Governor Bullock Sides with Trial Lawyers Over Small Businesses

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On April 20, 2015, the Legislature passed Senate Bill 288, which made it easier for Montana’s employers to recoup medical expenses they or their workers’ compensation carrier expend on behalf of an injured employee.

When that employee recovered a large amount of money in a tort lawsuit, known as “subrogation,” this right of reimbursement exists and works effectively in every other state but Georgia, and plays a key role in helping to hold down one of the largest expenses for small businesses—workers’ compensation insurance premiums. The trial lawyers cried foul, and, on April 29, 2015, Governor Bullock vetoed the business-friendly Bill.

Governor Bullock has already vetoed 34 bills passed by the legislature. The autopsy on the vetoed bills reveals that they include a bill to revise Montana small business health insurance laws, lower state income taxes, revise energy laws, revise landlord/tenant laws, and to change income tax credits. However, the most devastating stroke of his pen came when Bullock nixed Senate Bill 288, which would have overturned a series of unfortunate Montana Supreme Court rulings which effectively preclude a workers’ compensation insurer from exercising a right of subrogation on which all employers and small businesses depend.

Subrogation is a word foreign to even the most savvy politicians and lawyers. In the context of Montana businesses, subrogation is the substitution of the employer into the shoes of its injured employee with respect to a potential lawsuit. When the employee of a small business is injured at work, workers’ compensation provides significant wage replacement protection and the payment of unlimited medical expenses—forever. In return for accepting these unlimited, guaranteed benefits, Montana law clearly states that when the injured employee hires a lawyer and sues the person or company that caused the injury, the employer (or its workers’ compensation carrier) has the right to be reimbursed out of this tort recovery for any benefits it has paid. The purpose of subrogation is to place the burden for a loss on the party ultimately liable or responsible for it and by whom it should have been discharged, and to relieve entirely the insurer or surety who indemnified the loss and who in equity was not primarily liable for the loss. An additional purpose underlying subrogation is that it returns the excess,
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