.

2 (5) "Board" means the unemployment insurance appeals board provided for in Title 2, chapter 15,
3 part 17.

4 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June
5 30, September 30, or December 31.

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

8 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
9 17.

10 (9) (a) "Domestic or household service" means employment of persons other than members of the
11 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
12 family, including but not limited to housecleaning and yard work.

13 (b) The term does not include employment beyond the scope of normal household or domestic duties,
14 such as home health care or domiciliary care.

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

27 (11) "Employment office" means a free public employment office or branch of an office operated by this
28 state or maintained as a part of a state-controlled system of public employment offices or other free public

1 employment offices operated and maintained by the United States government or its instrumentalities as the
2 department may approve.

3 (12) "Fund" means the unemployment insurance fund established by this chapter to which all
4 contributions and payments in lieu of contributions must be paid and from which all benefits provided under this
5 chapter must be paid.

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

9 (14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a
10 hospital.

11 (15) "Independent contractor" means an individual working under an independent contractor
12 exemption certificate provided for in 39-71-417 or as provided in [section 1].

13 (16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education
14 Assistance Act, 25 U.S.C. 450b(e).

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

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

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

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

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

25 (b) All universities in this state are institutions of higher education for purposes of this part.

26 (18) "Licensed and practicing health care provider" means a health care provider who is primarily
27 responsible for the treatment of a person seeking unemployment insurance benefits and who is:

28 (a) licensed to practice in this state as:

- 1 (i) a physician under Title 37, chapter 3;
- 2 (ii) a dentist under Title 37, chapter 4;
- 3 (iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse
- 4 practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

5 (iv) a physical therapist under Title 37, chapter 11;

6 (v) a chiropractor under Title 37, chapter 12;

7 (vi) a clinical psychologist under Title 37, chapter 17; or

8 (vii) a physician assistant under Title 37, chapter 20; or

9 (b) with respect to a person seeking unemployment insurance benefits who resides outside of this
10 state, a health care provider licensed or certified as a member of one of the professions listed in subsection
11 (18)(a) in the jurisdiction where the person seeking the benefit lives.

12 (19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

13 (i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer,
14 including:

15 (A) insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable
16 directions, processes, or instructions of the employer;

17 (B) repeated inexcusable tardiness following warnings by the employer;

18 (C) dishonesty related to employment, including but not limited to deliberate falsification of company
19 records, theft, deliberate deception, or lying;

20 (D) false statements made as part of a job application process, including but not limited to deliberate
21 falsification of the individual's criminal history, work record, or educational or licensure achievements;

22 (E) repeated and inexcusable absences, including absences for which the employee was able to give
23 advance notice and failed to do so;

24 (F) deliberate acts that are illegal, provoke violence or violation of the law, or violate a collective
25 bargaining agreement by which the employee is covered. However, an employee who engages in lawful union
26 activity may not be disqualified because of misconduct under this subsection (19)(a)(i)(F).

27 (G) violations of a company rule if the rule is reasonable and if the claimant knew or should have
28 known of the existence of the rule; or

1 (H) actions by the claimant who, while acting within the scope of employment, commits violations of
2 law that significantly affect the claimant's job performance or that significantly harm the employer's ability to do
3 business;

4 (ii) deliberate violations or disregard of established employer standards or of standards of behavior that
5 the employer has the right to expect of an employee;

6 (iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or
7 a fellow employee; or

8 (iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or
9 substantial disregard of the employer's interest.

10 (b) The term does not include:

11 (i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

12 (ii) inadvertent or ordinary negligence in isolated instances; or

13 (iii) good faith errors in judgment or discretion.

14 (20) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue
15 Code, 26 U.S.C. 132.

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

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

20 (23) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business
21 enterprise that is wholly owned by that tribe.

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

25 (25) (a) "Wages", unless specifically exempted under subsection (25)(b), means all remuneration
26 payable for personal services, including the cash value of all remuneration paid in any medium other than cash.
27 The reasonable cash value of remuneration payable in any medium other than cash must be estimated and
28 determined pursuant to rules prescribed by the department. The term includes but is not limited to:

- 1 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and
- 2 sickness periods;
- 3 (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous
- 4 service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and
- 5 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are
- 6 documented by the employee to the employer for tax purposes.

7 (b) The term does not include:

8 (i) the amount of any payment made by the employer for employees, if the payment was made for:

9 (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
10 Revenue Code;

11 (B) sickness or accident disability under a workers' compensation policy;

12 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
13 health insurance for the employee or the employee's immediate family; or

14 (D) death, including life insurance for the employee or the employee's immediate family;

15 (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other
16 expenses, as set forth in department rules;

17 (iii) a no-additional-cost service;

18 (iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers
19 program, 19 U.S.C. 2318; or

20 (v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a
21 partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship
22 pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the
23 salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

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

25 (27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to
26 receive for 1 week of total unemployment."

27

28 **Section 3.** Section 39-51-203, MCA, is amended to read:

1 **"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section,
2 means service by an individual, by a manager or member of a limited liability company treated as a corporation
3 pursuant to 39-51-207, or by an officer of a corporation, including service in interstate commerce, performed for
4 wages or under any contract of hire, written or oral, express or implied.

5 (2) (a) The term "employment" includes an individual's entire service performed within or both within
6 and outside this state if:

7 (i) the service is localized in this state; or

8 (ii) the service is not localized in any state but some of the service is performed in this state and:

9 (A) the base of operations or, if there is no base of operations, the place from which the service is
10 directed or controlled is in this state; or

11 (B) the base of operations or the place from which the service is directed or controlled is not in any
12 state in which some part of the service is performed, but the individual's residence is in this state.

13 (b) Service is considered to be localized within a state if:

14 (i) the service is performed entirely within the state; or

15 (ii) the service is performed both within and outside the state, but the service performed outside the
16 state is incidental to the individual's service within the state; for example, the out-of-state service is temporary
17 or transitory in nature or consists of isolated transactions.

18 (3) Service not covered under subsection (2) and performed entirely outside the state and on which
19 contributions are neither required nor paid under an unemployment insurance law of any other state or of the
20 federal government is considered to be employment subject to this chapter if the individual performing the
21 services is a resident of this state and the department approves the election of the employing unit for whom the
22 services are performed in order that the entire service of the individual is considered to be employment subject
23 to this chapter.

24 (4) Service performed by an individual for wages is considered to be employment subject to this
25 chapter until it is shown to the satisfaction of the department that the individual is an independent contractor. An
26 individual may not be determined to be an employee based solely on not having an independent contractor
27 exemption certificate as provided in [section 1].

28 (5) The term "employment" includes service performed by an individual in the employ of this state or

1 any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities)
2 for a hospital or institution of higher education located in this state. The term "employment" includes service
3 performed by all individuals, including those individuals who work for the state of Montana, its universities,
4 public schools, components or units of universities or public schools, or any local government unit and one or
5 more other states or their instrumentalities or political subdivisions whose services are compensated by salary
6 or wages.

7 (6) The term "employment" includes service performed by an individual in the employ of a religious,
8 charitable, scientific, literary, or educational organization.

9 (7) (a) The term "employment" includes the service of an individual who is a citizen of the United
10 States performed outside the United States, except in Canada, in the employ of an American employer, other
11 than service that is considered employment under the provisions of subsection (2) or the parallel provisions of
12 another state's law, if:

13 (i) the employer's principal place of business in the United States is located in this state;

14 (ii) the employer has no place of business in the United States, but:

15 (A) the employer is an individual who is a resident of this state;

16 (B) the employer is a corporation that is organized under the laws of this state; or

17 (C) the employer is a partnership or a trust and the number of the partners or trustees who are
18 residents of this state is greater than the number who are residents of any other state; or

19 (iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected
20 coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a
21 claim for benefits based on the service under the law of this state.

22 (b) An "American employer", for purposes of this subsection (7), means a person who is:

23 (i) an individual who is a resident of the United States;

24 (ii) a partnership if two-thirds or more of the partners are residents of the United States;

25 (iii) a trust if all of the trustees are residents of the United States; or

26 (iv) a corporation organized under the laws of the United States or of any state."

27

28 **Section 4.** Section 39-71-419, MCA, is amended to read:

- 1 **"39-71-419. Independent contractor violations -- penalty.** (1) A person may not:
- 2 (a) perform work as an independent contractor without first:
- 3 (i) obtaining from the department an independent contractor exemption certificate unless the
- 4 individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a);
- 5 or
- 6 (ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or
- 7 3;
- 8 (b) perform work as an independent contractor when the department has revoked or denied the
- 9 independent contractor's exemption certificate;
- 10 (c) transfer to another person or allow another person to use an independent contractor exemption
- 11 certificate that was not issued to that person;
- 12 (d) alter or falsify an independent contractor exemption certificate; or
- 13 (e) misrepresent the person's status as an independent contractor as provided in [section 1]. A person
- 14 who falsely claimed, either in writing or through credible evidence, to have an independent contractor
- 15 certification may not be considered to be an employee solely based on not actually having an independent
- 16 contractor exemption certificate. The burden of proof that an independent contractor is certified rests with the
- 17 independent contractor and not the hiring entity.
- 18 (2) An employer may not:
- 19 (a) require an employee through coercion, misrepresentation, or fraudulent means to adopt
- 20 independent contractor status to avoid the employer's obligations to provide workers' compensation coverage;
- 21 or
- 22 (b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-
- 23 417(4).
- 24 (3) In addition to any other penalty or sanction provided in this chapter, a person or employer who
- 25 violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each
- 26 violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-
- 27 506 apply to any assessed fines.
- 28 (4) A person or employer who disputes a fine assessed by the department pursuant to this section

1 may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after
2 mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for
3 resolution."

4
5 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
6 integral part of Title 39, and the provisions of Title 39 apply to [section 1].

7 - END -

