

# MONTANA



## MONTANA QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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## **At-Will Employment**

Montana is the only state that is not an at-will employment state. Montana enforces a “good cause” standard for terminating employment. Mont. Code § 39-2-903 and Mont. Code § 39-2-904(1)(b). Effective October 1, 2023, if not specified by the employer, employees have an automatic probationary period during their first 12 months where either the employer or employee may terminate the employment relationship at-will on notice to the other. Mont. Code § 39-2-910; Mont. Code § 39-2-904(2). Further, the employer holds the broadest discretion when making a decision to discharge any manager or supervisor. Mont. Code § 39-2-904(3).

## **Immigration Verification**

Montana places no additional employment verification procedures on employers beyond federal I-9 compliance. There is no requirement to use E-Verify under Montana state laws. Nevertheless, an employer may not knowingly employ an alien who is not lawfully authorized to work and any person in violation may be fined up to \$300. Mont. Code § 39-2-305.

## **Drug Testing**

The state of Montana enforces the Workforce Drug and Alcohol Testing Act. Mont. Code § 39-2-205. The Act establishes a qualified testing program that must comply with the criteria found in § 39-2-207. Employers may drug test a potential employee as a condition to hire under § 39-2-208(1).

## **Jury Duty Leave**

It is unlawful for an employer to persuade or attempt to persuade any employee to avoid jury service; intimidate or threaten any employee in that respect; or remove or otherwise subject an employee to adverse employment action because of jury service if the employee provides reasonable notice of their absence. Under Montana law, employers wrongfully discharge employees if they retaliate against employees for their refusal to violate public policy or for reporting a violation of public policy. Mont. Code § 39-2-904.

Furthermore, citizens are obligated to participate in jury duty unless they are exempt from doing so. Mont. Code § 3-15-301-§ 3-15-321. Thus, employers may not terminate or take any adverse action against employees because the employees receive and/or respond to jury summons or serve jury duty. No state law requires the employer to pay wages while an employee is on jury duty.

## **Voting Leave**

Montana does not have a law that requires an employer to grant its employees leave, either paid or unpaid, to vote.

## **Parental Leave**

Montana does not have any specific parental leave requirements applicable to private sector employers, although a permanent state employee may take up to 15 days of parental leave if they are the adoptive parent or birth father of a child. Mont. Code § 2-18-606. Montana prohibits employers from denying a reasonable leave of absence for a woman’s pregnancy. Mont. Code § 49-2-310.

Further, § 49-2-311 of the Montana Code Annotated, requires that an employee who indicates an intent to return at the end of maternity leave be reinstated to their original job or an equivalent position with equivalent pay, accumulated seniority, retirement, fringe benefits, and other service credits, unless the employer is a private employer with circumstances that have changed as to make it unreasonable or impossible to do so.

## **Other Leave**

### **Military Leave**

Effective April 30, 2021, Mont. Code § 10-1-1004 provides clarification on military access to federal leave of absence. According to the Uniformed Services Employment and Reemployment Rights Act (USERRA), Montana military members have the right to continue group health care benefits for 24 months of their leave and be reinstated to the same or equivalent position held before leave, and must receive up to five years of unpaid leave for military service (with exceptions), if they give their employer advanced notice that they are a member of the military or plan to enlist in the military. 20 C.F.R § 1002.34; 20 C.F.R § 1002.

## **Sick Leave**

Montana has determined that state employees are eligible to earn sick leave credits from the first day of employment if they are permanent full-time employees but are not entitled to be paid sick leave until they have been continuously employed for 90 days. Full-time temporary and seasonal employees are entitled to sick leave benefits if they work the qualifying period, while permanent part-time employees are entitled to prorated leave benefits if they worked the qualifying period. In addition, employees who are on leave without pay or are considered short-term workers cannot earn sick leave. Mont. Code § 2-18-618.

Montana law does not, however, require private employers to provide employees with sick leave benefits, either paid or unpaid. If an employer chooses to provide sick leave benefits, it must comply with the terms of its established policy or employment contract. MT Dept. of Labor and Industry FAQ.

## **Holiday Leave**

Montana recognizes 11 holidays, in addition to each Sunday, as “legal holidays.” Mont. Code § 1-1-216. Yet, the state does not require private employers to provide employees with either paid or unpaid holiday leave. Moreover, a private employer can require an employee to work holidays without paying an employee “premium pay,” such as one and one-half times the regular rate, for working on holidays, unless the time worked qualifies the employee for overtime under standard overtime laws. If an employer chooses to provide either paid or unpaid holiday leave, it must comply with the terms of its established policy or employment contract. MT Dept. of Labor and Industry FAQ.

## **Vacation Leave**

In Montana, employers are not required to provide employees with vacation benefits, either paid or unpaid. If an employer chooses to provide such benefits, it must comply with the terms of its established policy or employment contract. Once an employee earns vacation leave, it cannot be forfeited for any reason. This means an employee must be paid for all accrued vacation pay upon separation from employment, regardless of the reason. MT Dept. of Labor and Industry FAQ; *Langager v. Crazy Creek Products, Inc.*, 287 Mont. 445, 954 P.2d 1169 (Mt. Sup. Ct. 1998).

An employer may place a reasonable cap on the vacation leave an employee can accrue, but an employer cannot require an employee to comply with specific requirements to receive accrued vacation leave upon separation from employment, such as giving timely notice or not being terminated. In addition, an employer cannot implement a “use it or lose it” vacation policy requiring employees to use their vacation leave by a set date or lose it. MT Dept. of Labor and Industry FAQ; *Langager v. Crazy Creek Products, Inc.*, 287 Mont. 445, 954 P.2d 1169 (Mt. Sup. Ct. 1998).

## **Smoking Laws**

Smoking is prohibited in all enclosed public places, including but not limited to workplaces. Employers must post conspicuous notices of the smoking ban at all public entrances of the establishment. Mont. Code § 50-40-104.

The state of Montana prohibits employers from discriminating against employees who legally use lawful products such as marijuana and tobacco off the employer’s premises during nonworking hours. Mont. Code § 39-2-313. Effective October 1, 2023, adults 21 years and older and registered medical marijuana cardholders may: 1) possess, purchase, ingest, inhale, or transport up to one ounce of marijuana; 2) transfer, deliver, or distribute up to one ounce of marijuana to another adult over age 21 or registered cardholder; and 3) possess, plant, or cultivate up to two mature marijuana plants and two seedlings in a private residence or four mature marijuana plants and four seedlings for a registered cardholder provided they meet certain cultivation requirements. Mont. Code § 16-12-106. However, the law is limited and does not require employers to permit or accommodate possession or use of marijuana in the workplace or on their property, does not prohibit employers from disciplining employees for violating a workplace drug policy or for working while intoxicated by marijuana, and does not prevent an employer from declining to hire, discharging, disciplining, or otherwise taking an adverse employment action against an individual because of their violation of a workplace drug policy or working while intoxicated by marijuana. Mont. Code § 16-12-108(5)(a-c).

Additionally, if an employee who is not a registered medical marijuana cardholder fails to pass or refuses to take a drug test in violation of a lawful written workplace drug policy and is discharged, they will be disqualified from receiving unemployment benefits. Mont. Code § 39-51-2303.

### **Break Time to Express Milk**

The state of Montana requires all state and county governments, municipalities, school districts, and the university system to make reasonable efforts to provide an area close in proximity to the workplace, other than the bathroom, to allow an employee to express milk. Mont. Code § 39-2-216(1). Public employers are encouraged, but not required, to provide nursing mothers who return to work, a private area to express milk and facilities for milk storage. Mont. Code § 39-2-216(2). Montana does not require public or private employers to pay for time taken to express milk and public employers are not required to provide break time if it would unduly disrupt the employer's operations. Mont. Code § 39-2-217.

### **Meal Breaks**

The state of Montana has no law regulating meal breaks or rest periods. If a break is offered to employees, that time is paid time. Meal breaks are only paid time if the period is half an hour or longer and the employee is completely relieved from duty. MT Dept. of Labor and Industry FAQ.

### **Minimum Wage and Overtime**

Effective January 1, 2024, the minimum wage for most businesses is \$10.30 per hour. Businesses not covered by the federal Fair Labor Standards Act which earn \$110,000 or less in annual gross sales have a minimum wage rate of \$4.00 an hour. Montana does not permit a tip credit. Mont. Code § 39-3-409.

Provisions governing overtime pay can be found at Mont. Code § 39-3-405. Generally, if an employee works more than 40 hours in a workweek, they must be compensated at a rate of at least one and one-half times the regular rate of pay at which they are employed, although this does not apply to agricultural employees.

### **Wage Recordkeeping**

Effective March 9, 2024, Montana implemented an administrative rule to ease the disparity between state and federal recordkeeping requirements. Montana adopted 29 CFR 516.1 through 516.8 (with the exception of 29 CFR 516.6). Montana replaced 29 CFR 515.6 with a new rule that requires each employer to maintain records on basic employment and earnings records and wage rate tables for at least three years. The new rule also clarifies provisions on order, shipping, and billing records, along with records of additions to or deductions from wages paid. Moreover, Montana adopted 29 CFR 516.25 through 516.27 and chose not to adopt 29 CFR 516.30 which was replaced with new a rule requiring employers to maintain and preserve records for learners, apprentices, students, student-employees, or workers with disabilities under special certificates the same way as other employees in that role. Mont. Admin. R. 24.16.3019.

### **Final Payments**

When an employer discharges or lays off an employee, the employer must pay the employee all wages due immediately upon separation (within four hours or the end of the business day, whichever occurs first), unless the employer has a written personnel policy that extends the time for payment of final. MT Dept. of Labor and Industry FAQ. When an employee quits, the employer must pay the employee all wages due by the next regular payday or within 15 days of the separation from employment, whichever occurs first. Mont. Code § 39-3-205.

### **Unemployment Insurance**

The Unemployment Insurance Act was enacted to protect the public good and the general welfare of the citizens of Montana because unemployment is a serious menace to the health, morals, and welfare of the people. Mont. Code § 39-51-102. The state of Montana prohibits an employer from forcing an employee to pay for the employer's contributions, as well as coercing the employee to waive, release, or commute their rights to unemployment benefits. Mont. Code § 39-51-3102. Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own.

The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. No deduction from the employee's wages will be used to pay for this coverage. Unemployment benefits are administered by the Montana Department of Labor & Industry. Mont. Code § 39-51-2102 and Mont. Code § 39-51-2103.

## **Workers' Compensation**

The Workers' Compensation Act (Act) applies to every employer in Montana with three or more employees and to those in the construction industry. Employees who suffer injuries and/or occupational diseases arising out of, and in the course of their employment may be eligible to receive several types of benefits under the Act. Under the Act, a workplace injury must be reported to the employer immediately; failing to report an injury in a timely manner may result in a denial of benefits. Mont. Code § 39-71-101 *et seq.* Effective October 1, 2021, a payment of up to \$10,000 is required for the reasonable burial expenses of an employee whose death is the result of an accidental injury arising out of the employment and happening in the course of the employment. Mont. Code § 39-71-725.

Unlike some states, Montana recognizes a private cause of action for retaliation under the Act. If an employer discriminates against an employee because they have asserted their rights under the Act, the employer may have to pay a fine to the Second Injury Trust Fund. Mont. Code § 39-71-317; *Whidden v. Nerison*, 981 P.2d 271, 273 (Mont. 1999).

## **Child Labor**

Minors aged 16 to 17 cannot work in certain occupations, except as an apprentice, student-learner, or student-employee under certain conditions. Minors aged 14 to 15 cannot work in certain occupations unless an exemption applies under the Child Labor Standard laws. They also cannot be employed during school hours, except as permitted for a work experience or career exploration program. However, such minors may work outside of school hours in certain occupations, but not before 7:00 a.m. or after 7:00 p.m. (after 9:00 p.m. during periods outside the school year) and not more than three hours on a school day, 18 hours in a school week, eight hours on a nonschool day, or 40 hours in a nonschool week. Minors under the age of 14 generally cannot be employed in, or employed in connection with, an occupation. On October 1, 2021, Montana amended the child labor law to exclude children or youth aged 16 or 17 as minors if they are student employees, under the supervision of a qualified and experienced person, and they are given safety instructions by the employer. Mont. Code § 41-2-110. The laws may be found at Mont. Code § 41-2-102 *et seq.*

## **Gun Laws**

Montana has no laws that force employers or businesses to allow guns in the workplace or on privately held property. Montana law (Mont. Code § 45-8-316 through § 45-8-328) prohibited the carrying of concealed weapons inside city or town limits, but in 2021 the state amended the law to only exclude carrying concealed weapons in specified places such as school zones or government buildings.

## **Additional Laws and Regulations**

### **Social Media**

According to Mont. Code § 39-2-307, an employer may not require or request an employee or prospective employee to disclose information relating to their social media account. This includes their username and password or content posted unless the employee engaged in work-related misconduct or criminal defamation, as provided in Mont. Code § 45-8-212. Effective October 1, 2023, an employer may not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or job applicant for legal expressions of free speech on personal social media, unless such expression violates an employer's written policy or violates the terms or conditions of the employer's employment contract.

### **Equal Pay**

In the state of Montana, it is illegal for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind. Mont. Code § 39-3-104.



### **Covid-19 Vaccinations**

In the state of Montana, it is illegal for a person or government entity to discriminate against individuals seeking employment opportunities based on the person's vaccination status or whether the person has an immunity passport. Mont. Code § 49-2-312; Montana Supreme Court in *State v. Nelson*, 283 Mont. 231, 941 P.2d 441 (1997).

### **Worker Adjustment and Retraining Notification Act (WARN Act)**

In Montana, employers who are planning a plant closing or a mass layoff are required to give affected employees at least 60 calendar days' notice of the impending closing or layoff. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employers from voluntarily providing longer periods of advance notice. Not all plant closings and layoffs are subject to the Act, and certain employment thresholds must be met before the Act applies. The Act sets out specific exemptions and provides for a reduction in the notification period in particular circumstances. Damages and civil penalties can be assessed against employers who violate the Act. 20 C.F.R. § 639.1.

### **Tip Pools**

Effective May 3, 2021, an employer may impose a tip pooling agreement. The employer must notify their employees of the required tip pooling agreement, is prohibited from participating in the tip pool, may not include exempt salaried managers or supervisors, and may control an employee's tips only to distribute tips to the employee(s). Mont. Code § 39-3-218.

### **Whistleblower Award and Protection Act**

Effective March 2, 2021, the Whistleblower Award and Protection Act provides monetary awards to whistleblowers and provides protection for those who make whistleblower complaints. The amount of the award is at the discretion of Montana's securities commissioner, but the aggregate amount may not be less than 10 percent or more than 30 percent of the monetary sanctions in the administrative or judicial action. Further, the commissioner must consider certain factors, such as the significance of the original information provided by the whistleblower to the success of the administrative or judicial action. Mont. Code § 30-10-1102 *et seq.*