

1 HOUSE BILL NO. 84

2 INTRODUCED BY C. BOLAND

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LABOR LAW; PROVIDING THAT THE
6 DEFINITION OF "EMPLOYEE" DOES NOT INCLUDE AN INDEPENDENT CONTRACTOR WITH RESPECT
7 TO GENERAL OBLIGATIONS OF EMPLOYERS; PROVIDING THAT THE DEPOSIT OF CERTAIN WAGES
8 INTO THE WAGE COLLECTION FUND BY THE COMMISSIONER OF LABOR IS DISCRETIONARY RATHER
9 THAN MANDATORY; UPDATING THE REFERENCE TO FEDERAL LAW WITH RESPECT TO THE
10 DEFINITION OF A PERSON IN AN OUTSIDE SALES CAPACITY; AND AMENDING SECTIONS 39-3-201,
11 39-3-213, AND 39-3-406, MCA."

12

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

14

15 **Section 1.** Section 39-3-201, MCA, is amended to read:16 **"39-3-201. Definitions.** The following are the definitions used for the purpose of this part:

17 (1) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and
18 industry, as the department is defined by law, or any person or persons designated by the director, commissioner,
19 or chief for the purpose of this part.

20 (2) "Department" means the department of labor and industry as provided for in 2-15-1701.

21 (3) "Employ" means to permit or suffer to work.

22 (4) "Employee" includes any person who works for another for hire, except that the term does not include
23 a person who is an independent contractor.

24 (5) "Employer" includes any individual, partnership, association, corporation, business trust, legal
25 representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation
26 to an employee but does not include the United States.

27 (6) (a) "Wages" includes any money due an employee from the employer or employers, whether to be
28 paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and
29 gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the
30 Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for

1 services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

2 (b) For the purposes of this subsection (6), "service charge" means an arbitrary fixed charge added to
3 the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly
4 to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved
5 in related services, pursuant to a tip pool agreement."

6

7 **Section 2.** Section 39-3-213, MCA, is amended to read:

8 **"39-3-213. Disposition of wages.** (1) The commissioner of labor ~~shall~~ may deposit wages collected
9 under parts 2 and 4 of this chapter into the wage collection fund and with respect to wages deposited into the fund
10 shall attempt to make payment of wages to the entitled person. Wages deposited into the wage collection fund
11 do not bear interest. The wage collection fund is an agency fund as provided in 17-2-102(3)(d). The payment of
12 wages collected may be made by means of state warrants.

13 (2) A warrant issued pursuant to subsection (1) that remains unclaimed for more than 6 months from the
14 date of issuance must be returned to the state treasurer to be stale-dated in accordance with 17-8-303."

15

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

17 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

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

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

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

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

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

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

30 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30

1 days of their employment;

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

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

7 (j) an individual employed in a bona fide executive, administrative, or professional capacity, as these
8 terms are defined by regulations of the commissioner, or in an outside sales capacity, ~~as defined in 29 CFR 541.5~~
9 pursuant to 29 CFR 541.500;

10 (k) an individual employed by the United States of America;

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

13 (m) a direct seller as defined in 26 U.S.C. 3508;

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

18 (o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621,
19 and providing care without wage compensation to no more than six foster children in the provider's own
20 residence. The person may receive reimbursement for providing room and board, obtaining training, respite care,
21 leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home
22 foster care.

23 (p) an employee employed in domestic service employment to provide companionship services, as
24 defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for
25 themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the
26 person providing the service is employed directly by a family member or an individual who is a legal guardian.

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

28 (a) an employee with respect to whom the United States secretary of transportation has power to
29 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

30 (b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part

1 I of the Interstate Commerce Act;

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

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

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

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

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

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

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

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

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

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

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

30 (l) an employee who is employed with the employee's spouse by a nonprofit educational institution to

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

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

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

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

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

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

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

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

29 (t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the
30 minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and

1 if more than half of the employee's compensation for a period of not less than 1 month is derived from
2 commissions on goods and services;

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

5 (v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a
6 second- or third-class city or a town;

7 (w) an employee of the consolidated legislative branch as provided in 5-2-503;

8 (x) an employee of the state or its political subdivisions employed, at the employee's option, on an
9 occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the
10 employee was employed in a capacity other than the employee's regular occupation may be excluded from the
11 calculation of hours to determine overtime compensation."

12 - END -