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TITLE 39. LABOR

CHAPTER 71. WORKERS' COMPENSATION

Part 15. Montana Safety Culture Act

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39-71-1501. Short title. This part may be cited as the "Montana Safety Culture Act".

History: En. Sec. 1, Ch. 295, L. 1993; amd. Sec. 1, Ch. 170, L. 2003.

39-71-1502. Purpose. The purpose of this part is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market.

A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

History: En. Sec. 2, Ch. 295, L. 1993; amd. Sec. 2, Ch. 170, L. 2003.

39-71-1503. Safety consultation. (1) As used in this part, "safety consultation services" means assistance rendered by an insurer or the department to advise and aid an employer in the identification, evaluation, and control of existing and potential accidental and occupational

health problems. The services may be delivered in person, by mail, electronically, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) education and training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise employers relative to risk, exposure, and experience in the employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

History: En. Sec. 3, Ch. 295, L. 1993; amd. Sec. 3, Ch. 170, L. 2003; amd. Sec. 16, Ch. 27, L. 2009.

39-71-1504. Safety programs -- educational activities. (1) To promote health and safety in places of employment in this state:

(a) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to [39-71-1505](#); and

(b) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(i) educate students about the necessity for safe work practices;

(ii) prepare students to embark on accident-free careers; and

(iii) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor shall provide a safety program for employees not employed by other employers.

(3) The department may issue a safety recommendation to an employer who fails to comply with the requirements of this section or with rules adopted by the department pursuant to [39-71-1505](#).

History: En. Sec. 4, Ch. 295, L. 1993; amd. Sec. 1, Ch. 58, L. 2001.

39-71-1505. Rulemaking authority. The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

(a) a safety training program to provide:

- (i) new employee general safety orientation;
 - (ii) job- or task-specific safety training; and
 - (iii) continuous refresher safety training, including periodic safety meetings;
 - (b) periodic hazard assessment, with corrective actions identified; and
 - (c) appropriate documentation of performance of the activities; and
- (2) an employer of more than five employees to have a comprehensive and effective safety program, including but not limited to:
- (a) subject to subsection (3), a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;
 - (b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and
 - (c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

(3) The department may adopt rules authorizing:

___(a) a plan No. 2 or plan No. 3 insurer to waive the requirement in subsection (2)(a) for a safety committee if the employer presents sufficient evidence of an effective written safety plan and has a satisfactory modification factor, if applicable, or has a low incident record of injuries;
or

___(b) the department to waive the requirement in subsection (2)(a) for a safety committee if a plan No. 1 insurer approved by the department presents sufficient evidence of an effective safety program, including a written safety plan. A waiver granted under this subsection (3)(b) to a member of the self-insurers guaranty fund must be made with the concurrence of the fund.

History: En. Sec. 5, Ch. 295, L. 1993; amd. Sec. 1, Ch. 238, L. 1995.

39-71-1506. Notification of safety consultation services available by insurer. To implement safety requirements, each insurer shall notify each insured employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

History: En. Sec. 6, Ch. 295, L. 1993.

39-71-1507. Safety consultation services -- safety program as provision of insurance contract or agreement. (1) Each insurer shall provide safety consultation services to each of its insured employers who request the assistance.

(2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the insured employer's operations.

(3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service requests, giving first priority to insured employers that have an unreasonably high actual or potential loss experience.

(4) Each insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage.

History: En. Sec. 7, Ch. 295, L. 1993.

39-71-1508. Safety consultation services -- insurer's exemption from civil liability --

exceptions. (1) The furnishing of or the failure to furnish safety consultation services related to, in connection with, or incidental to a workers' compensation insurance contract or agreement to provide workers' compensation coverage does not subject the insurer or its agents, employees, or service contractors to liability for damages from injury, loss, or death, whether direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services.

(2) Subsection (1) does not apply:

(a) if the injury, loss, or death occurred during the actual performance of safety consultation services and was directly and proximately caused by the negligence of the insurer or its agents, employees, or service contractors;

(b) to any safety consultation services required to be performed under the provisions of a written service contract for which a specific charge is made and not incidental to a policy of insurance; or

(c) in an action against an insurer or its agents, employees, or service contractors for damages caused by the act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

History: En. Sec. 9, Ch. 295, L. 1993.