

STATE EMPLOYMENT REGULATIONS FOR MONTANA

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STATE EMPLOYMENT REGULATIONS FOR MONTANA

What's New

010107 – As of January 1, 2007 Montana's minimum wage is \$6.15 per hour.

010107 – New sections added on Breastfeeding Rights, Drug Testing and Smoking in the Workplace.

072408 – As of July 24, 2008 Montana's minimum wage will match the federal minimum of \$6.55 per hour.

072409 – As of July 24, 2009 Montana's minimum wage will match the federal minimum of \$7.25 per hour.

010513 - The following sections were changed: Family Leave, Jury Duty, Discrimination, Military Leave, Payment of Wages, Child Labor, Voting and Minimum Wage. The following sections were added: New Hire Reporting and Job Reference Liability.

010114 0 Effective 1/1/14 the minimum wage is \$7.90

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Introduction

Employment laws vary from state to state with some being more employee-friendly than others. Federal regulations set minimum standards of worker protections that all employers of a given size must meet. Individual states, however, are free to grant workers additional or expanded rights or protections above this federal minimum.

Virtually all employers in the U.S. are subject to federal employment regulations. Only the smallest, strictly local employers are not subject to federal regulations. If an employer does any of the following, they are participating in interstate commerce and are subject to federal employment regulations:

- Production of goods for commerce, such as transportation or communication
- Use of mail over state lines
- Interstate communications using the telephone
- Use of the Internet over state lines
- Interstate communications using electronic mail
- Make purchases from out-of-state vendors
- Sell to customers in other states

This summary of employment regulations does not include information for those few employers not subject to the federal minimum employment regulations.

Many states have regulations for public employers that are different than those for employers in the private sector. This document also does not include information on regulations (federal and state) that apply only to public sector employers.

In this document we summarize the workplace regulations and worker protections available in Montana. Although not an exhaustive list, it covers the major topics small to mid-sized employers must deal with on a regular basis. Covered areas include:

- Wage, hour and overtime rules (including child labor and break rules);
- Leaves of absence (family leaves, voting time and jury duty);
- Discrimination and harassment regulations; and
- State rules on continuation of benefits.

The federally mandated, but state run new-hire reporting requirements are covered under a separate document, available for download from Libretto or from the Agent 77 store.

The following Quick View table summarizes these regulations. This is followed by a more detailed description of these regulations. Please be sure to read both carefully to understand your responsibilities under Montana and federal law. Also, see the resources section below for reference websites and Libretto tools that can help you comply with these regulations.

QUICK VIEW OF STATE EMPLOYMENT REGULATIONS FOR MONTANA

Topic	Montana Regulation
Minimum Wage	<ul style="list-style-type: none"> • \$7.90 / hour • No tip credit is allowed • Some localities have a higher minimum
Overtime	Non-exempt employees must be paid at least 1.5 times their regular rate for hours worked over 40 in a given week
Payment of Wages	<ul style="list-style-type: none"> • Employees must be paid at least semi-monthly, no more than 10 days after the close of the period. • Final paychecks must include any accrued vacation. • Final paychecks must be delivered no later than the following payday or 15 days after the last day of employment, whichever is earlier for voluntary terminations and on the last day of employment for dismissals. • Employees must consent to electronic wage payments.
Work Hours and Breaks	Montana has no break time rules.
Child Labor	<ul style="list-style-type: none"> • Federal and Montana law prohibit minors in certain occupations. See the U.S. Department of Labor and the Montana Department of Labor & Industry for information on these prohibitions (contact information is in the reference section). • See the details section below for restrictions on hours minors may work
Family Leave	<ul style="list-style-type: none"> • Montana requires all employers to: <ul style="list-style-type: none"> ○ Offer, but not require, reasonable time for pregnancy leave ○ Leave is unpaid, but employees must be able to use any accrued paid sick or disability leave ○ Employee must be reinstated to same or equivalent position after completion of leave • Employers with 50 or more employees: <ul style="list-style-type: none"> ○ Must grant up to 12 weeks of unpaid family medical leave to employees who have completed a year of service or 1250 hours ○ Leave must be granted for birth or adoption of a child, serious medical condition of the employee, to care for a family member with a serious medical condition, qualifying exigency for military leave and illness/injury of covered service member for leave. ○ Employee must be reinstated to same or equivalent position after completion of leave ○ Benefits must be maintained during leave
Jury Duty	<ul style="list-style-type: none"> • Leave is required, but is unpaid • Employee must be reinstated to same position after completion of jury duty

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Voting Time	Montana has no voting time rules except employers cannot influence employees' political opinions and actions.
Military Leave	<p>The Federal Law outlined below</p> <ul style="list-style-type: none"> • Employers must grant up to 5 years of military leave • Employee must be reinstated to same or equivalent position after completion of military leave • Employers may not terminate or threaten to terminate any employee called to military service • Special benefit rules apply for military leave • Montana has employment and re-employment rights detailed below.
Breastfeeding Rights	Mothers must be allowed to breastfeed their child in any place that they otherwise are allowed to be. Employers are not required to provide any special time off or location for this.
Smoking in the Workplace	Montana prohibits smoking in any indoor work space. For exceptions, see below.
Drug Testing	Employers may implement a pre-employment or random drug testing program, provided that it applies to all applicants and employees and that the employer has a written policy including a employee acknowledgement that they have received the policy
Discrimination and Harassment	Montana prohibits employers from discriminating based on national origin, race or color, religion, age, physical or mental disability, marital status or sex (including sexual harassment, pregnancy, childbirth, and other pregnancy-related conditions) and lifestyle.
New Hire Reporting	Employers must report certain information about hires/rehires to the state within 20 days.
Job Reference Liability	<ul style="list-style-type: none"> • Montana does not limit the civil damage liability of private employers who disclose employment information. • Service letters are required.
Continuation of Benefits	Montana has no provisions for continuation of health care benefits for employees of companies with fewer than 20 employees

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Wage, Hour and Overtime Rules

Employers are subject to the federal minimum wage, hour and overtime rules through the Fair Labor Standards Act. This act specifies that businesses that do at least \$500,000 in gross revenue, as well as all health care facilities and schools are subject to the federal rules. Also, employers involved in interstate commerce are subject to the federal rules.

Minimum Wage

Montana minimum wage is \$7.90 per hour. Montana does not allow employers to take a tip credit for their tipped employees; all employees must be paid at least the minimum wage.

Be aware that certain local governments in Montana have a higher minimum wage for employees in their jurisdictions. Be sure to contact your city or county government to see if there are any local minimum wage rules for your business.

Finally, both federal and Montana regulations allow employers to apply for licenses to pay sub-minimum wages to certain disabled persons. Please contact the U.S. Department of Labor or the Montana Department of Labor & Industry for more information on applying for these licenses. (Contact information for both are listed in the reference section below.)

Overtime

Montana has the same overtime rules as the federal government. That is, for any hours worked over 40 in a given week, non-exempt employees must be paid at least one and one-half times their regular pay.

Like the federal rules Montana exempts certain employees from minimum wage and overtime rules. Excluded employee classes include: executive, administrative, professional, outside salespeople and computer professionals. (Use Libretto's FLSA Resource Package for help in determining whether a given employee is exempt). Montana also permits exemptions for certain small employers not involved in interstate commerce. See the Montana Department of Labor & Industry web site for a list of these exemptions.

Payment of Wages

Montana law requires that employees be paid at least semi-monthly, and payment must be made no more than 10 days after the close of that period. These regular pay periods must be established and published for all employees.

Montana requires that a terminating employee be paid for any accrued vacation in addition to all wages earned. Final paychecks must be delivered no later than the following payday or 15 days after the last day of work, whichever comes first, when the employee leaves voluntarily. When an employee is terminated involuntarily, final paychecks must be delivered the last day of employment. Deductions from the final paycheck may not be made without the employee's written consent, unless required by law.

Employers may not require employees to be paid electronically.

Work Hours and Breaks

Montana has no break time rules.

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Child Labor

Employers who employ minors less than 16 years of age are subject to strict limits for hours worked per day and per week for their minor employees:

1. When school is in session, children 14 and 15 years of age may NOT work:
 - During school hours, unless employment is part of a vocational training program;
 - More than 3 hours per day, and
 - More than 18 hours per week.
2. When school is NOT in session (including summer vacations and holidays), children under the age of 16 may NOT work.
 - More than 8 hours per day; nor
 - More than 40 hours per week.
3. Daily hours of work may not be before 7:00 AM or after 7:00 PM except between June 1st and Labor Day when working hours may be extended to 9:00 PM.
4. A minor who is 14 or 15 years of age and who is enrolled in and employed pursuant to a school-supervised or administered work experience or career exploration program approved by the Department of Labor and Industry or the Office of Public Instruction may be employed up to 23 hours in a week when the program is in session.

There are no work hour restrictions for minors 16 and 17 years of age.

Both federal and Montana law prohibits minors from working in hazardous or certain other occupations. Please contact the U.S. Department of Labor or the Montana Department of Labor & Industry for more information on restricted occupations for minor employees.

Leaves of Absence

Family Leave

Employers must grant employees a reasonable leave of absence for pregnancy leave, but cannot require employees to take this leave. This leave need not be paid, however, employees must be able to use any paid sick or disability leave for the pregnancy. All employees, including fathers, must be able to use any accrued sick leave to attend to a newborn or new child placed for adoption. Also, employers may not terminate an employee due to pregnancy and after completion of pregnancy leave the employee must be reinstated to the same or an equivalent position (as regards to salary, benefits and seniority).

Federal law requires that employers with 50 or more employees must grant up to 12 weeks of unpaid family medical leave to employees who have completed a year of service or 1250 hours. This leave must be granted for the birth or adoption of a child, serious medical condition of the employee, to care for a family member with a serious medical condition, qualifying exigency for military leave and illness/injury of covered service member for leave. After completion of the leave the employee must be reinstated to the same or an equivalent position (as regards to salary, benefits and seniority). Also, benefits, such as health care coverage and retirement benefits, must be maintained during leave.

Voting Time

Montana has no voting time leave provisions; however an employer is prohibited from influencing an employee's political opinions and actions.

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Jury Duty

Employers must provide leave for jury duty, but need not pay for the leave. Also, employers may not terminate or threaten to terminate any employee called to jury duty, and employees must be restored to their position within the company as if they had been on furlough.

Employees covered by FLSA exemptions must be paid their full salary (minus jury duty stipend) or risk losing their exemption status.

Military Leave

Federal law requires that employees must be granted up to 5 years of military leave and must be restored to their position (or an equivalent position) within the company as if they had been on furlough. Also, employers may not terminate or threaten to terminate any employee called to military service, Please see Libretto's White Paper on USERRA for more details on military leave.

Montana provides that 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 or application for membership in the state organized militia or because the person exercised his/her rights under the Montana Military Service Employment Rights 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 employee's sick, vacation, military or other accrued leave at the employee's discretion.

Employees are entitled to reemployment with the same seniority, status, pay, pension and other benefits as if they had not been absent for duty, with some exceptions.

Other Employment Regulations

Breastfeeding Rights

Under Montana law mothers may not be prohibited from breastfeeding their child in any location where they are otherwise authorized to be. However, employers are not required to provide any special time off or place for breastfeeding or expressing of breast milk.

Smoking in the Workplace

Montana prohibits smoking in any enclosed public space, including most private work places. Exceptions include private homes (not used for commercial child, adult or health care), designated smoking rooms at hotels & motels, stand-alone bars and sites used in conjunction with the cultural activities of American Indians.

Drug Testing

Employers may implement a pre-employment or random drug testing program, provided that they have a written policy describing the program, including a notice given to applicants and employees and written acknowledgement that the employee or applicant has received the policy, and that testing apply to all employees.

New Hire Reporting

Employers must report new employee/rehire's name, SSN, address (both mailing and residential), date of hire as well as employer's name, address and FEIN to the state within 20 day of hire or rehire on form W-4 or the state new hire reporting form.

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Job Reference Liability

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

Montana 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.

Employers are required to furnish a discharged employee, upon demand, a complete statement of the reasons for the employee's termination. Employers that fail to comply with service letter requirements may not furnish a statement of the reasons for discharge to any person.

Discrimination and Harassment

Montana prohibits discrimination or harassment based on:

- National origin
- Race or color
- Religion
- Age
- Mental or physical disability
- Marital status
- Lifestyle discrimination (employers cannot refuse to employ or discriminate against an individual because the individual legally uses a lawful product off the employer's premises during non-working hours.
- Sex (including sexual harassment, pregnancy, childbirth, and other pregnancy-related conditions)

Informed consent must be obtained before an individual is tested for AIDS and disclosure of AIDS test results or the identify of anyone being tested for AIDS is prohibited, except as provided under the state Uniform Health Care Information Act.

Employers with more than 15 employees are subject to GINA that prohibits discrimination based on genetic testing results.

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.

Whistleblowing is protected.

Employers are required to post, in conspicuous location on their premises, a notice regarding employee rights prepared or approved by the Commission of Human Rights.

State Continuation of Benefits

Montana has no provisions for continuation of health care benefits for employees of companies with fewer than 20 employees (companies with 20 or more employees are subject to the federal COBRA regulations).

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Resources/Posters

Montana Department of Labor & Industry

<http://erd.dli.state.mt.us/>

United States Department of Labor

<http://www.dol.gov/>

Montana New Hire Reporting

www.dphhs.mt.gov/csed/relatedtopics/employerinformation.shtml/

Montana Commission for Human Rights

erd.dli.mt.gov>Human Rights/

Related Libretto Products

FLSA Resource Package (for help in determining overtime exempt / non-exempt status of employees)

Overtime Guidelines

Break Period Guidelines

Family Medical Leave of Absence Policy

Military Leave of Absence Policy

Jury Duty-Witness Leave Policy

Voting Time Policy

Prohibited Harassment and Nondiscrimination Policy & Employee Acknowledgement

Drug & Alcohol Testing Policy & Release Forms

Guidelines on Smoking In the Workplace

Guidelines on Verification of Employment and Providing References

COBRA Continuation Coverage Policy

General Notice of COBRA Continuation Coverage Rights

COBRA Continuation Coverage Election Information: Notice And Form

New Hire Reporting for Montana