

1 YMCA YOUTH LEGISLATURE OF THE STATE OF MONTANA

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3
4 _____ Bill Number _____

_____ Legislative Action:

5 House Committee: _____

6 House: _____

6 Introduced by: Brent Ekblad

7 Senate Committee: _____

7 Authored by: Brent Ekblad

8 Senate: _____

9 Delegation: Great Falls

Governor: _____

10
11 Referred to Committee:

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14 A BILL FOR AN ACT ENTITLED: "An Act to Amend the Definition Of "Supervisory
15 Employee""

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17 BE IT ENACTED BY THE MONTANA YMCA YOUTH LEGISLATURE:

18 "Section 39-31-103 of the MCA is amended as follows: Definitions..."

19 (1) "Appropriate unit" means a group of public employees banded together for collective
20 bargaining purposes as designated by the board.

21 (2) "Board" means the board of personnel appeals provided for in 2-15-1705.

22 (3) "Confidential employee" means any person found by the board to be a confidential labor
23 relations employee and any person employed in the personnel division, department of
24 administration, who acts with discretionary authority in the creation or revision of state
25 classification specifications.

26 (4) "Exclusive representative" means the labor organization which has been designated by the
27 board as the exclusive representative of employees in an appropriate unit or has been so
28 recognized by the public employer.

29 (5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of
30 employment or concerning the association or representation of persons in negotiating, fixing,
31 maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of
32 whether the disputants stand in the proximate relation of employer and employee.

33 (6) "Labor organization" means any organization or association of any kind in which
34 employees participate and which exists for the primary purpose of dealing with employers
35 concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits,
36 or other conditions of employment.

37 (7) "Management official" means a representative of management having authority to act for
38 the agency on any matters relating to the implementation of agency policy.

39 (8) "Person" includes one or more individuals, labor organizations, public employees,
40 associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

41 (9) (a) "Public employee" means:

42 (i) except as provided in subsection (9)(b), a person employed by a public employer in any
43 capacity; and

44 (ii) an individual whose work has ceased as a consequence of or in connection with any unfair
45 labor practice or concerted employee action.

46 (b) Public employee does not mean:

- 47 (i) an elected official;
- 48 (ii) a person directly appointed by the governor;
- 49 (iii) a supervisory employee, as defined in subsection (11);
- 50 (iv) a management official, as defined in subsection (7);
- 51 (v) a confidential employee, as defined in subsection (3);
- 52 (vi) a member of any state board or commission who serves the state intermittently;
- 53 (vii) a school district clerk;
- 54 (viii) a school administrator;
- 55 (ix) a registered professional nurse performing service for a health care facility;
- 56 (x) a professional engineer; or
- 57 (xi) an engineer intern.

58 (10) "Public employer" means the state of Montana or any political subdivision thereof,
59 including but not limited to any town, city, county, district, school board, board of regents,
60 public and quasi-public corporation, housing authority or other authority established by law, and
61 any representative or agent designated by the public employer to act in its interest in dealing with
62 public employees. Public employer also includes any local public agency designated as a head
63 start agency as provided in 42 U.S.C. 9836.

64 (11) (a) "Supervisory employee" means an individual having the authority on a regular,
65 recurring basis, at least 50% of all work hours, while acting in the interest of the employer to
66 hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other
67 employees or to effectively recommend the above actions if, in connection with the foregoing,
68 the exercise of the authority is not of a merely routine or clerical nature but requires the use of
69 independent judgment.

70 (b) The authority described in subsection (11)(a) is the only criteria that may be used to
71 determine if an employee is a supervisory employee. The use of any other criteria, including any
72 secondary test developed or applied by the national labor relations board or the Montana board
73 of personnel appeals, may not be used to determine if an employee is a supervisory employee
74 under this section.

75 (12) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

76 **History:** En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384,
77 L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L.
78 1979; amd. Sec. 1, Ch. 354, L. 1987; amd. Sec. 14, Ch. 108, L. 1995; amd. Sec. 1, Ch. 483, L.
79 2005.

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