

EMPLOYMENT VERIFICATION FORM INFORMATION FOR MONTANA EMPLOYEES WORKING SOLELY IN NORTH DAKOTA

BACKGROUND: Montana has an existing extraterritorial/reciprocity agreement with North Dakota that allows a Montana employer to provide workers' compensation coverage with exclusive remedy under the Montana policy when the employer takes Montana employees to North Dakota to perform temporary work incidental to employment for a period up to one year.

During the period approved by North Dakota pursuant to the agreement, Montana employers only have to provide coverage in Montana and Montana's coverage is the exclusive remedy for injuries. After the one year period, North Dakota may issue an extension of the reciprocity certificate at the discretion of North Dakota. If North Dakota determines coverage is required in that state because the employer has a significant contact or the work performed in North Dakota is determined not to be incidental to employment, North Dakota may rescind the reciprocity certificate and require coverage in North Dakota. The employer may then have to be covered in both states and pay premium on the same payroll in both states.

The Montana Legislature passed HB538 effective July 1, 2015. HB538 is intended to reduce requirements to cover all employees in both states and clarify where claims will be filed when Montana employers send Montana employees to work solely in North Dakota.

HB538 excludes from the Montana coverage requirement Montana employees who work solely in North Dakota, are required to be covered in North Dakota and are covered under a North Dakota policy. This exclusion is effective for as long as the Montana employee works solely in North Dakota and is covered under a North Dakota policy. "Work solely in North Dakota" means the employee does not perform job duties in Montana and coverage is required by the state of North Dakota. Travel that is commuting to and from a job site in North Dakota from a location in Montana does not constitute performing job duties in Montana even if the employer pays for all or a portion of the costs of travel or if the work is paid for the travel time. The Montana workers' compensation insurer may require proof of coverage in North Dakota and records of work in North Dakota.

If an employee is injured while working solely in North Dakota and meets the provisions in HB538, the employee's claim should be filed in North Dakota under the North Dakota policy. If an employee files a claim in Montana while working solely in North Dakota and the provisions of HB538 are met, the Montana insurer may deny the claim.

PURPOSE OF THE EMPLOYMENT VERIFICATION FORM: Completion of the form by the employer provides certification to the insurer that the Montana employer has employees working solely in North Dakota; that the employees are required to be covered in North Dakota; and the employer has a North Dakota policy. The worker(s) name(s), worker(s) permanent address, and the location and dates of work performed or estimated to be performed in North Dakota should be listed on the form. The form should be submitted to the Montana workers' compensation insurer. The Montana insurer can then determine which Montana employees will not be covered on the Montana workers' compensation policy and the Montana employer will not have to pay premium in Montana on those employees while they are working solely in North Dakota.

Signing the form by an authorized representative of the employer certifies that the information on the form is truthful and accurate.

EXTRATERRITORIAL COVERAGE: Montana employers may still request a certificate of extraterritorial reciprocity from North Dakota if they take Montana employees to North Dakota for temporary work incidental to their employment for a period of up to one year and the employees do not work solely in North Dakota and the employer is not required to get North Dakota coverage. If your Montana workers' compensation coverage is with the Montana State Fund, contact them at 1-800-332-6102 for information on extraterritorial coverage or if you are covered by another Montana insurer, contact the Montana Department of Labor and Industry at 406-444-6532 to request North Dakota's approval of an extraterritorial/reciprocity certificate. You may also want to visit our website at <http://erd.dli.mt.gov/work-comp-regulations/insurance-compliance/extra-territorial> .