

West's Montana Code Annotated

Title 39. Labor

Chapter 51. Unemployment Insurance (Refs & Annos)

Part 2. Definitions

MCA 39-51-204

39-51-204. Exclusions from definition of employment

Currentness

(1) The term "employment" does not include:

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

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

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

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under [26 U.S.C. 152](#) or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under [26 U.S.C. 7703](#);

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

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

(d) services performed by qualified real estate agents, as defined in [26 U.S.C. 3508](#), or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

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

(ii) who contracts with a salon or shop, as defined in [37-31-101](#), and the contract must show that the cosmetologist or barber:

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

(B) receives payment for service from individual clientele; and

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

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

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

(g) service performed for the installation of floor coverings if the installer:

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

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

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

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

(vi) works under a written contract that:

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

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

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

(h) service performed as a direct seller as defined by [26 U.S. C. 3508](#);

(i) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

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

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

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

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

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

(l) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(m) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(n) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(o) service performed by elected public officials;

(p) agricultural labor, except as provided in [39-51-202\(2\)](#), [\(4\)](#), or [\(6\)](#). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

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

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

(q) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in [5 U.S.C. 8501\(1\)\(I\)](#) and [section 3306\(c\)\(6\)](#) of the Federal Unemployment Tax Act;

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

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

(t) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(t) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

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

(v) service performed by an alien as identified in [8 U.S.C. 1101\(a\)\(15\)\(F\)](#), [\(a\)\(15\)\(H\)\(ii\)\(a\)](#), [\(a\)\(15\)\(J\)](#), [\(a\)\(15\)\(M\)](#), or [\(a\)\(15\)\(Q\)](#);

(w) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in [26 U.S.C. 7873](#);

(x) service performed to provide companionship services, as defined in [29 CFR 552.6](#), or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(y) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(z) services performed by an election judge appointed pursuant to [13-4-101](#) if the remuneration received for those services is less than \$1,000 in the calendar year; or

(aa) service performed by a volunteer participant in a program funded under the National and Community Service Act of 1990, [42 U.S.C. 12501, et seq.](#), or the Domestic Volunteer Service Act of 1973, [42 U.S.C. 4950, et seq.](#)

(2)(a) Except as provided in subsection (2)(b), an individual found to be an independent contractor by the department under the terms of [39-71-417](#) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to [39-51-2402](#).

(b) An officer or a manager who is exempt under [39-71-401\(2\)\(r\)\(iii\)](#) or [\(2\)\(r\)\(iv\)](#) and who obtains an independent contractor exemption pursuant to [39-71-417\(1\)\(a\)\(ii\)](#) is not considered an independent contractor for the purposes of this chapter.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under [section 501\(c\)\(3\) of the Internal Revenue Code](#) unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.

Credits

Enacted Subd. (a) to (m), by Laws 1937, ch. 137, § 19. Amended by Laws 1939, ch. 137, § 6; amended by Laws 1941, ch. 164, § 10; amended by Laws 1943, ch. 233, § 5; amended by Laws 1953, ch. 160, § 1; amended by Laws 1955, ch. 164, § 9; amended by Laws 1957, ch. 171, § 11; amended by Laws 1959, ch. 177, § 1; amended by Laws 1959, ch. 178, § 1; amended by Laws 1965, ch. 84, § 2; amended by Laws 1969, ch. 37, § 2; amended by Laws 1971, ch. 411, § 1; amended by Laws 1973, ch. 159, § 1; amended by Laws 1973, ch. 404, § 1; amended by Laws 1975, ch. 323, § 3; amended by Laws 1977, ch. 523, § 1; Revised Code of Montana 1947, 87-148(part); amended by Laws 1979, ch. 57, § 2; amended by Laws 1979, ch. 67, § 1; amended by Laws 1979, ch. 397, § 39; amended by Laws 1981, ch. 349, § 1; amended by Laws 1983, ch. 357, § 1; amended by Laws 1985, ch. 125, § 3; amended by Laws 1987, ch. 234, § 3; amended by Laws 1987, ch. 526, § 1; amended by Laws 1989, ch. 618, § 4; amended by [Laws 1991, ch. 373, § 4](#); amended by [Laws 1991, ch. 573, § 1](#); amended by [Laws 1993, ch. 171, § 1](#); amended by [Laws 1993, ch. 473, § 11](#); amended by [Laws 1995, ch. 48, § 2](#); amended by [Laws 1995, ch. 95, § 1](#); amended by [Laws 1995, ch. 195, § 4](#); amended by [Laws 1997, ch. 60, § 4](#); amended by [Laws 1997, ch. 491, § 19](#); amended by [Laws 1999, ch. 61, § 2](#); amended by [Laws 2001, ch. 200, § 3](#); amended by [Laws 2001, ch. 339, § 1](#); amended by [Laws 2003, ch. 83, § 2](#); amended by [Laws 2003, ch. 94, § 1](#); amended by [Laws 2003, ch. 197, § 1](#); amended by [Laws 2003, ch. 243, § 20](#); amended by [Laws 2005, ch. 448, § 6](#); amended by [Laws 2005, ch. 466, § 2](#); amended by [Laws 2007, ch. 52, § 4](#); amended by [Laws 2007, ch. 340, § 1](#); amended by [Laws 2011, ch. 123, § 3](#), eff. Oct. 1, 2011.

[Notes of Decisions \(4\)](#)

MCA 39-51-204, MT ST 39-51-204

Statutes are current through chapters effective July 1, 2013, and the 2012 general election. Statutory changes are subject to classification and revision by the Code Commissioner.

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