


Employment Laws – Federal and State

SHRM State Conference
May 1, 2019

Presented by:

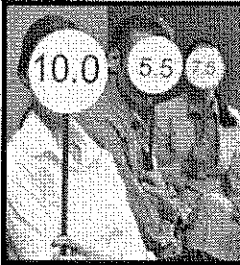


Discrimination

Title VII & Age Discrimination Act (ADEA)

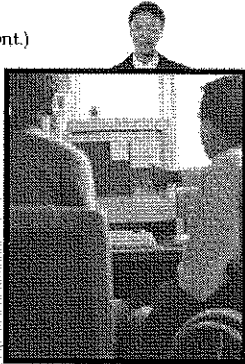
What you should not do:

- Base employment decisions on race, color, religion, national origin, sex, or age
- Make assumptions about an individual's abilities, interests, and aspirations
- Play favorites
- Deny protected employees equal opportunities

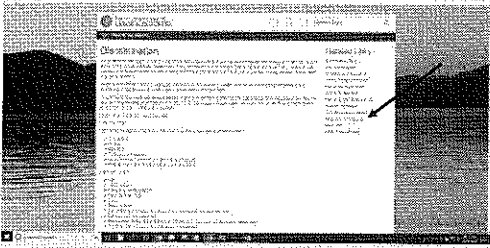


Discrimination (cont.)

- What you should do:
 - Use objective, job-related criteria for all employment decisions
 - Evaluate employees based on job performance not personal attributes
 - Apply job standards fairly and consistently
 - Make sure all employees have equal opportunities



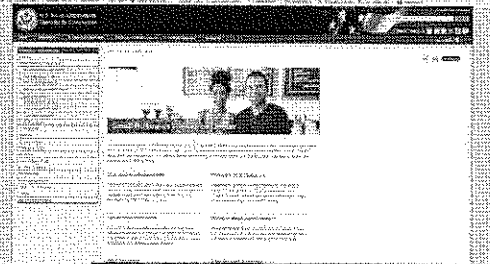
Montana Human Rights Act



The screenshot shows a webpage with a header for the Montana Human Rights Act. Below the header is a navigation menu with several links. A red arrow points to the 'Home' link. The main content area contains text about the act, and there is a sidebar on the right with more links. The URL <http://erd.dli.mt.gov/human-rights> is displayed at the bottom of the screenshot.

<http://erd.dli.mt.gov/human-rights>

HRB Claims Process




The screenshot shows a webpage titled 'HRB Claims Process'. It features a large image of two people in a meeting. Below the image is a list of steps or information related to the claims process. The URL <https://www.eeoc.gov/employers/smallbusiness/index.cfm> is displayed at the bottom of the screenshot.

<https://www.eeoc.gov/employers/smallbusiness/index.cfm>

Harassment

- Title VII
- What you should not do:
 - Allow employees to make unwelcome sexual advances to coworkers
 - Tolerate environment in which employees feel threatened or abused
 - Ignore harassment or complaints



A black and white photograph of a woman with glasses, wearing a dark jacket, sitting in a chair. She is looking directly at the camera.

Harassment (cont.)

What you **should** do:

- Explain the antiharassment policy to employees
- Encourage employees to come to you with harassment complaints
- Require employees to treat one another with respect
- Report and investigate complaints
- Take appropriate action

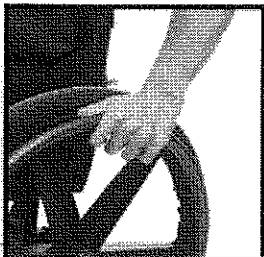


Disabilities

Americans with Disabilities Act (ADA)

What you **should not** do:

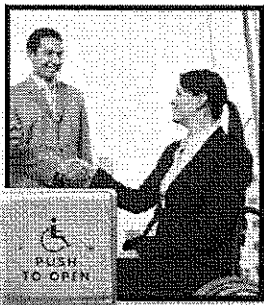
- Ask about disabilities at job interview
- Deny job opportunities because of disabilities
- Make assumptions about people's abilities
- Require applicant to take physical exam before making job offer



Disabilities (cont.)

What you **should** do:

- Define a job's essential functions
- Ask all applicants if they can perform the essential functions of the job
- Provide reasonable accommodation
- Offer equal employment opportunities to workers with disabilities

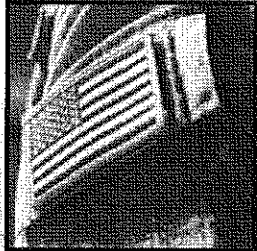


Military Service

•Uniformed Services Employment and Reemployment Rights Act (USERRA)

•What you should not do:

- Terminate employee or take away benefits
- Deny promotions, raises, or other opportunities
- Refuse to reemploy a worker returning from military leave



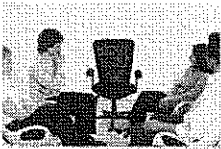
Military Service (cont.)

What you should do:

- Ensure smooth transition
- Keep in touch with employees on leave
- Reemploy returning workers in "escalator" positions
- Accommodate employees
- Help returning workers readjust to the job



Treating Employee Time Away From Work Properly



- Breaks/Meal Periods
- Jury Duty/Witness Leave
- Sick
- Vacation
- Paid Time Off (PTO)
- Montana Maternity Leave Act
- Family & Medical Leave Act

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What is FMLA?



- Family Medical Leave Act
- Federal law -- in effect 20 years ago
- Provides:
 - 12 workweeks of unpaid leave per year;
 - Maintenance of group health benefits during leave;
 - Job restoration after leave; and
 - Certain military family leave entitlements
- Also requires employers to keep certain records

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Qualifying Reasons for FMLA:



- Employee's own serious health condition
- Care of an immediate family member (spouse, child, parent) with a serious health condition;
- Birth and care of newborn child of employee;
- Placement of child with employee for adoption or foster care; or
- Qualified military leave

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FMLA:

Covered Employers

- Public agencies, including state, local and federal employers, local education agencies (schools), and
- Private sector employers who
 - Employ 50 or more employees within a 75-mile radius, in 20 or more workweeks in current or preceding calendar year

MT MATERNITY:

- Any employer with one or more employees

Eligible Employees

For *FMLA* eligibility, employee must:

- Have worked for the employer for a total of 12 months
- Have worked at least 1250 hours during the 12 month period immediately before leave begins
- Be employed at a worksite where 50 or more employees are employed by the employer within 75 miles

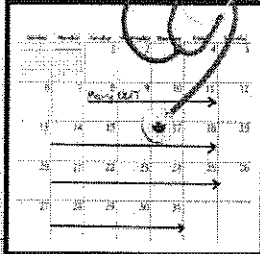
Under the Montana Maternity Leave Act, any pregnant employee is eligible

Medical Leave

•Family and Medical Leave Act (FMLA)

•What you should not do:

- Try to prevent an employee from taking leave
- Deny intermittent leave
- Refuse to reinstate a returning worker
- Take away accrued benefits



Medical Leave (cont.)

•What you should do:

- Check eligibility status
- Require employees to give notice of leave
- Ensure their jobs are adequately covered
- Keep in touch with employees on leave
- Accommodate the need for intermittent leave



Pregnancy and Maternity

•Pregnancy Discrimination Act (PDA)

•What you should not do:

- Refuse to hire or promote because of pregnancy
- Ask applicants about pregnancy
- Deny pregnant workers benefits afforded to other workers
- Refuse to reinstate a worker returning from maternity leave



Pregnancy and Maternity (cont.)

•What you should do:

- Base employment decisions on performance
- Treat pregnancy leave like any other temporary disability leave
- Permit extended maternity leave under FMLA
- Work with employees to avoid problems



20 Montana Maternity

- An employer may not refuse to hire an applicant because she is pregnant or plans to become pregnant
- An employer may not fire or discharge an employee because of her pregnancy
- An employee is entitled to a reasonable leave of absence for the temporary disabilities associated with childbirth, delivery and related medical conditions



21 Montana Maternity

- The employer may not place restrictions on the leave which would not apply to leaves of absence for any other valid medical reason
- An employer may not require an employee to take a mandatory maternity leave for an unreasonable length of time
- A pregnant employee is entitled to use any disability benefits, sick leave, vacation time, annual leave or compensatory time accrued
- An employer may not treat an employee disabled due to pregnancy less favorably than an employee with any other temporary disability under any health, medical or temporary disability plan or sick leave maintained by the employer



Montana Maternity

- An employee returning from maternity leave must be reinstated to her original job or equivalent position with equivalent pay, accumulated seniority, retirement, fringe benefits
- Exception:
 - For private employers where the circumstances have changed so much that it is impossible or unreasonable to do so

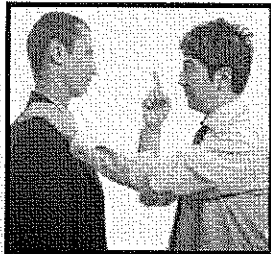
$$\frac{1}{2} = \frac{2}{4}$$

Discipline

•Title VII

•What you should not do:

- Use discipline as a weapon or punishment
- Be inconsistent
- Discipline without counseling and establishing a plan for corrective action
- Delay when a problem requires discipline



Discipline (cont.)


•What you should do:

- Base discipline on actions, not personalities
- Follow the corrective discipline policy
- Treat all similar offenses the same way
- Explain the need action
- Keep written records of disciplinary action
- Monitor performance



Discipline Policy

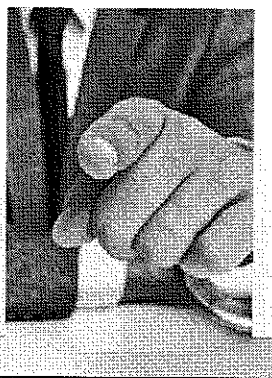
- Provides legal protection
- Reassures "good" employees
- Puts potential offenders on notice
- Protects employees from inappropriate actions of co-workers
- Gives violators the opportunity to improve



Retaliation

You should not take any adverse employment action against an employee who:


- Complains about discrimination
- Cooperates with an investigation
- Opposes discrimination or harassment



Retaliation (cont.)

What you should do:

- Keep complaint and investigation confidential
- Avoid harassment or negative treatment
- Document



Hiring and Firing

• Title VII, ADEA, ADA, GINA, USERRA, PDA

• What you should not do:

- Make hiring decisions based on appearance, accent, religion, ethnic origin
- Ask interview questions that could be considered discriminatory
- Refuse to hire a qualified individual because of age or disability



Hiring and Firing (cont.)

• What you should not do:

- Apply standards inconsistently when making termination decisions
- Fire an employee without consultation
- Focus layoffs on a particular age group, sex, or other legally protected group
- Retaliate against employees who exercise rights under employment laws



Hiring and Firing (cont.)

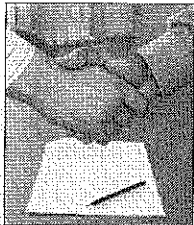
What you should do:

- Make hiring decisions based on objective, job-related criteria
- Focus on essential functions of the job
- Keep detailed performance records
- Carefully document reasons for termination
- Follow policies



The Employment Relationship

- Montana is the only state that does not recognize "at-will employment"
- Covered by Montana Wrongful Discharge From Employment Act
- Found at Mont. Code Annotated § 39-2-901 to -915



Overview of MWDEA

- Give Notice
- Allow Due Process
 - Gather the Facts
 - Is there evidence that the rule or policy was violated
 - Fair and equal treatment for infractions
 - Is the corrective action appropriate
- Establish Good Cause
- Document the Process
 - When employer has established internal policies, employee must follow first
 - Employer has 90 days to resolve internally
 - Employer has 7 days after discharge to provide discharged employee with internal written policy

Elements of Wrongful Discharge



- Retaliation for refusal to violate public policy
- No "good cause" after probation completed
 - If no probationary period is established by the employer, then 6 months will be the standard
- Employer violates own written personnel policy

Due Process



Establish "Good Cause"

- Failure to perform duties
- Disruption of business operations
- Other legitimate business reason

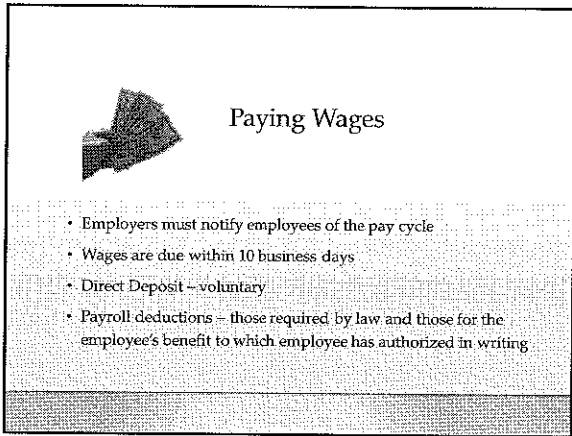
Ensure that Due Process is...

Part of the disciplinary process

- Ongoing communication
- Documentation
- Meetings
- Handbook/signed release
- Performance appraisal/signature of employee
- Consultation with company's legal and Human Resources Departments prior to taking any action

Compliance Guidelines for Conducting a Termination Meeting

- Make sure you have legitimate grounds and adequate proof before terminating workers
- Take the requirements of employment laws into consideration
- Make sure you've documented your case for termination accurately and completely
- Use termination as a last resort
- Remember that it is easier to make good hiring decisions than resort to firing




Paying Wages

- Employers must notify employees of the pay cycle
- Wages are due within 10 business days
- Direct Deposit – voluntary
- Payroll deductions – those required by law and those for the employee's benefit to which employee has authorized in writing

Final Wages – Needs Written Policy

- Voluntary termination – due at next regular payday or 15 days from date of separation



- Involuntary termination – due immediately (within 4 hours or by end of day, whichever occurs first), unless company has final pay policy, then due at next regular payday or 15 days from date of separation

Employment Laws - Resources

- <http://dli.mt.gov/resources/laws>

