

# **APPENDIX**

**Revised June 2014**

**ALL VOLUNTEERS MUST BE LISTED ON A ROSTER THAT IS TO BE SENT INTO MACo ([smcgowan@mtcounties.org](mailto:smcgowan@mtcounties.org)) ON A MONTHLY BASIS. IF A VOLUNTEER IS INJURED AND THEY ARE NOT LISTED ON THE ROSTER, THERE WILL BE NO COVERAGE.**

## **I. SEARCH AND RESCUE VOLUNTEERS**

This information is to give sheriffs and search and rescue a clear understanding of when a search and rescue volunteer is covered by workers' compensation insurance.

### **DEFINITIONS**

Coverage during travel / training / mission exercises - When a volunteer participates in a pre-approved and supervised training activity, coverage will begin when the volunteer arrives at the designated location. Coverage ends after the training session is completed.

During a field-exercise training session, coverage will begin when the volunteer arrives at the designated location and be in effect until the volunteer leaves the training session site.

When called by the sheriff or a designated representative to respond to an emergency, the volunteer will be covered as soon as he/she leaves a place of origin and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to the home or work place, or travels or engages in activity outside the scope of search and rescue business.

Designated Representative - an individual appointed by the sheriff who possesses the necessary skills and whose span of control would be considered within reasonable limits.

Log in - to report to the sheriff or the designated representative individually or as a unit. An activity log or sign up sheet showing the time and members present is required.

Personal training session - when rescuers go alone or in a small group to develop personal skills and train without the sheriff or the designated representative's approval and without a pre-established training plan.

Pre-approved training activity - The sheriff or designated representative will decide what activities are approved for training, in writing and prior to the training activity. MACo Risk Management or the County Safety Officer may be included to insure that safety is addressed. However, if MACo Risk Management or the County Safety Officer is not included, it will not jeopardize a search and rescue volunteer from coverage.

Supervised by the sheriff - "Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff." 42 Op. A.G. No 97 (1988)

The reference to "sheriff" will include the sheriff or the designated representative.

Training - to instruct; to bring into proper body condition; to undergo special drill.

Training plan - a brief, written outline of the training activities and overall goals.

### **GUIDELINES**

For those counties insured under the MACo Workers' Compensation Trust, premiums for such coverage must be paid within the due dates.

The sheriff, through the chain of command, decides which activities are approved for training and which search and rescue missions will be undertaken. Pre-approval for a training activity must be in writing and signed by the sheriff or the designated representative prior to the training activity. When a search and rescue

volunteer is engaged in an activity approved and supervised by the county sheriff, he/she is covered for workers' compensation benefits

When search and rescue volunteers participate in planned activities, they log-in at the start of the activity. Supervision of the training activity should be specified in the training plan. The sheriff or designated representative supervising the activity will determine the start and end of the training activity. Coverage will begin when the volunteer arrives at the designated training location. Coverage ends when the session is completed.

When a volunteer is working on the unit's equipment or property, he/she will be covered during such activity as long as the activity is scheduled and agreed upon by the sheriff or the designated representative.

## **HOW TO CALCULATE AND REPORT PREMIUM FOR VOLUNTEERS**

The sheriff will provide to the county payroll clerk a list that includes the names of search and rescue volunteers who participated in training, maintenance and rescue activities for that period. (monthly or quarterly) The list will show the number of hours each volunteer worked. The hours reported should agree with the hours posted in the sheriff's search and rescue log. **The list should be kept on file for audit purposes.**

The volunteers reported are to be placed in Class Code 7720. They are reported at an assumed wage set by the Board of County Commissioners for each county as recommended by the sheriff. The minimum reporting wage can be no less than the federal minimum wage, or State minimum wage which ever is greater.

## **II. SHERIFF RESERVE OFFICERS**

This information is to give sheriffs a clear understanding of when a reserve officer is covered by workers' compensation insurance.

### **DEFINITIONS**

Auxiliary Officer - an un-sworn, part time volunteer member of a law enforcement agency who may perform, but is not limited to the performance of, such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities. (MCA 7-32-201(1))

Coverage during travel / training / mission exercises - When a volunteer is to participate in a pre-approved and supervised training activity, coverage will begin when the volunteer arrives at the designated location. Coverage ends after the training session is completed.

During a field-exercise training session, coverage will begin when the volunteer arrives at the designated location and be in effect until the volunteer leaves the training site.

When called by the sheriff or a designated representative to respond to an emergency, the volunteer will be covered as soon as he/she leaves a place of origin and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to the home or work place, or travels or engages in activity outside the scope of Sheriff Reserve duties.

Designated Representative - an individual appointed by the sheriff who possesses the necessary skills and whose span of control would be considered within reasonable limits.

General Law Enforcement Duties - operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

Law Enforcement Agency - a law enforcement service provided by local government.

Log in - to report to the sheriff or the designated representative individually or as a unit. An activity log or sign up sheet showing the time and members present is required.

Personal Training Session - when a reserve officer goes out alone or in small groups to develop

personal skills and such exercise without the sheriff or the designated representative approval and without a pre-established training plan.

Pre-approved training activity - The sheriff or designated representative will decide what activities are approved for training, in writing and prior to the training activity. MACo Risk Management or the County Safety Officer may be included to insure that safety is addressed. However, if MACo Risk Management or the County Safety Officer is not included, it will not jeopardize a search and rescue volunteer from coverage.

Reserve Officer - a sworn, part time volunteer member of a law enforcement agency who is a peace officer as defined in MCA 46-1-202(16) and has arrest authority as described in MCA 46-6-210, only when authorized to perform these functions as a representative of the law enforcement agency.

Supervised by the sheriff - Members of the sheriff reserves are auxiliary officers and will be provided workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

The reference to "sheriff" will include the sheriff or the designated representative.

Training - to instruct; to bring into proper body condition; to undergo special drill.

Training Plan - a brief, written outline of the training activities and overall goals.

## **GUIDELINES**

For those counties insured under the MACo Workers' Compensation Trust, premiums for such coverage must be paid within the due dates.

MCA 7-32-203 (1), Provision of Workers' Compensation Coverage: Each law enforcement agency that utilizes reserve officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. The law enforcement agencies shall pay to the insurer an appropriate premium, as established by the insurer, to cover the insurance risk of providing coverage to the officers.

The sheriff, through the chain of command, is the person who decides what activities are approved for training and which work assignments will be undertaken.

Pre-approval for a training activity must be in writing and signed by the sheriff or the designated representative. When a sheriff reserve officer is engaged in an activity approved and supervised by the county sheriff, he/she is covered for workers' compensation benefits.

When sheriff reserve officers participate in planned activities, they log-in at the start of the activity. Supervision of the training activity should be specified in the training plan. The sheriff or the designated representative supervising the activity will determine the start and end of the training activity. Coverage for classroom training ends when the session is completed.

Under no circumstances will "personal training sessions" be insured.

During a field exercise or training session, coverage will be in effect until the volunteer returns to the home or work place or otherwise travels or engages in activity outside the scope of law enforcement business.

## **HOW TO CALCULATE PREMIUMS FOR VOLUNTEERS**

The sheriff will provide to the county payroll clerk a list that includes the names of reserve officers who participated in training and for law enforcement duties for that period. (monthly or quarterly). The list will show the number of hours each volunteer worked. The hours reported should agree with the hours posted in the sheriff's reserve officer log. **The list should be kept on file for audit purposes.**

The volunteers reported are to be placed in Class Code 7720. They are reported at an assumed wage set by the Board of County Commissioners for each county as recommended by the sheriff. The minimum reporting wage can be no less than the federal minimum wage, or State minimum wage which ever is greater.

## **III. VOLUNTEER FIREFIGHTERS**

This information is to give fire chiefs' and county commissioners a clear understanding of when a volunteer firefighter is covered for workers' compensation insurance.

## DEFINITIONS

Coverage during travel / training / mission exercises - When a volunteer is to participate in an approved and supervised training activity, coverage will begin when the volunteer arrives at the designated location. Coverage ends after the training session is completed.

When called to respond to an emergency, the volunteer will be covered as soon as he/she leaves their current location and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to home or work place, or travels or engages in activity outside the scope of volunteer fire fighting business.

Log in - to report to a fire chief individually or as a unit. An activity log or sign up sheet showing the time and members present is required.

Personal training session – when a volunteer firefighter goes alone or in a small group to develop personal skills or train without the fire chief's approval and without a pre-established training plan.

Pre-approved training activity - The fire chief will approve activities for training in writing and prior to the training activity. MACo Risk Management or the County Safety Officer may be included to insure that safety is addressed. However, if MACo Risk Management or the County Safety Officer is not included, it will not jeopardize a volunteer from coverage.

Supervised by the fire chief - Members of a recognized volunteer fire unit may be provided full workers' compensation coverage when engaged in fire training or a testing operation called and supervised by the fire chief.

Training – to instruct; to bring into proper body condition; to undergo special drill.

Training plan - a brief, written outline of the training activities and overall goals.

Volunteer firefighter - a firefighter who is an enrolled and active member of a fire company organized and funded by a county or a county fire service area.

## GUIDELINES

For those counties insured under the MACo Workers' Compensation Trust, premiums for such coverage must be paid within the due dates.

The fire chief decides what activities are approved for training. Pre-approval for a training activity will be in writing and signed by the fire chief prior to the training activity. When a volunteer firefighter is engaged in an activity approved and supervised by the fire chief, he/she is covered for workers' compensation benefits

When volunteer firefighters participate in planned activities, they log in at the start of the activity. Supervision of the training activity should be specified in the training plan. The fire chief must conduct supervision of the training activity. Coverage will begin when the volunteer arrives at the designated training location. Coverage ends after the training is completed.

## HOW TO ENROLL VOLUNTEERS (7-38-4510 and 39-71-745)

In accordance with Montana statutes addressing workers' compensation for a volunteer firefighter, 39-county commissioners may elect to provide workers' compensation benefits. In the event of such election, the commissioners must give MACo Workers' Compensation Trust written notice naming the fire company and areas to be covered.

## PREMIUM AND REPORTING REQUIREMENTS FOR VOLUNTEER FIREFIGHTERS

The fire chief will provide to the county payroll clerk a list that includes the names of volunteer firefighters who participated in fire training and fire fighting for that period. The list will show the number of hours each volunteer worked. The hours reported should agree with the hours posted in the fire chief's log. **The list should be kept on file for audit purposes.**

Volunteers are to be placed in Class Code 7704. A copy of the list showing the number of hours worked is submitted to MACo with the payroll report and payment. A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

Due to high risk exposure, the Trust requires an annual minimum premium for each covered volunteer firefighter as of July 1, 2013, of one hundred dollars (\$130.00) per volunteer firefighter per year. This \$130.00 minimum premium payment shall be made with the first (July 1<sup>st</sup> – September 30<sup>th</sup>) Payroll Report due by October 15<sup>th</sup> for every volunteer firefighter on the Roster of Service. If volunteer firefighters are added during the year, the Trust is to be notified in a timely manner, which means if the added volunteer firefighter is injured and they are not listed on the roster, there will be no coverage. A \$130.00 minimum payment per volunteer shall be paid for those added firefighters with the next due quarterly Payroll Report.

## HOW TO CALCULATE PREMIUM FOR FIREFIGHTER VOLUNTEERS

Senate Bill 386 (2013) amended the allowable calculation methods for determining workers compensation premiums for volunteer firefighters. Previously the only allowable method was to use the state’s average weekly wage. Senate Bill 386 **allows an insurer to use one of two methods:**

1. Actual volunteer hours reported times the effective rate for working firefighters
2. **Assumed annual payroll**

MACo JPA Worker’s Compensation Trust has chosen the “**Assumed Payroll**” method because it is simpler to administer and does not require volunteer firefighting agencies to track actual volunteer hours.

### Assumed Annual Payroll

\$1,080.63	Assumed Annual Wage for Volunteer Firefighters
0.1203	Working Firefighter rate per \$1.00 payroll
\$130.00/Volunteer	Premium assuming flat assumed payroll pursuant to 39-71-745(1)MCA

To determine the annual payroll, thus the annual premium, the calculation would go like this:

Use an assumed annual payroll of \$1080.63 then multiply that times the current MACo JPA rate for working firefighters which is 0.1203. When the assumed payroll is multiplied times the applicable rate, the annual premium for each volunteer listed on the fire agency’s “Roster of Service” as defined in 7-33-4510 is \$130.00.

**For example, \$130.00 x 30 volunteers =3900.00 annual workers’ compensation premium.**

Applicable statutes are included below for reference

**7-33-4510. Workers’ compensation for volunteer firefighters -- definitions.** (1) An employer may provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter who **is listed on a roster of service.**

(2) An employer may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in Title 39, chapter 71.

(3) If an employer provides workers' compensation coverage as provided in this section, the employer may, upon payment of the filing fee provided for in 7-4-2631(1)(a), file a roster of service with the clerk and recorder in the county in which the employer is located and update the roster of service monthly if necessary to report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original and replace it with updates whenever necessary. The employer shall maintain the roster of service with the effective date of membership for each volunteer firefighter.

**(b) "Roster of service" means the list of volunteer firefighters who have filled out a membership card prior to performing services as a volunteer firefighter.**

**(c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A 39-71-745. Calculation of volunteer firefighter benefits and premiums -- definitions.** (1) (a) A plan No. 1

or plan No. **2 insurer shall designate whether an employer, as defined** in 7-33-4510, **is to use actual volunteer hours or a flat assumed payroll** amount for each volunteer firefighter for calculating premiums. The coverage option must be the same for all fire agencies organized under Title 7, chapter 33, that are covered by that insurer and meet the definition of employer in 7-33-4510. A plan No. 3 insurer shall use a flat assumed payroll amount for each volunteer firefighter for calculating premiums.

## HOW TO CALCULATE PREMIUM FOR PAID FIREFIGHTER

### PREMIUM CALCULATION:

The premium calculation formula is Payroll (Sum Total Base Rate) for this period x MACo rate  
Premium rates are calculated from the employee's payroll, per \$100 of earnings. For example, if class code 7704- paid firefighters' payroll is \$ 20,000.00 per quarter and the MACo premium rate is 0.1203 (\$12.03 per \$100 of payroll).

For example: Class Code 7704- paid firefighters' payroll (Sum Total Base Wage) x MACo Rate= Manual Premium

$$\$20,000.00 \times 0.01203 = \$246.00$$

### EXPERIENCE MODIFICATION:

Additional factors affect rates, such as the frequency and severity of work place accidents, medical costs, and indemnity (loss time) payments. This is expressed in the use of an experience modification factor. The factor can be either positive or negative. If the county has experienced a low accident frequency and severity, they may qualify for a discount, such as -5%. The Class Code 7704 premium manual rate of \$246.00 show in the above example would be adjusted to \$229.00. On the other hand, if the county had poor experience in accident frequency and severity, it would be charged additional premium. The Class Code 7704 paid firefighters' manual premium of \$246.00 would be adjusted to \$253.00 if the modification factor was +5%.

## IV. VOLUNTEER AMBULANCE PERSONNEL

This information is to give county commissioners and volunteer ambulance units to have a clear understanding of when an ambulance volunteer is covered by workers' compensation insurance.

### DEFINITIONS

Coverage during travel / training / mission exercises - When a volunteer is to participate in a pre-approved and supervised training activity, coverage will begin when the volunteer arrives at the designated location. Coverage ends after the training session is completed.

When called to respond to an emergency, the volunteer will be covered as soon as he/she leaves their current location and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to the home or work place, or travels or engages in activity outside the scope of volunteer ambulance business.

Log-in - an activity log or sign up sheet showing the time and members present is required.

Personal training session - when a volunteer goes alone or in a small group to develop personal skills and train without a pre-established training plan approved by the supervisor.

Pre-approved training activity - The supervisor will approve activities for training in writing and prior to the training activity. MACo Risk Management or the County Safety Officer may be included to insure that

safety is addressed. However, if MACo Risk Management or the County Safety Officer is not included, it will not jeopardize a volunteer from coverage.

Supervised by the supervisor - members of a recognized volunteer ambulance unit may be provided full workers' compensation coverage when engaged in an emergency response, training, or testing operation called and supervised by the supervisor.

Training - to instruct; to bring into proper body condition; to undergo special drill.

Training plan - a brief, written outline of the training activities and overall goals.

## GUIDELINES

For those counties insured under the MACo Workers' Compensation Trust, premiums for such coverage must be paid within the due dates.

When ambulance volunteers are engaged in an activity that is approved and supervised, they are covered for workers' compensation benefits. The supervisor decides which activities are approved for training. The approval must be in writing prior to the training activity.

When ambulance volunteers participate in planned activities, they log-in at the start of the activity. Supervision of the training activity should be specified in the training plan--the supervisor conducts supervision of the training activity. Coverage begins when the volunteer arrives at the designated training location; coverage ends when the training session is over.

## HOW TO CALCULATE PREMIUM FOR VOLUNTEERS

The ambulance supervisor will provide to the county payroll clerk a list that includes the names of volunteer ambulance employees who participated in ambulance training and emergency response for that period (monthly or quarterly). The list will show the number of hours each volunteer worked. The hours reported should agree with the hours posted in the unit's log. **The list should be kept on file for audit purposes.**

Volunteers are to be placed in Class Code 9410. They are to be reported at an assumed wage. The minimum reporting wage can be no less than the federal minimum wage.

## EMERGENCY MEDICAL SERVICES FIRST RESPONDER UNIT

First responder units are becoming more numerous as population increases. The unit's purpose and volunteer job descriptions match those for volunteer ambulance services. Personnel qualify for workers' compensation and should be reported for coverage.

The guidelines for their coverage in the MACo workers' compensation program are the same as for volunteer ambulance personnel.

## V. COURT ORDERED COMMUNITY SERVICE WORKERS COUNTY JAIL TRUSTEES

Pursuant to MCA 739-71-118 (1)(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1) (e):

MCA 39-71-118 (1) (b) includes juveniles performing work under authorization of a District Court judge in a delinquency prevention or rehabilitation program. For a person covered by the definition, compensation

benefits are limited to medical expenses and an impairment award. The law states that premiums must be paid by the employer and must be based upon the minimum wage for the number of hours of community service required under the order from the court (or hearings officer, in the case of probation or parole violations).

Pursuant to MCA 7-32-2225, a county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail. The program must be authorized by the county commissioners and supervised by the sheriff. Other requirements are outlined in MCA 7-32-2226 and 7-32-2227

The Montana Association of Counties Workers' Compensation Trust will provide coverage to member counties provided the proper steps are taken as outlined below.

While the Trust does not discourage members from implementing a jail work program, it encourages counties to weigh the decision carefully. Counties must give significant consideration to all risks, determine what can be done to minimize or eliminate the exposure and then determine if there is adequate protection.

If coverage is to be extended by the Trust, the following steps must be followed:

1. The community service must be performed pursuant to a court or hearing officer's order;
2. If the program is being performed pursuant to MCA 7-32-2225 through 2227, it must be authorized by the commissioners; and
3. Exact hours must be kept. A record of the service performed is to be reported to the Trust on its quarterly payroll reports at the current minimum wage rate or the hourly wage rate determined by the Judge. The individuals are to be reported under Class Code 9420. **The record should be kept on file for audit purposes.**  
The court case number can be used in reporting if the individual's name is not available.

Questions concerning this matter can be directed to Emelia McEwen, Sr. Loss Control Specialist, 406-449-4370.

## **VI. ELECTION JUDGES**

Election judges are considered to be county employees. Therefore, it is important to report these people for workers' compensation.

### **HOW TO CALCULATE PREMIUMS**

Some counties pay election judges by voucher and others include them in their payroll system. For workers' compensation purposes, either one is acceptable. Reporting compensation / wages is as simple as identifying the amount of dollars paid to the judges and applying rates for Class Code 8743 to that payroll.

MACo Workers' Compensation program does not require that election judges be included in a payroll system unless the county so chooses.

## **VII. GENERAL VOLUNTEERS**

### **VOLUNTEERS INCLUDING SEARCH AND RESCUE, SHERIFF RESERVE, AMBULANCE PERSONNEL, AND OTHERS DESIGNATED BY THE COUNTY FOR PREMIUM**

The MACo Workers' Compensation Trust allows an insured county the option to insure volunteers who otherwise would not be covered by worker's compensation. Coverage for reserve officer and ambulance service personnel is mandatory. Below are guidelines to follow regarding volunteer coverage and reporting.

## DEFINITION

A volunteer is one who enters into service to assist a county in a county sanctioned activity and receives no wages for such service.

## BENEFITS AVAILABLE

Covered volunteers receive medical benefits in accordance with the provisions of the Montana Workers' Compensation Act and indemnity benefits based on the average actual wages in the volunteer's regular employment, except self-employed as a sole proprietor or partner if the volunteer has elected not to be covered in the volunteer's personal business.

## GENERAL GUIDELINES

Coverage Generally: Coverage for volunteers extends to the time spent by the volunteer in service of the county, including training time and response time.

Training: The supervisor of a volunteer decides what activities are approved for training. Pre-approval by the County Commission is required for a training activity. The request for approval of a training activity must be in writing and signed by the supervisor prior to start of the training activity. When a volunteer is engaged in an activity approved and supervised, the volunteer is covered for workers' compensation benefits. Unsupervised personal training sessions are not covered for workers' compensation purpose.

When a volunteer participates in a training activity, the volunteer must log in at the start of the activity. Supervision of the training activity shall be specified in the training plan. The supervisor must conduct the supervision of the training activity. Coverage will begin when the volunteer arrives at the designated training location, and ends after the training session is completed.

Emergency: When called to respond to an emergency, the volunteer will be covered as soon as the volunteer leaves the place of current location and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to home or the work place, or travels or engages in activity outside the scope of volunteer activity.

## VOLUNTEERS: PREMIUM COLLECTION & REPORTING GUIDELINES

Covering volunteers with workers' compensation insurance can lead to significant obligations affecting a county's injury experience and modification factor, as well as financial obligations for the Trust. It is essential that a salaried county supervisor maintains detailed records as to the time incurred and the activity performed by each volunteer, and that those detailed records are provided to the insurer.

**For payroll reporting purposes, the volunteer's work activity shall be placed in the class code that best describes the volunteer's work. For search and rescue and sheriff's reserve the code is 7720, county volunteer firefighters is 7704 and ambulance personnel is 9410. The wage reported for each hour shall be an assumed wage based on the current state minimum wage. The current minimum wage is \$7.90 per hour (effective 1/1/14) then and that figure is adopted by the Trust as the assumed wage for the insurance year 7/1/14 - 6/30/15. However, for sheriff's reserve the assumed hourly rate is the county's hourly wage for starting deputies.**

## VIII. SUBSEQUENT INJURY FUND

### GENERAL OVERVIEW

Montana's Subsequent Injury Fund, MCA 39-71-901, assists vocationally handicapped individuals in obtaining employment by offering a financial incentive to employers for hiring certified individuals. Many states

have similar funds called Subsequent or Second Injury Funds.

## **DEFINITION OF VOCATIONALLY HANDICAPPED**

"Vocationally Handicapped" refers to a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or ... reemployment ... considering such factors as the person's age, education, training, experience and employment rejection.

## **ADVANTAGES OF PARTICIPATION**

An injured or vocationally handicapped worker may encounter difficulty in obtaining employment because of the prospective employer's concerns about the extent of financial liability in the event the worker incurs a work-related injury. The Subsequent Injury program helps alleviate the employer's concern by placing an upper limit on the liability of an employer (or its insurer) should the worker become injured or re-injured on the job. When that upper limit is reached, the Subsequent Injury Fund assumes liability. The certified worker is, therefore, more likely to be hired.

If a certified worker does become injured on the job, the worker remains entitled to all benefits due under the Workers' Compensation Act.

By hiring an injured or vocationally handicapped worker who has been certified by the Montana Department of Labor and Industry, the employer is able to hire an experienced, skilled worker, while limiting the financial exposure to payment of the first 104 weeks of benefits, if the employee becomes injured on the job. After the employer has actually paid 104 weeks of benefits, the Fund assumes all remaining liability.

## **CERTIFICATION PROCESS**

### Required Action of Worker

Any worker who has a medically certifiable permanent impairment (as defined by the American Medical Association's "Guide to the Evaluation of Permanent Impairment") may apply to the Montana Department of Labor and Industry for certification under the Subsequent Injury Fund. The application form includes the Medical Evidence of Impairment form. (Other medical information may be substituted if it is equivalent.) The applicant must either be unemployed, off work due to the injury, or must apply within 60 days of rehire.

The application should attach an explanation of why the impairment is hindering employment or return to work. The explanation should address such factors as the worker's age, education, training, experience, employment rejection and physical limitations. The worker, a rehabilitation counselor or another party familiar with the worker's situation and qualifications may prepare the explanation.

Qualified Department of Labor and Industry personnel will review the application to determine whether the applicant meets the requirements for certification set forth in the law. The Department may also review related workers' compensation claim files. However, claim files are not always readily available, so it is important for the applicant to complete the forms thoroughly.

The Department will notify the worker of approval or denial after the completed application has been reviewed. If the application is approved, the Department will send the applicant a wallet-sized card identifying the worker as a certified, vocationally handicapped person.

The worker should present this card to the prospective employer as proof of his eligibility for Subsequent Injury Fund benefits, so the employer may complete the employer's half of the application requirements.

### Required Action of Employer

Within 60 days of hiring a certified worker, or prior to a compensable work-related injury, the employer must file a completed "Certificate of Employment" form with the Montana Department of Labor and Industry. If the Department does not receive this form, the employer's insurer may not be eligible to receive the financial protection of the Subsequent Injury Fund for that worker. (The worker will still be eligible for full benefits from the employer's insurer). Upon receipt of the Certificate of Employment, the Fund will acknowledge receipt of the form within ten working days to the employer and insurer.

A sample form is attached. Forms can be obtained from Montana Department of Labor and Industry  
Employment Relations Division  
PO Box 8011, Helena, MT 59604  
Phone 406-444-7737.

## SUBSEQUENT INJURY FUND CLAIMS

### Worker

The worker who becomes injured on the job must follow the standard procedure for filing a claim to be entitled to all benefits due under the provisions of the Workers' Compensation Act in force on the date of injury.

### Employer

The employer should notify its insurer that the Subsequent Injury Fund certifies the insured worker. This will allow the insurer sufficient time to notify the Subsequent Injury Fund of its potential liability in accordance with the law

### Employer's Insurer

When a worker certified under the Subsequent Injury Fund is injured in the course and scope of employment with an employer to which he is certified, the employer's insurer must notify the Fund (not less than 90 days or more than 150 days before the expiration of 104 weeks after the date of injury) of the Fund's potential liability.

If the above deadline is not met, the Fund will accept liability 90 days from the date of notification. The Fund will not accept retroactive liability in these cases.

If the Fund does not notify the insurer of its intent to dispute a payment of benefits beyond 104 weeks, the insurer will continue to make payments as required under the Workers' Compensation Act, which will be reimbursed by the fund every six (6) months.

## IX. USE OF SICK OR ANNUAL LEAVE WHILE ON WORKERS' COMPENSATION

Because the law addresses this issue differently for injured employees, contact MACo claims adjuster to help you determine eligibility. ((406) 442-1178)

### **MCA 39-71-736 Compensation—from what date paid**

(1)(a) Except as provided in subsection(1)(c), compensation may not be paid for the first 32 hours of 4 day loss of wages, whichever is less that the worker is totally disabled and unable to work because of an injury. A worker is eligible for compensation starting with the 5<sup>th</sup> day.

(b) Separate benefits for medical and hospital services must be furnished from the date of injury.

(c) If the worker is totally disabled and unable to work in any capacity for 21 days or longer, waives the payment as provided in subsection (2)(b)(ii).

(2) (a) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 4-day waiting period.

(b) A worker who is entitled to receive retroactive compensation benefits pursuant to subsection (1)(c) but who took sick leave as provided in subsection (2)(a) may elect to either:

(i) repay the employer the amount of salary for the sick leave received: or

(ii) waive the retroactive payment of benefits attributable to any days or hours for which the worker received sick leave.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits.

## X. DEPUTY SHERIFF PAYMENT OF PARTIAL SALARY WHILE INJURED

County personnel are advised, under §7-32-2113, MCA, that payment of partial salary of a deputy sheriff must be made if an injury occurs in the performance of duty and the injury results in disability. The section provides

as follows:

(1) A deputy sheriff who is injured in the performance of the deputy sheriff's duties and who requires medical or other remedial treatment for injuries that render the deputy sheriff unable to perform the deputy sheriff's duties must be paid by the county the difference between the deputy sheriff's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the deputy sheriff must be unable to perform the deputy sheriff's duties as a result of the injury.

## **XI. REPORTING INCIDENTS / ACCIDENTS**

### **FILING A WORKERS' COMPENSATION CLAIM**

Reporting injuries is addressed in the Montana Workers' Compensation Laws under MCA 39-71-601, 602, and 603.

Notice of injuries is to be submitted within 30 days after the occurrence of an accident that is claimed to cause an injury. Notice is to be given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on part of the employer or the employer's managing agent or superintendent in charge of work in which the injured employee was engaged at the time of injury is equivalent to notice. A claimant or a claimant's representative must file a claim within 12 months from the date of injury. Failure to do so could cause the claim to be denied.

- 1) A county should adopt a good incident report form. (See attached sample).
- 2) A reporting policy should require that all incidents are to be reported as soon as possible and no later than the end of the work shift. (See sample policy). This should be the case whether or not injury or property damage occurred. The policy needs to be backed up with disciplinary action when necessary.
- 3) The county should distribute the policy to all employees and explain it. It is important that employees know and understand the policy and why it is being implemented. The policy should be reviewed during new employee orientation.

An incident may or may not involve injuries. Sometimes an injury is not apparent at the time and does not surface until later. So, a good reporting system is critical to the employee, the employer and the insurer.

When an accident occurs involving injury, the supervisor should complete an incident report and investigate the accident. If the injury is minor and does not require medical treatment that should be noted on the incident report. The supervisor should check with the employee the next day and again on the second or third day to determine if the minor injury has worsened and now should be treated by a medical professional. In most cases, minor injuries do not worsen. The supervisor should note determinations on the incident report and then file it.

If the employee wants to have the injury examined by a medical professional or if the Supervisor convinces the employee to have the injury examined, the employer should complete the first report of notice and file the workers' compensation claim with

MACo Claims  
PO Box 7059  
Helena, MT 59604.

It is most important that the supervisor is the person who completes the form and that the employee completes only the employee's claim for compensation section at the bottom of the form and signs it. The person in charge of payroll may have to enter in the wage information if the claim is going to include wage loss.

If an employee's injury is going to involve a period of time that the employee is off work, the employer should check in with the employee. When the healing of the injury has progressed to a point where the

employee can return to work on a limited basis, the employer should work closely with the doctor, claims adjuster and the rehabilitation counselor (if one is involved) in establishing a light duty temporary job. Ordinarily, the doctor would review the employee's job description and determine which tasks could be performed without causing a re-injury. Typically the duties will progress until the employee is performing all of the job tasks on a full-time basis.

By following this recommended outline, you will find:

- + Fewer claims filed by individuals who are attempting to malingering
- + Injured employees returning to work sooner
- + Injured employees recovering faster
- + Reduced long-term disability claims
- + Better employee moral
- + Less absenteeism
- + Lower accident costs.



# EMPLOYEE INCIDENT REPORT

This report is to be completed when an occupational illness or injury occurs. If an employee is injured or develops a job-related illness (developed gradually e.g., tendonitis) as a result of their employment they must complete and submit the "Incident Report". If the employee is unable to complete the form, the supervisor must complete on their behalf.

**EMPLOYEE:** Please complete below. Upon completion, please give this form to your supervisor. An employee has 30 day to report an incident.

**EMPLOYEE COMPLETES THIS SECTION:** (If the employee is unable to complete the form, the supervisor must complete on their behalf)

**Social security number:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_ **Sex**  Male  Female

**Home Address:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Home Phone:** \_\_\_\_\_ **Work Phone:** \_\_\_\_\_

**Department:** \_\_\_\_\_ **Job Title:** \_\_\_\_\_

**Supervisor Name:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

Employment Type:  Full-time  Part-time  Regular  Temporary  Seasonal  Volunteer

Do you have other employment?  No  Yes If so, where \_\_\_\_\_

**Date of Incident:** \_\_\_\_\_ **Time of Incident:** \_\_\_\_\_

Address/Bldg, name & room # of incident: \_\_\_\_\_

**State all parts of body and type of injuries involve** (e.g. bruised right elbow)

\_\_\_\_\_  
\_\_\_\_\_

**Describe how incident occurred:** \_\_\_\_\_

\_\_\_\_\_

**Incident was reported to:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Do you require medical treatment for this injury?**

No medical treatment  Declined treatment at this time  Treatment was/will be provided by:

Name (facility or physician): \_\_\_\_\_

**I, the injured employee, herein certify the information above is true and to best of my knowledge.**

**Date:** \_\_\_\_\_ **Signature of employee:** \_\_\_\_\_

**SUPERVISOR:** Please complete below and fax or mail to the MACo Claims Office at fax #: 406-443-4161, PO Box 7059, Helena, MT 59604.

**Important:** All injuries must be reported within 30 days.

**Supervisor Completes This Section**

**Supervisor Name:** \_\_\_\_\_ **Work Phone:** \_\_\_\_\_

**Name of injured employee:** \_\_\_\_\_

Did employee lose time from work after date of injury?  Yes  No  Unknown

If 'yes' last day worked: \_\_\_\_\_ Date employee returned to work: \_\_\_\_\_

**Describe what happened:**

**When did this happen?**

**Where did this event happen?**

**Was there equipment involved?**  Yes  No If you answered "yes" what was the equipment:

**How could this have been prevented?**

**Do you have any reason to question this incident?**  Yes  No If yes, please describe:

**Date:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Montana Association of Counties  
Workers' Compensation Trust**

PO Box 7059  
Helena, MT 59604

(406) 442-1178  
Fax (406) 443-4161

# WORKERS' COMPENSATION

INSURANCE COVERAGE

## EMPLOYEE NOTICE

Date:  
Policy Number:

The above-named employer's workers' compensation insurance coverage is active and in good standing for the period of \_\_\_\_\_ to \_\_\_\_\_, provided the employer meets all premium and reporting requirements.

### IF YOU ARE INJURED

You should report any on-the-job injury to your supervisor, employer, or insurer as soon as possible. You must report the accident within 30 days. A sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under the Montana Workers' Compensation Act must report an accident to the insurer within 30 days.

Report minor injuries to your employer whether or not you receive medical treatment. After you report the injury, your employer has 6 days to notify their insurer. You must submit a written First Report of Injury within 12 months from the date of the accident. You can submit this form to your employer, insurer, or the Department of Labor and Industry.

All employees sustaining a compensable work related injury or occupational disease, other than those who are exempted by statute (Section 39-71-401, MCA), are covered for medical and wage-loss benefits.

**You have the right to choose your initial treating physician.**

**You may continue to receive treatment from your physician unless you receive written notice of referral to a preferred provider or a managed care organization. After providing you with a referral notice, the insurance carrier is no longer liable for treatment provided by your physician unless authorization is obtained to continue treatment.**

**For specific information about this policy, call or write your employer's insurance carrier:**  
(Insert insurer name, address and phone number here)

**For general information about workers' compensation, call or write: Montana Department of Labor and Industry, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011, Phone (406) 444-6532.**

FAILURE TO POST THIS SIGN OR POSTING AN ALTERED SIGN IN THE WORKPLACE WILL RESULT IN A \$50 FINE AGAINST THE EMPLOYER!

First Report Link:

<http://www.mtcounties.org/insurance/report-claim>