

MONTANA



MONTANA QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

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](#) & [Mont. Code § 39-2-904\(1\)\(b\)](#). Effective March 31, 2021, if not specified by the employer, employees have an automatic probationary period during their first 12 months where an employer may terminate the employee at will, with the broadest discretion when making a decision to discharge a manager and/or supervisor. [Mont. Code § 39-2-910](#); See also [Mont. Code § 39-2-904](#).

Right-to-Work Laws

Montana is not a right-to-work state, which means union membership or continued membership can be a condition of employment. Montana proposed a right-to-work bill ([HB 251](#)) that died in the House on April 29, 2021. Effective October 1, 2021, it is an unfair labor practice for a public employer to interfere with, restrain, or coerce employees in the exercise of their rights as guaranteed in [Mont. Code § 39-31-201](#). [Mont. Code § 39-31-401](#).

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. [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 through § 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 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, per [§ 49-2-311](#) of the Montana Code Annotated, requires that an employee who indicates an intent to return at the end of a maternity leave be reinstated to their original job or an equivalent position with equivalent pay, seniority, retirement, fringe benefits, and other service credits, unless the employer is a private employer with circumstances that have changed to make it unreasonable or impossible to do so. [Mont. Admin. R. 24.9.1207](#).

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 healthcare 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](#); see also [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. 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 and business days." [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 employment contract or established policy. 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](#); see also [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](#); see also [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 use lawful products such as marijuana and tobacco. [Mont. Code § 39-2-313](#). In January 2022, most of the revised marijuana laws found in Sections 1-41 of ([HB 701](#)) went into effect. However, if an employee who is not a registered medical marijuana cardholder violates the employer's written workplace drug policy, they can be discharged. [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](#). Montana does not require employers to pay for time taken to express milk. [Mont. Code § 39-2-217](#).

Meal Breaks

The state of Montana has no law regulating meal breaks or rest periods. The state only requires paying the employee for time they work during a break. [Mont. Admin. R. 24.16.1006](#).

Minimum Wage and Overtime

Effective January 1, 2022, the minimum wage for most businesses is \$9.20 per hour. Employers still must comply with federal wage laws and regulations because Montana does not allow employers to pay less than the minimum wage. [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 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

Every employer shall make and keep, in or about the premises wherein any employee is employed, for at least three years: a record of the name, address, occupation, rate of pay, and amount paid each pay period to each employee, in addition to any information as the director of the Department of Labor shall prescribe by regulation as necessary. [Mont. Admin. R. 24.16.6102](#); see also [Mont. Admin. R. 24.8.107](#).

Final Payments

When an employer discharges or lays off an employee, the employer must pay the employee all wages due immediately upon separation, unless the employer has a written personnel policy that extends the time for payment of final wages to the employee's next regular payday or within 15 days, whichever occurs first. When an employee quits, the employer must pay the employee all wages due by the next regular payday or within 15 days, 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](#) & [Mont. Code § 39-51-2103](#).

Workers' Compensation

The Workers' Compensation 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. [Whidden v. John S. Nerison, Inc., 981 P.2d 271, 273 \(Mont. 1999\)](#).

Child Labor

Generally, the minimum age for employment in Montana is 14. At age 16, a child may be employed for most work other than work in specified hazardous or dangerous fields, such as demolition, logging, mining, or with radioactive materials. There are restrictions for places of work dealing with minors, as well as on the hours of the day the minor may work. On October 1, 2021, Montana amended the child labor law to exclude children or youth 16 or 17 years old as minors if they are student-employees and under supervision of a qualified and experienced person. [Mont. Code § 41-2-110](#). The laws may be found at [Mont. Code § 41-2-101 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 ([HB 102](#)) amended that to only exclude carrying concealed weapons in specified places such as school zones.

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](#).

Equal Pay

In the state of Montana, it is illegal for a government agency, public or private employer, 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 § 50-16-502](#); see also [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 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 its 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 24, 2021, the Whistleblower Award and Protection Act provides monetary awards to whistleblowers and provides protection for those who make whistleblower complaints. [Mont. Code § 30-10-1102](#).