

MONTANA — State Laws by Topic

➤ AGE ◀

Under the Montana Human Rights Act, employers are prohibited from refusing to hire, barring from employment, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on age, as long as the position in question does not require an age distinction. **Note:** State law does not define a protected age group.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on age, unless a *bona fide* occupational qualification exists.

An employer is defined as an individual employing one or more persons, or an agent of the employer.

➤ AIDS ◀

Testing: Informed consent must be obtained before an individual is tested for AIDS. In addition, under Montana's AIDS Prevention Act, disclosure of AIDS test results or the identity of anyone being tested for AIDS is prohibited, except as provided under the state Uniform Health Care Information Act.

➤ ARRESTS/CONVICTIONS ◀

Montana has adopted the federal Uniform Guidelines on Employee Selection Procedures. Consequently, inquiries into criminal record information may be invalidated if it is a discrete step in employment decisions and if it adversely affects members of a protected class, unless the employer can demonstrate that the inquiry is related to job performance.

➤ BREAKS ◀

No provision.

➤ BREAST-FEEDING ◀

A woman may breast-feed her child in any location, public or private, where she and the child are authorized to be present.

All public employers must have a written policy supporting women who want to continue breast-feeding after returning from maternity leave. The policy must state that employers shall support and encourage the practice of breast-feeding, accommodate the breast-feeding-related

needs of employees, and ensure that employees are provided with adequate facilities for breast-feeding or expressing breast milk. At a minimum, the policy must identify the means by which an employer will make available a space suitable for breast-feeding and breast pumping for a lactating employee, including the provision of the basic necessities of privacy, lighting, and electricity for the pump apparatus. The space does not need to be fully enclosed or permanent, but must be readily available during the term that the employee needs the space. Employers should make a reasonable effort to provide a room or other location, in close proximity to the work area, other than a toilet stall, where an employee can express breast milk.

Public employers must also provide reasonable unpaid break time each day to an employee who needs to express breast milk for her child, if breaks are currently allowed. If breaks are not currently allowed, the employer shall consider each case and make accommodations as possible. The break time must, if possible, run concurrently with any break time already provided to the employee. An employer is not required to provide break time under this section if to do so would unduly disrupt its operations.

It is unlawful for any public employer to refuse to hire or employ, bar or discharge from employment, or discriminate with respect to compensation, terms, conditions, or privileges of employment against an employee who expresses milk in the workplace, unless based upon a *bona fide* occupational qualification.

➤ CHILD LABOR ◀

Click on the following link <http://erd.dli.mt.gov/labor-standards/child-labor-law> to access Montana's Department of Labor & Industry, Employment Relations child labor law home page.

➤ CHILD SUPPORT ◀

Employers served with a child support order must begin withholding with the first pay period occurring after the order is served. Amounts are remitted within seven working days of payday. Notify the state agency promptly if the employee-obligor terminates. Employers may remit withheld child support electronically through the state's website.

➤ COURT ATTENDANCE ◀

State employees who are subpoenaed as witnesses are entitled to their regular wages, provided they forward all witness fees to their employers' accounting office. Instead of forwarding witnesses fees and receiving regular wages, employees can elect to charge time spent in court to their annual leave.

➤ DISABILITIES ◀

Under the Montana Human Rights Act, employers are prohibited from refusing to hire, barring from employment, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on a physical or mental disability.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on a physical or mental disability.

An employer is defined as an individual employing one or more persons, or an agent of that employer.

➤ DRUG TESTING ◀

Montana's drug testing law applies to applicants and employees in limited circumstances. An employee is defined as an individual who engages in the performance, supervision, or management of work in a hazardous environment, security position, position affecting public safety, or fiduciary position for the employer (independent contractors excluded).

As part of a qualified drug testing program, employers are permitted to:

1. require an applicant to submit to testing as a condition of employment;
2. randomly test employees if the company's substance policy includes one or both of the following procedures: a) the establishment of a date when all salaried and wage-earning employees will be required to undergo controlled substance or alcohol testing, or both; or b) the establishment with a third-party administrator of such a program;
3. require an employee to submit to follow-up testing if the employee has previously tested positive;
4. require an employee to be tested if the employer has reason to suspect that the employee's faculties are impaired on the job as a result of the use of drugs or alcohol; and
5. require an employee to be tested for drugs or alcohol if the employer has reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that caused death, personal injury, or property damage in excess of \$1,500.

Employers must provide a copy of the test report to an employee who has been tested. An employee who tests positive must be given the opportunity to be retested by an independent laboratory that he/she selects. Additional tests are at the employer's expense if the results are subsequently negative, or at the employee's expense if the results are subsequently positive.

As part of a qualified drug-testing program, employers must create a written substance abuse policy, which must contain a description of:

1. applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;
2. the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of drugs and alcohol;
3. the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees;

4. available employee assistance programs;
5. sanctions that the employer may impose on an employee who violates the policy or tests positive for the presence of drugs or alcohol;
6. types of drug and alcohol tests to be used;
7. controlled substances for which the employer intends to test and a state alcohol level above which a tested employee must be sanctioned;
8. the employer's hiring policy with respect to prospective employees who test positive;
9. the procedures that will be followed to conduct the testing program; and
10. confidentiality requirements under Montana's Workforce Drug and Alcohol Testing Act.

Employers are not required to accommodate an employee's use of medical marijuana. Further, employers may prohibit employees' use of medical marijuana in employment contracts, and may fire employees who use medical marijuana.

➤ **FAMILIAL/MARITAL STATUS** ◀

Under the Montana Human Rights Act, employers are prohibited from refusing to hire, barring from employment, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on marital status.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on marital status.

An employer is defined as an individual of one or more persons, or an agent of that employer. The state recognizes same-sex marriage.

➤ **FAMILY/MEDICAL LEAVE** ◀

See pregnancy.

➤ **GENETIC TESTING** ◀

No provisions specified in the general employment context.

➤ **HEALTH CARE CONTINUATION COVERAGE** ◀

No general health care continuation coverage provision.

➤ JURY DUTY ◀

State employees who are summoned to jury service are entitled to their regular wages, provided they forward all juror fees to their employers' accounting office. Instead of forwarding those fees and receiving regular wages, employees can elect to charge time spent in court to their annual leave.

➤ LIFESTYLE DISCRIMINATION ◀

Employers cannot refuse to employ or license, or discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during non-working hours.

It is not a violation for an employer to offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions among employees for the type or price of coverage based on the employees' use of a lawful product, as long as: 1) differential employee premium rates reflect actuarially justified differences in providing employee benefits; 2) the employer provides the employees with written notice delineating the differential rates used by the employer's insurance carrier; and 3) the distinction in the type or price of coverage is not used to expand, limit, or curtail the right or liability of a party in a civil lawsuit.

➤ MASS LAYOFF NOTIFICATION ◀

Provisions apply to state governments only.

➤ MEDICAL DONATION LEAVE ◀

No general provision.

➤ MILITARY LEAVE ◀

Under the Montana Military Service Employment Rights Act, an employer may not deny employment, reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct, injure, discriminate against, or threaten a person with regard to employment because of the person's membership, application for membership, or potential application for membership in the state organized militia or because the person exercised his/her rights under the Act.

A person ordered to state active duty is entitled to a leave of absence from employment for the period of that duty. The leave of absence can only be deducted from the individual's sick, vacation, military, or other accrued leave at the individual's discretion.

Note: An employee of the state or of any political subdivision who is a member of the organized militia of the state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for at least six months must be given a leave of absence with pay accruing at a rate of 120 hours in a calendar year for performing military service. Military leave may not be charged against the employee's annual vacation

time. Unused military leave must be carried over to the next calendar year, but may not exceed a total of 240 hours in any calendar year.

Reinstatement: Employees are entitled to reemployment with the same seniority, status, pay, pension, and benefits they would have accrued had they not been absent for active duty. An employer has the discretion whether to allow an employee to accrue sick, vacation, military, or other leave during the leave of absence. However, the employee must not get fewer leave accrual benefits than are provided to other employees on similar, non-military leave status.

An employer is not obligated to reemploy an employee after a leave of absence for state active duty in the following circumstances.

1. The employee is no longer qualified to perform the duties of the position (subject to state disability discrimination laws).
2. The employee's position was temporary and the temporary employment has expired.
3. The employee's request to return to employment was not made in a timely manner. A timely manner is defined as follows. For up to 30 days of active duty, return to the next regular work shift; for 30 to 180 days, within 14 days of the end of state active duty; and for more than 180 days, within 90 days of the end of active duty.
4. The employer's circumstances have changed so significantly that the employee's continued employment cannot be reasonably expected.
5. The employee's return to employment would cause an undue hardship for the employer.

➤ **MINIMUM WAGE** ◀

Minimum hourly wage/overtime rate: \$8.50/\$12.75.

Basis for overtime: Over 40 hours/week.

Opportunity wage for under 20-year-olds: None.

Note: State inflation adjusts its minimum wage annually.

➤ **NATIONAL ORIGIN** ◀

Under the Montana Human Rights Act, employers are prohibited from refusing to hire, barring from employment, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on national origin, including ancestry.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on national origin, including ancestry, unless a *bona fide* occupational qualification exists.

An employer is defined as an individual employing one or more persons, or an agent of that employer.

➤ NEW-HIRE REPORTING ◀

Data to be reported: Employee's name, SSN, mailing and residential address, date of hire; employer's name, address, federal EIN.

Employers must report as new hires employees who have been off the payroll for at least 60 consecutive days.

Reporting deadline/form: Within 20 days of hire or rehire; on W-4s.

➤ OVERTIME ◀

Basis for overtime: Over 40 hours in a workweek.

The state has clarified its position on the revised federal white-collar regulations. State and federal law continue to parallel each other. Minor differences in the wording of the tests for exempt status exist. Employers are urged to consult both state and federal laws before deciding whether a position is exempt.

Air carrier employees who work longer than 40 hours in a week need not be paid overtime if their overtime hours weren't required by their employer and were arranged through a voluntary agreement among employees to trade scheduled working hours.

➤ PAY STATEMENTS ◀

Information required: Itemized deductions.

➤ PERSONNEL FILES ◀

State employees must have access to all their employee personnel records, and may file a written response to information contained in their employee personnel records. These employee responses must become a part of the record.

➤ POLYGRAPH TESTING ◀

No employer may require, as a condition for employment or continuation of employment, any person to take a polygraph test or any form of mechanical lie detector test.

➤ POSTING REQUIREMENTS ◀

Unemployment Insurance — All employers

Workers' Compensation — All employers

Minimum Wage — Recommended

Discrimination — Recommended

No Smoking — All employers

➤ PREGNANCY ◀

Coverage: Employers of one or more persons.

General rule: Employers may not: 1) terminate an employee because she is pregnant; 2) refuse to grant an employee reasonable pregnancy leave; 3) deny an employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to an employer plan; or 4) require that an employee take mandatory maternity leave for an unreasonable length of time. Employers may require that a disability as a result of pregnancy be verified by medical certification that an employee is unable to perform her job duties.

Paid leave: Employers may not deny an employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to an employer plan.

Reinstatement: Following a pregnancy-related leave of absence, when the employee notifies the employer that she is ready to return to work, she will be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits. If the employer's circumstances have so changed as to make it impossible or unreasonable to reinstate an employee after pregnancy leave, the employer may refuse reinstatement.

➤ RACE ◀

Under the Montana Human Rights Act, employers are prohibited from refusing to hire, barring from employment, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on race or color.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on race or color.

An employer is defined as an individual employing one or more persons, or an agent of that employer.

➤ REFERENCES ◀

Blacklisting: Former employers and their agents cannot try to prevent a voluntarily or involuntarily terminated employee from obtaining other employment.

References: Montana law does not limit the civil damage liability of private employers who disclose employment information about a former or current employee's employment-related performance to a prospective employer upon request of the prospective employer or the former or current employee.

Service letters: It is an employer's duty to furnish a discharged employee, upon demand, a complete statement of the reasons for the employee's discharge. If the employer does not provide a response within a reasonable period of time, the employer is prohibited from furnishing any statement of the reasons for discharge to any person. Employers who violate these provisions may be sued by the fired employees for damages and may be subject to criminal penalties.

A written demand must advise the employer of the possibility that the statements it provides may be used in litigation. The employer's response to the demand may be modified at any time and may not limit the employer's ability to present a full defense in any action brought by the discharged employee.

Social media: Employers can't request or require employees or job applicants to disclose information that allows access to their personal online accounts, or discharge, discipline, fail to hire, or otherwise penalize or threaten to penalize employees or job applicants who don't disclose this information. *Exceptions:* An employee may be required to disclose information if employers have specific information that he/she committed workplace misconduct or criminal defamation; transferred proprietary information, confidential information, trade secrets, or financial data to a personal online account without authorization; or disclosure is required by a state or federal law.

However, employers may request or require employees or job applicants to disclose the information if they pay for the electronic devices or employees' accounts or services, or the accounts or services are business related. In addition, employers may maintain policies governing the use of their electronic equipment. Employers aren't liable if they inadvertently receive employees' or job applicants' personal online account information; however, employers can't use this information. Employers may obtain information that is already public.

Employers can't discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against employees or job applicants for not complying with a request or demand to disclose this information.

➤ RELIGION ◀

Under the Montana Human Rights Act, employers are prohibited from refusing to hire, barring from employment, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on creed or religion.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on creed or religion, unless a *bona fide* occupational qualification exists.

An employer is defined as an individual employing one or more persons, or an agent of that employer.

➤ REPORTING PAY ◀

No provision.

➤ **SAFETY** ◀

Click on <http://erd.dli.mt.gov/safety-health/onsite-consultation/onsite-consultation> to learn more about Montana's public sector safety and health requirements, as well as the OSHA Consultation Project, which provides private sector employers with free safety and health consultation.

➤ **SCHOOL VISITATION LEAVE** ◀

No provision.

➤ **SEX DISCRIMINATION** ◀

Under the Montana Human Rights Act, employers are prohibited from refusing to hire, barring from employment, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on sex, unless a *bona fide* occupational qualification exists.

In addition, it is an unlawful employment practice for an employer to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination based on sex, unless a *bona fide* occupational qualification exists.

An employer is defined as an individual employing one or more persons, or an agent of that employer.

➤ **SEXUAL HARASSMENT** ◀

State employers must provide employees a work environment free from sexual harassment.

➤ **SEXUAL ORIENTATION DISCRIMINATION** ◀

Public employers are prohibited from discriminating against employees based on sexual orientation.

➤ **SMOKING** ◀

The state's Clean Indoor Air Act prohibits smoking in all enclosed public places and workplaces, including bars, taverns, and casinos.

See also lifestyle discrimination.

➤ SOCIAL SECURITY NUMBER PRIVACY ◀

Employers that maintain computerized data that includes personal information (e.g., Social Security numbers) must report a security breach “without unreasonable delay” to anyone whose personal information might have been compromised.

➤ UNEMPLOYMENT INSURANCE ◀

Click on <http://uid.dli.mt.gov/> to access the Montana Unemployment Insurance Division home page.

➤ VACATION PAY UPON TERMINATION ◀

No provision requiring the payment of accrued vacation at the time of termination. However, the Montana attorney general has determined that “vacation pay which has been earned and is due and owing must be considered in the same category as wages and is collectable in the same manner and under the same statutes as are wages.”

➤ VIOLENCE ◀

No general workplace violence provision.

➤ VOTING ◀

No time-off-to-vote provision.

➤ WAGE DEDUCTIONS ◀

Reasonable deductions may be made for room, board, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or other deductions provided for by law. Employers may withhold an amount sufficient to cover the value of a theft from an employee’s final paycheck, if the employee’s discharge is due to an allegation of theft of property or funds connected with work, and the employer files a police report within seven business days of the termination. If no charges are filed against the employee within 30 days, he/she must receive the final check at the end of the 30-day period.

➤ WAGE GARNISHMENT ◀

The lesser of 25% of disposable weekly pay, or the amount by which disposable weekly pay exceeds 30 times the federal minimum wage in effect during the week the garnishment is to occur, may be withheld. Employers may not terminate an employee because his/her disposable pay is subject to a creditor garnishment.

➤ WAGE PAYMENT ON TERMINATION ◀

Employee who quits: Earlier of next regular payday or 15 days.

Employee who's fired: At once, unless employer policy extends time of payment to earlier of next regular payday or 15 days from separation.

➤ WAGE PAYMENTS ◀

Payday requirements: Within 10 days after wages are due; semimonthly if no other payday is designated.

Direct deposit: Employers may not require employees to be paid electronically. Employee consents in writing or electronically.

➤ WHISTLEBLOWING ◀

An employer commits a wrongful discharge if: 1) the discharge is in retaliation for an employee's refusal to violate public policy or for reporting a violation of public policy; 2) the discharge was not for good cause and the employee had completed a probationary period; or 3) the employer violated the provisions of the employer's own personnel policy.

It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any unlawful employment practices or has filed a complaint, testified, assisted, or participated in a related investigation or proceeding.

In addition, employers may not discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against an employee who exercises his/her rights, testifies, or helps others exercise their rights under Montana's Employee and Community Hazardous Chemical Information Act.

➤ WORK AUTHORIZATION ◀

No general provision.

➤ WORKERS' COMPENSATION ◀

Click on <https://www.montanastatefund.com/web/workerscompensation/index.jsf> to access the Montana Department of Labor & Industry, Employment Relations Division home page.