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HOUSE BILL NO. 135

INTRODUCED BY M. BERTOGLIO

BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING INDEPENDENT CONTRACTOR STATUS; CLARIFYING DUTIES OF EMPLOYERS; REVISING THE TRANSFER OF SERVICE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE PURCHASE OF THE FIRST 210 HOURS OF SERVICE; REVISING THE REDEPOSIT OF CONTRIBUTIONS PREVIOUSLY WITHDRAWN FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING EARNED COMPENSATION LIMITATIONS; REVISING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; CLARIFYING THE CALCULATION OF AVERAGE FINAL COMPENSATION; CLARIFYING THE MEDICAL EXAMINATION OF A DISABILITY RETIREE; CLARIFYING PAYMENTS ON THE DEATH OF A RETIREE; AMENDING SECTIONS 19-20-208, 19-20-409, 19-20-417, 19-20-427, 19-20-715, 19-20-719, 19-20-805, 19-20-901, 19-20-903, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. ~~Presumption of common law employee status — establishing~~**

Establishing independent contractor status. (1) (a) An individual working in a position reportable to the retirement system is presumed to be a common law employee of the employer and not an independent contractor.

(b) Until the status of an individual working in a position reportable to the retirement system is conclusively established to be that of an independent contractor, the individual must be reported to the retirement system as an active member or working retiree, as appropriate, not as an independent contractor.

(2) (a) An employer who asserts that an individual working in a position reportable to the retirement system is an independent contractor shall conclusively establish that the individual is an independent contractor and not a common law employee of the employer by: ~~application of the internal revenue service criteria set forth~~

1 ~~in internal revenue service publication 15-A.~~

2 ~~(b) — The presumption of common law employee status may be rebutted by:~~

3 (i) a written determination prepared by an attorney, an employment or human resources
4 professional, or another individual who is qualified to make worker status determinations;

5 (ii) an order of a court of competent jurisdiction; or

6 (iii) internal revenue service form SS-8.

7 ~~(e)(b)~~ (i) An individual making the determination must provide with their written determination their full
8 name, professional designations, business name, business address, and business telephone number.

9 (ii) The written determination or order must comprehensively address the internal revenue service
10 criteria related to the facts and circumstances of the specific worker in the specific position at issue and must
11 provide a reasoned discussion of each criterion and its application to the specific facts and circumstances of the
12 work and the position, not merely provide a conclusory statement of finding.

13 ~~(d)(iii) The presumption of common law employee status is not rebutted by the issuance of an An~~
14 ~~independent contractor exemption certificate by the Montana department of labor-or by any certification-or~~
15 ~~determination issued by any federal or state agency unless the determination meets and industry must meet all~~
16 ~~of the requirements of this subsection (2).~~

17 ~~(e) — If the retirement system is not satisfied that independent contractor status under the internal~~
18 ~~revenue service criteria is conclusively established by the determination or order submitted, the retirement~~
19 ~~system shall require the employer to obtain a determination of worker's status from the internal revenue service~~
20 ~~pursuant to the internal revenue service form SS-8 process.~~

21 (3) Any costs incurred to conclusively establish the independent contractor status of an individual
22 working in a position reportable to the retirement system, as specified in this section, must be the sole
23 responsibility of the employer.

24

25 **Section 2.** Section 19-20-208, MCA, is amended to read:

26 **"19-20-208. Duties and liability of employer.** (1) Each employer shall:

27 (a) (i) each month, report the name, social security number, time worked, and gross earnings of
28 each employed member; and