

HOUSE BILL NO. 128

INTRODUCED BY L. JONES, W. GALT, L. MUSZKIEWICZ, J. SECKINGER, J. WEBER, D. POWERS, S. ROSENZWEIG, E. TILLEMANN, D. BEDEY, E. BUTTREY, M. CUFFE, W. CURDY, B. GILLESPIE, S. GIST, C. SPRUNGER, G. LAMMERS, D. LOGE, S. FITZPATRICK, B. LER, K. WALSH, G. OBLANDER, J. FITZPATRICK, S. MORIGEAU, M. THANE, P. TUSS, Z. WIRTH

A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING VOLUNTEER EMERGENCY SERVICE PROVIDERS FROM TERMINATION BY A PUBLIC OR PRIVATE EMPLOYER UNDER CERTAIN CONDITIONS; AND PROVIDING FOR A LEGAL CAUSE OF ACTION FOR WRONGFUL TERMINATION."

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

NEW SECTION. Section 1. Termination of volunteer emergency services provider prohibited -- conditions -- definition. (1) An agency may not terminate the employment of an employee WHO HAS COMPLETED THE EMPLOYEE'S PROBATIONARY PERIOD because the employee has elected to serve as a volunteer emergency services provider or joined a volunteer emergency unit or organization, including but not limited to a municipal, rural, or subscription fire department.

(2) An employee who serves as a volunteer emergency services provider before [the effective date of this section] shall provide the agency with a written notification of the service within 30 days of [the effective date of this section]. An employee who joins a volunteer emergency unit or organization after [the effective date of this section] shall provide the agency with written notification within 30 days of joining the unit or organization. ~~Before accepting an offer of employment, an~~ AN employee HIRED BY AN AGENCY shall provide the agency with written notification that the employee is a volunteer emergency services provider WITHIN 30 DAYS OF HIRE.

(3) (a) ~~After~~ EXCEPT AS PROVIDED IN SUBSECTION (1), AFTER written notification is provided, the agency may not terminate the employment of a volunteer emergency services provider if the employee is absent or late to work WHILE PERFORMING VOLUNTEER EMERGENCY SERVICE DUTIES DURING AN EMERGENCY and the provisions in this subsection (3) are fulfilled.

1 (b) An employee who is a volunteer emergency services provider and is absent from or late to
2 work while performing volunteer emergency service duties DURING AN EMERGENCY shall notify the agency as
3 soon as possible that the employee may be absent or late because of volunteer emergency service. IF AN
4 EMPLOYEE'S ABSENCE OR DELAY WOULD IMPERIL PUBLIC SAFETY OR PREVENT THE AGENCY FROM PERFORMING AN
5 ESSENTIAL FUNCTION, THE AGENCY MAY REQUIRE THE EMPLOYEE TO REQUEST AND RECEIVE AUTHORIZATION PRIOR TO
6 RESPONDING TO AN EMERGENCY.

7 (c) An agency may request that an employee who is a volunteer emergency service provider and
8 is absent from or late to work provide a written statement from a supervisor of the volunteer emergency service
9 organization that the employee responded to an emergency and provide the date, and the time, AND DURATION
10 of the emergency.

11 (d) An employee may not claim regular pay for the time that the employee is absent from or late to
12 work while performing volunteer emergency service duties. If the pay was claimed, the agency may deduct that
13 amount of regular pay for the time the employee was not present at work.

14 (4) An agency shall determine whether an employee may leave work to respond to an emergency
15 as a part of the employee's volunteer emergency service.

16 (5) An employee whose employment is terminated in violation of this section may bring a civil
17 action against the agency EMPLOYER UNDER 39-2-904. ~~The employee may seek reinstatement to the employee's~~
18 ~~former position, payment of back wages, reinstatement of fringe benefits, and, in situations in which seniority~~
19 ~~rights are granted, reinstatement of seniority rights.~~ If the employee prevails in a civil action, the employee is
20 entitled to ~~an award of reasonable attorney fees and costs of the action~~ THE REMEDIES IN 39-2-905. ~~An employee~~
21 ~~must commence an~~ THE action MUST BE COMMENCED within 1 year after the date of termination of employment.

22 (6) For the purposes of this section, "volunteer emergency services provider" means a volunteer
23 firefighter as defined in 7-33-4510, a volunteer who is an enrolled member of a volunteer fire department
24 established under 7-33-4109, or a volunteer emergency medical technician as defined in 50-6-202, and who is
25 not paid full-time by the entity for which the services are performed in the local service area, ~~in a mutual aid~~
26 ~~agreement area, or in a state of disaster or emergency declared by the governor.~~

27
28 NEW SECTION. Section 2. Termination of volunteer emergency services provider prohibited --

1 **conditions -- definition.** (1) An employer may not terminate the employment of an employee WHO HAS
2 COMPLETED THE EMPLOYEE'S PROBATIONARY PERIOD because the employee has elected to serve as a volunteer
3 emergency services provider or joined a volunteer emergency unit or organization, including but not limited to a
4 municipal, rural, or subscription fire department.

5 (2) An employee who serves as a volunteer emergency services provider before [the effective date
6 of this section] shall provide the employer with a written notification of the service within 30 days of [the
7 effective date of this section]. An employee who joins a volunteer emergency unit or organization after [the
8 effective date of this section] shall provide the employer with written notification within 30 days of joining the unit
9 or organization. ~~Before accepting an offer of employment, an~~ AN employee HIRED BY AN EMPLOYER shall provide
10 the employer with written notification that the employee is a volunteer emergency services provider WITHIN 30
11 DAYS OF HIRE.

12 (3) (a) ~~After~~ EXCEPT AS PROVIDED IN SUBSECTION (1), AFTER written notification is provided, the
13 employer may not terminate the employment of a volunteer emergency services provider if the employee is
14 absent or late to work WHILE PERFORMING VOLUNTEER EMERGENCY SERVICE DUTIES DURING AN EMERGENCY and the
15 provisions in this subsection (3) are fulfilled.

16 (b) An employee who is a volunteer emergency services provider and is absent from or late to
17 work while performing volunteer emergency service duties DURING AN EMERGENCY shall notify the employer as
18 soon as possible that the employee may be absent or late because of volunteer emergency service. IF AN
19 EMPLOYEE'S ABSENCE OR DELAY WOULD IMPERIL PUBLIC SAFETY OR PREVENT THE EMPLOYER FROM PERFORMING AN
20 ESSENTIAL FUNCTION, THE EMPLOYER MAY REQUIRE THE EMPLOYEE TO REQUEST AND RECEIVE AUTHORIZATION PRIOR
21 TO RESPONDING TO AN EMERGENCY.

22 (c) An employer may request that an employee who is a volunteer emergency service provider and
23 is absent from or late to work provide a written statement from a supervisor of the volunteer emergency service
24 organization that the employee responded to an emergency and provide the date, ~~and the time,~~ AND DURATION
25 of the emergency.

26 (d) An employee may not claim regular pay for the time that the employee is absent from or late to
27 work while performing volunteer emergency service duties. If the pay was claimed, the employer may deduct
28 that amount of regular pay for the time the employee was not present at work.

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2 emergency as a part of the employee's volunteer emergency service.

3 (5) An employee whose employment is terminated in violation of this section may bring a civil
4 action against the employer UNDER 39-2-904. ~~The employee may seek reinstatement to the employee's former~~
5 ~~position, payment of back wages, reinstatement of fringe benefits, and, in situations in which seniority rights are~~
6 ~~granted, reinstatement of seniority rights.~~ If the employee prevails in a civil action, the employee is entitled to an
7 award of reasonable ~~attorney fees and costs of the action~~ THE REMEDIES IN 39-2-905. An employee must
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10 firefighter as defined in 7-33-4510, a volunteer who is an enrolled member of a volunteer fire department
11 established under 7-33-4109, or a volunteer emergency medical technician as defined in 50-6-202, and who is
12 not paid full-time by the entity for which the services are performed in the local service area, ~~in a mutual aid~~
13 ~~agreement area, or in a state of disaster or emergency declared by the governor.~~

14
15 NEW SECTION. Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an
16 integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to [section 1].

17 (2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 2, part 3, and the
18 provisions of Title 39, chapter 2, part 3, apply to [section 2].

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