



## MONTANA'S MINIMUM WAGE

(Effective 1/1/2023)

**\$9.95\***

\*The minimum wage is subject to a cost-of-living adjustment based on the Consumer Price Index no later than September 30<sup>th</sup> of each year. Montana's minimum wage is to be the greater of the federal or current state minimum wage.

**Exception:** A business not covered by the Fair Labor Standards Act whose gross annual sales are \$110,000 or less may pay \$4.00 per hour. **However**, if an individual employee is producing or moving goods between states or otherwise covered by the Fair Labor Standards Act, that employee must be paid the greater of either the federal minimum wage or Montana's minimum wage.

**NO TIP CREDIT, TRAINING WAGE OR MEAL CREDIT IS ALLOWED IN THE STATE OF MONTANA**

### OVERTIME PAY

Employees who work in excess of 40 hours in a workweek must receive overtime compensation at a rate of at least 1½ times their regular hourly rate for those hours worked over 40. There are exclusions from overtime pay. This information can be obtained by calling our office at (406) 444-6543.

### PAYMENT OF WAGES

**WHILE STILL EMPLOYED:** An employee must be paid within 10 business days after the end of the pay period.

**WHEN SEPARATED FROM EMPLOYMENT:** When an employee quits, wages are due on the next scheduled pay day for the period in which the employee was separated, or 15 calendar days, whichever occurs first.

**TERMINATED FOR CAUSE:** When an employee is laid off or discharged, all wages are due immediately (within four hours or end of the business day, whichever occurs first), unless the employer has a preexisting, written policy that extends the time for payment. The wages cannot be delayed beyond the next pay day for the period in which the separation occurred, or 15 calendar days, whichever occurs first.

**FOR ADDITIONAL INFORMATION PLEASE CONTACT:**

DEPARTMENT OF LABOR & INDUSTRY  
COMPLIANCE & INVESTIGATIONS BUREAU  
PO BOX 201503  
HELENA MT 59620-1503  
PHONE (406) 444-6543  
EMAIL: [DLIERDWage@mt.gov](mailto:DLIERDWage@mt.gov)

Please visit us on the web at:  
[www.mtwagehourbopa.com](http://www.mtwagehourbopa.com)

# MONTANA LAW PROHIBITS DISCRIMINATION & RETALIATION

in employment, housing, education, public accommodations, credit, finance, insurance, & state / local government.

Discrimination is unlawful if based on one of these protected classes:

**ANY AGE**

**PHYSICAL DISABILITY**

**MENTAL DISABILITY**

**RACE / COLOR**

**NATIONAL ORIGIN**

**MARITAL STATUS**

**RELIGION/CREED**

**VACCINATION STATUS**

**FAMILIAL STATUS**  
IN HOUSING

**SEX**  
(INCLUDING PREGNANCY, SEXUAL  
ORIENTATION, & GENDER IDENTITY)

**POLITICAL BELIEFS**  
IN GOVERNMENTAL SERVICES OR  
GOVERNMENT EMPLOYMENT

FOR MORE INFO CONTACT THE MONTANA HUMAN RIGHTS BUREAU

P.O. BOX 1728, HELENA, MT 59624-1728

(406) 444-2884 OR 1 (800) 542-0807 (RELAY SERVICE 711)

[MONTANADISCRIMINATION.COM](http://MONTANADISCRIMINATION.COM)



For information on the Human Rights Bureau process, discrimination issues and filing a discrimination complaint, please contact the

**Montana Human Rights Bureau**

P.O. Box 1728  
Helena, MT 59624-1728  
Phone (406) 444-2884 or  
1-800-542-0807  
Relay Service 711

[www.montanadiscrimination.com](http://www.montanadiscrimination.com)

The Human Rights Bureau is committed to making its services available to persons with disabilities in compliance with Title II of the Americans with Disabilities Act and relevant state law. The Bureau will not exclude persons with disabilities from participating at its meetings or otherwise deny them services, programs or activities. The Bureau will also provide and accept information in alternative formats to accommodate disabilities. Persons with disabilities requiring accommodation in order to take advantage of the Bureau's services should contact the Bureau's staff at 1-800-542-0807.

**Employment Discrimination is Against the Law**



**Montana Human Rights Bureau**



**Discrimination in Employment is Prohibited if Based on These Protected Classes**

- Age (all ages)
- Religion, Creed
- Physical or Mental Disability
- Marital Status
- Race, Color, National Origin
- Sex (includes maternity, pregnancy, and sexual harassment)
- Political Belief (state and local government employment or service)

**What Is Illegal Discrimination?**

The following practices (if based on one or more of the above classes) are illegal:

- To discharge, to refuse to hire, or to discriminate against a person with respect to compensation or privileges of employment
- To deny a reasonable maternity leave or refuse to reinstate an employee following leave
- For labor unions to deny membership or otherwise discriminate against a person or member
- For employment agencies to fail or refuse to refer for employment
- To retaliate against a person who filed a complaint, participated in the investigation or opposed discriminatory practices

**Employer Alert!**

- Questions on applications should be related to skills, experience, and education important to performing the job

- Anyone who hires one or more persons is subject to the Montana Human Rights Act

- Avoid questions about an applicant's race, age, religion, medical condition, marital status, or family responsibilities

**Sexual Harassment & Unlawful Harassment**

Sexual harassment includes unwelcome verbal or physical conduct of a sexual nature when:

- Submission to the conduct is explicitly or implicitly made a term or condition of employment
- Submission to, or rejection of, the conduct is used as the basis for an employment decision
- The conduct has the effect of unreasonably interfering with work performance, or creates an intimidating, hostile or offensive work environment
- Harassment directed toward a person because of gender
- A pattern of favoritism toward sexual partners

**Examples of Sexual Harassment**

- Propositions or pressure to engage in sexual activity
- Repeated body contact
- Repeated sexual jokes, innuendoes or comments
- Constant leering or staring
- Inappropriate comments concerning appearance
- Hiring or promoting a sex partner over more qualified persons
- Harassment based upon gender in nontraditional employment

**What You Should Do**

If you are offended by sexual jokes, comments, or other sexual or gender-based conduct in your workplace, immediately inform your supervisor.

If your complaints are not resolved, or your supervisor is the alleged harasser, you should take the following steps:

- Report the sexual harassment to another supervisor or your employer
- Keep written records of the dates and facts of all sexual harassment and the names of witnesses

**Employer Alert!**

Employers may be liable for monetary compensation and other forms of relief to employees who are victims of sexual harassment by:

- The owner or manager
- Supervisors, whether or not the employer knew of the sexual harassment
- Co-workers and non-employees in the workplace, when the employer knew, or should have known of the sexual harassment and failed to take immediate corrective action

**Harassment based on any protected class is unlawful discrimination!**

**Pregnancy & Breastfeeding Pregnant Employees Have These Rights**

- Nondiscrimination in hiring
- Continued employment during pregnancy
- Reasonable maternity leave
- No mandatory unreasonable leave
- Use of accrued benefits and leave time
- Equal treatment in employee benefits and plans
- Reinstatement after maternity leave
- Employer must provide reasonable accommodations as they would for any other employee with medical limitations

**What is Reasonable Maternity Leave?**

- It is determined on a case-by-case basis. In the case of normal pregnancy and delivery, medical providers typically consider a reasonable leave to be 6-8 weeks after delivery.
- Rely on the judgment of the employee's physician or other medical provider.
- An employer is required to provide medically necessary maternity leave for the period of the employee's actual disability.
- An employer may require the employee to provide medical verification.

**Employer Alert!**

- Know your company's disability benefit policies and policies regarding sick, vacation and annual leave.
- Communicate with your pregnant employee about the anticipated need for maternity leave and put it in writing.
- Be sure the employee understands her obligations to return to work on a specified date and provide medical verification of required. Make sure the employee knows how to request an extension of her leave should complications arise.
- Replacement employees should understand that his or her employment is temporary, unless the pregnant employee resigns or you make other arrangements for reinstatement to her same or equivalent job after the maternity leave.
- If an employee plans to voluntarily resign because of her pregnancy, obtain the resignation in writing after making sure she is aware that you are prepared to grant a reasonable leave of absence as required by law.

**Advised Accommodation for Breastfeeding Mothers**

In 2007, the Montana Legislature passed legislation requiring public employers ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their child.

**Rights of Persons with Disabilities in Employment**

The Montana Human Rights Act and Americans with Disabilities Act prohibit discrimination in employment to an applicant or employee because of a physical or mental disability. An employer may have additional obligations under the federal Family Medical Leave Act.

**Employment Rights**

- Qualified persons with physical and mental disabilities:
- May not be refused an application, interview or employment because of their disability
- May not be terminated or discharged because of their disability
- Have the right to a reasonable accommodation, which would allow them to perform the essential functions of their position

**Who is Covered?**

- To be protected under the Montana Human Rights Act and the ADA, an applicant or employee with a disability must:
- Have a physical or mental impairment the substantially limits one or more major life activities; or
- Have a record of such an impairment; or
- Be regarded or perceived as having such an impairment; and
- Be able to perform the essential functions of the position with or without a reasonable accommodation.

**Requests For Reasonable Accommodation Employers**

- If an employee should request a reasonable accommodation to perform the essential functions of their job, engage in a dialogue with the employee to determine the most appropriate accommodation
- Make a reasonable accommodation, required by a person with a disability, to perform the essential job functions

- Employees should notify the employer if they need an accommodation and tell the employer what modifications are needed to perform the job.

**Reasonable Accommodation**

- Whether or not a suggested accommodation is "reasonable" will depend on factors such as cost, availability, necessity, and whether a less expensive or more convenient accommodation is available
- The employer is not required to provide the accommodation suggested by the employee, if there is an effective alternative accommodation
- An accommodation is not reasonable if it endangers any employee's health or safety, or it creates an undue hardship on the employer

**Examples of Reasonable Accommodation**

- Making all application processes accessible to persons with disabilities
- Making existing facilities used by employees readily accessible to and usable by employees with disabilities
- Restructuring the job; offering part-time or modified work schedules
- Acquiring or modifying equipment or devices
- Adjusting or modifying examinations or training materials or policies as appropriate
- Providing qualified readers or interpreters

**Perceived Disability**

Those who are "perceived" as having disabilities are protected from employment discrimination based on stereotypes, fears, or misconceptions about disability. This protection applies to decisions based on unsubstantiated concerns about productivity, safety, insurance, liability, attendance, the costs of accommodation, accessibility, worker's compensation costs or acceptance by co-workers and customers.

For more information on discrimination in the workplace, visit our website: [www.montanadiscrimination.com](http://www.montanadiscrimination.com)



For questions about the Human Rights Bureau process, discrimination issues and filing a discrimination complaint, please contact the

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Fax (406) 443-3234  
Relay Service 711  
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# Fair Housing is Your Right



## Montana Human Rights Bureau



## Discrimination in Housing is Prohibited if Based on These Protected Classes

- Age** (all ages)
- Religion, Creed**
- Physical or Mental Disability**
- Marital Status**
- Race, Color, National Origin**
- Sex** (includes maternity, pregnancy, and sexual harassment)
- Political Belief** (state and local government employment or service)
- Familial Status** (presence of children under 18 years of age)

### What Is Illegal Discrimination?

If based on a protected class, the following actions are prohibited:

- Printing or publishing any advertisement or statement that indicates a limitation or preference in the area of housing
- Refusing to rent or sell housing or otherwise deny entry into a neighborhood
- Set different terms, conditions, facilities, services or privileges for sale or rental of a housing unit
- Ask about a buyer's or renter's protected class
- Represent that available housing is not available for inspection, sale or rental
- For profit, persuade owners to sell or rent
- Deny any reasonable accommodations, at their expense, to persons with disabilities, in sales, rental and terms and conditions
- Refuse to make or purchase a mortgage loan, or fail to provide information regarding loans
- Discriminate in appraising property
- Impose different terms and conditions on a loan, such as different interest rates, points or fees

### What Type of Housing is Covered?

Montana and federal fair housing laws cover most types of housing. The law exempts owner-occupied sleeping rooms in a private residence, provided the owner rents no more than three rooms within the residence.

### Exemption for Housing for Older Persons

Housing for older persons is exempt from the familial status and age provisions of Montana fair housing if the units:

- Are occupied solely by persons who are 62 or older
- At least one person who is 55 or older resides in 80% of the occupied units, and owners publish and adhere to written policies and procedures that demonstrate the housing is intended and operated for persons 55 and older

### Sexual Harassment & Unlawful Harassment in Housing

Sexual harassment includes unwelcome verbal or physical conduct of a sexual nature when:

- Submission to the conduct is explicitly or implicitly made a term or condition of renting or purchasing a housing accommodation.
- Submission to, or rejection of, the conduct is used as the basis for refusing to rent or sell a housing accommodation.
- The conduct has the effect of unreasonably interfering with renting, making continued tenancy significantly less desirable, or creating an intimidating, hostile or offensive living environment.

### Examples of Sexual Harassment

- Propositions or pressure to engage in sexual activity
- Repeated body contact; constant leering or staring
- Repeated sexual jokes, innuendoes or comments
- A pattern of renting to individuals based on gender
- Harassing behavior based on an individual's gender owner

### What You Should Do

If you are offended by sexual jokes, comments, or other sexual or gender-based conduct in your housing accommodations, immediately inform the manager. If your complaints are not resolved, you should take the following steps:

- Report sexual harassment to the manager and the owner
- Keep written records of the dates and facts of all sexual harassment and the names of witnesses

### Owner/Agent Liability

Owners and agents may be liable for monetary compensation and other forms of relief to buyers or renters who are victims of sexual harassment.

The best tool for eliminating sexual harassment is prevention. The following steps will aid in preventing sexual harassment:

- Develop and post a written policy defining and prohibiting sexual harassment and providing a procedure for reporting sexual harassment and disciplining those who engage in it.
- Provide training for all managers and employees in sexual harassment prevention.
- Immediately investigate any report of sexual harassment by tenants or employees
- Take immediate corrective action upon determining that sexual harassment has occurred.

Harassment based on any protected class is unlawful discrimination!

### Familial Status

The 1988 Federal Fair Housing Act and the Montana Human Rights Act prohibit housing discrimination against families with children under the age of 18. Families cannot be denied housing of their choice simply because they have children.

The law protects:

- Established families with children
- Pregnant women
- Persons planning on having a family
- Persons in the process of securing legal custody of children through foster care, adoption or divorce
- Unique or unexpected circumstances, which may change the composition of a family, such as the death of parents, temporary or permanent court ordered custody, or written permission from a parent or legal guardian

### How to Recognize Housing Discrimination

Landlords, property managers, or real estate agents generally will not directly state, "we don't accept children" or "there are no kids allowed." Discrimination against families with children is subtle.

The agent may simply refuse to rent to families or tell them the housing is not available when it is. They may refuse to sell, rent or even deal with a person because they have children or they may advertise or indicate the housing is available for only certain people (adults only).

There may be attempts to discourage families by changing the terms, conditions, services and facilities. Examples include: different rules, charging additional fees, or applying more burdensome rental criteria, larger deposits, increased water charges or higher rent based on the number of people or children in a family.

There may be attempts to impose occupancy standards which prevent children from residing in a development to steer families with children away from "adult only" areas.

***All of these practices are illegal!***

### Rights of Persons with Disabilities in Housing

The Montana Human Rights Act and the federal fair housing laws prohibit discrimination in housing against a person with a physical or mental disability. It is also unlawful to discriminate against persons who reside in a housing unit with a person with a disability or to discriminate against any person associated with a buyer, seller, or renter with a disability. To be protected under Montana and federal fair housing laws, a qualified buyer

or renter must have a physical or mental impairment that substantially limits one or more major life activities, have a record of such and impairment, or be regarded as having such an impairment.

### Reasonable Accommodation Modifications

#### Renters & Buyers

- Have a duty to inform housing providers that an accommodation is needed
- May have to pay for modification costs to the unit

#### Housing Providers

- May not refuse to rent or sell housing based on a person's disability
- Where reasonable, may be required to pay for modification costs of common use facilities
- Are required to allow service animals for tenants with disabilities

### Examples of Reasonable Accommodation in Housing

- An apartment complex with a "no pets" policy must allow a visually impaired tenant to keep a guide dog.
- The owner of a mobile home must allow a tenant, whose child is in a wheelchair to install a ramp to access the unit.
- An apartment complex that offers tenant ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment in necessary to assure that she can have access to her apartment.
- A homeowner with a "no pets" policy must allow a tenant with a chronic mental illness to have a cat if medically necessary.

An accommodation is not reasonable if it endangers any tenant's health or safety or creates an extraordinary hardship on the housing provider.

### Policy & Advertising

In advertising, Montana and federal fair housing laws prohibit anyone from printing, or publishing any advertisement or statement that indicates a limitation or preference in the area of housing based on race, color,

national origin, religion, creed, age, sex, marital status, familial status, or disability.

In pre-rental inquires, the housing provider may obtain information required to make a determination on a person's ability to pay timely, follow the rules of tenancy and rental history, to determine if the potential renter is a qualified applicant. The provider may not request information concerning the race, color, national origin, religion, creed, age, familial status, sex, marital status, or physical or mental disability when inquiring about or applying for housing.

Exemption: If the housing accommodation is bona fide housing for older persons and is in compliance with state and federal laws that apply to housing for older persons, the housing provider may ask for information regarding a person's age and familial status.

### Mortgage Lending

Lenders may not take any of the following actions based on these protected classes:

- Refuse to make a mortgage loan
- Impose different terms and conditions on a loan, such as different interest rates, points or fees
- Discriminate in appraising property
- Set different terms or conditions for purchasing a loan

### What Housing Providers Can Do to Prevent Discrimination

- Develop and post a written anti-discrimination policy and discipline those who engage in discriminatory behavior
- Provide training for all managers and employees in fair housing law
- Take immediate corrective action upon determining that discrimination has occurred
- Apply standards equally to all tenants

### What Renters and Buyers Can Do

- Report incidents of discrimination to the sales person or manager
- If complaints are not resolved, report the discrimination to the broker or owner



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August 2013

## The Rights of Pregnant Employees in the Workplace



### Montana Human Rights Bureau



If you are pregnant or have recently had a child and you believe an employer has denied your right to maternity leave or you believe an employer has otherwise discriminated against you, contact the Montana Human Rights Bureau. It is important to remember that under state discrimination laws you only have 180 days to file a complaint. This means you only have 180 days from when an adverse act happens to have a written complaint filed with our office. Time may be extended if you participated in a grievance procedure. (MCA 49-2-501)

### What Does the Human Rights Bureau Do?

The Montana Human Rights Bureau receives and investigates complaints of illegal discrimination. The Human Rights Bureau is the agency responsible for enforcing the Montana Human Rights Act and the Governmental Code of Fair Practices, along with certain federal anti-discrimination statutes. The Bureau is committed to providing quality education and training opportunities to employers, employees, housing providers, tenants, and all Montana residents.

It is important to understand that we serve Montana as a neutral entity; we do not provide any type of advocacy service on behalf of the employee or the employer.

## A Pregnant Employee has the Following Rights

### Non-discrimination in Hiring

An employer may not refuse to hire an applicant because she is pregnant or plans to become pregnant.

### Continued Employment

An employer may not fire or discharge an employee because of her pregnancy.

### Reasonable Maternity Leave

An employee is entitled to a reasonable leave of absence for the temporary disabilities associated with childbirth, delivery and related medical conditions. An employer may require the employee to provide medical verification. The employer may not place restrictions on the leave, which would not apply to leaves of absence for any other valid medical reason.

### No Mandatory Unreasonable Leave

An employer may not require an employee to take a mandatory maternity leave for an unreasonable length of time.



A woman experiencing an atypical pregnancy that results in a condition that substantially limits one or more major life activities may have additional protections under disability discrimination laws. Additionally, under certain circumstances, an employer may be required to provide a woman who is pregnant with accommodations such as light duty if that accommodation is afforded to others with temporary disabilities.

### Reinstatement after Maternity Leave

An employee who has signified her intent to return at the end of a reasonable leave of absence for maternity must be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other service credits. The law provides a limited exception to this rule for private employers when the employer's circumstances have changed so much that it is impossible or unreasonable to do so. For example, an employer who has gone out of business while the employee is on maternity leave would not be required to reinstate her.



### What is Reasonable Maternity Leave?

Whether maternity leave is reasonable is determined case by case based upon the ability of the employee to perform her job. In the case of normal pregnancy and delivery, medical providers typically consider a reasonable leave to be six to eight weeks after delivery.

If the employee is unable to perform her job prior to delivery, or if there are complications such as illness or surgical delivery, necessary leave may be longer than normally required. If the employer and the employee cannot agree in establishing a reasonable period of time for the leave, the employer should rely on the judgment of the employee's physician or other medical provider who has actually examined the employee.

An employer and an employee may mutually agree to a longer period of leave, either compensated or uncompensated, than would otherwise be required by law. An employer is not required to provide maternity leave for child care beyond the period of actual disability. However, if an employer permits the use of leave beyond the period of disability, it should allow child care leave for both mothers and fathers.

As a condition of maternity leave, an employer may require the employee to provide medical verification that the employee is unable to perform her employment duties.

Leave for fathers and parents of adopted children are not required by state law (except for employees of the State of Montana) but may be required under federal law. An employer may, however, voluntarily provide for such leave.

### What About Breastfeeding?

In 2007, the Montana Legislature passed legislation requiring public employers (all state and county governments, municipalities, school districts and the university system) to provide accommodations for breastfeeding mothers.

This legislation does not require private employers to provide accommodations.

If you work for a private employer, ask your employer about their policies regarding breastfeeding and any accommodations they may be willing to provide.

A pregnant employee may have additional protections under the federal Family Medical Leave Act. For information on the laws relating to the Family Medical Leave Act, visit the U.S. Department of Labor website at [www.dol.gov](http://www.dol.gov) or call 1-866-487-9243.



### Use of Accrued Benefits and Leave Time

A pregnant employee is entitled to use any disability benefits, sick leave, vacation time, annual leave or compensatory time accrued pursuant to plans maintained by the employer for her maternity leave. If the employer maintains no such plans or benefits, the employee is entitled to maternity leave without pay.

### Equal Treatment in Employee Benefit Plans

Disabilities as a result of pregnancy, childbirth or related medical conditions are, for all job related medical conditions, temporary disabilities. 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 temporary disability or sick leave plan maintained by the employer. All benefits provided to temporarily disabled employees pursuant to such a plan must be provided to pregnant employees.



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December 2013

## The Rights of Persons with Disabilities in Employment



### Montana Human Rights Bureau



## What Does the Human Rights Bureau Do?

The Montana Human Rights Bureau receives and investigates complaints of unlawful discrimination. The Human Rights Bureau is the agency responsible for enforcing the Montana Human Rights Act and the Governmental Code of Fair Practices, along with certain federal anti-discrimination statutes. The Bureau is committed to providing quality education and training opportunities to employers, employees, housing providers, tenants, and all Montana residents. It is important to understand that we serve Montana as a neutral entity; we do not provide any type of advocacy service.



## Rights of Persons With Disabilities in Employment

The Montana Human Rights Act and the Americans with Disabilities (ADA) prohibit discrimination in employment to an applicant or

employee because of a physical or mental disability. An employer may have additional obligations under the federal Family Medical Leave Act. For information regarding this law, see the U.S. Department of Labor website at [www.dol.gov](http://www.dol.gov) or call 1-866-487-9243.

### Employment Rights

Qualified persons with physical and mental disabilities:

- May not be terminated or discharged because of their disability
- Have the right to a reasonable accommodation which would allow them to perform the essential functions of their position

### Who is Covered?

To be protected under the Montana Human Rights Act and the ADA, an applicant or employee with a disability must:

- Have a physical or mental impairment that substantially limits one or more major life activities; or
- Have a record of such an impairment; or
- Be regarded or perceived as having such an impairment

Employees and applicants must be able to perform the essential functions of the position with or without a reasonable accommodation.



## Requests for Reasonable Accommodation

When a person is or becomes disabled, he or she may need a reasonable accommodation in order to remain active in the workforce. With an effective reasonable accommodation, an employee with a disability can perform the essential functions of the job and enjoy the same benefits and privileges of other non-disabled employees. Montana's employers and employees need to be aware of their rights and responsibilities when it comes to the provision of reasonable accommodations. But, how do you figure out the right reasonable accommodation? The answer lies in a meaningful interactive dialogue. An "interactive dialogue" or "interactive process" is an opportunity for the employer and the employee to have a discussion. The parties can discuss the essential functions of the job and take a look at how a person's

disability may impact their ability to perform those functions. With this in mind, they can begin to look at different ways to address the problem. In some cases, both the disability and the type of accommodation required will be obvious. If so, an in-depth dialogue will not be necessary. In other situations, the employer may need to gather more information concerning the nature of the disability and the individual's functional limitations in order for the parties to identify an effective accommodation. Fortunately, there are extensive resources out there to assist such as the Job Accommodation Network and the Americans with Disabilities National Network.



## "Reasonable" Accommodation

Whether or not a suggested accommodation is "reasonable" will depend on factors such as cost, availability, necessity and whether a less expensive or more convenient accommodation is available.

An accommodation is not reasonable if after an independent assessment, it endangers any employee's health or safety and/or it presents an undue hardship.

## Examples of Reasonable Accommodation

- Making all application processes accessible to persons with disabilities;
- Making existing facilities used by employees readily accessible to and usable by employees with disabilities;
- Restructuring the job; offering part-time or modified work schedules;
- Reassigning the employee to vacant positions they are qualified to hold;
- Acquiring or modifying equipment or devices;
- Adjusting or modifying examinations or training materials or policies as appropriate;
- Providing qualified readers or interpreters.

**Employees should notify the employer if they need an accommodation and tell the employer what modifications are needed to perform the job.**



## Perceived Disability

People who are "perceived" as having disabilities are protected from employment discrimination based on stereotypes, fears, or misconceptions about disability. This protection applies to decisions based on unsubstantiated concerns about productivity, safety, insurance, liability, attendance, and the costs of accommodation, accessibility, workers' compensation costs or acceptance by co-workers and customers.

## Resources

Job Accommodation Network  
[www.askjan.org](http://www.askjan.org)  
1-800-526-7234 (voice)  
1-800-781-9403 (TTY)

Americans with Disabilities National Network  
[www.adata.org](http://www.adata.org)  
1-800-949-4232 (voice or TTY)

U.S. Department of Justice  
[www.dol.gov](http://www.dol.gov)  
1-866-487-9243

# MONTANA HUMAN RIGHTS BUREAU POLICY GUIDE



## POLICY GUIDE

<b>Introduction</b>	<b>1</b>
<b>Basic Discrimination Policy</b>	<b>2</b>
<b>Disabilities</b>	<b>2</b>
<b>Sexual Harassment</b>	<b>3</b>
<b>Pregnancy</b>	<b>4</b>
<b>Unlawful Harassment</b>	<b>5</b>
<b>Religion</b>	<b>5</b>
<b>Grievance Procedure</b>	<b>6-7</b>
<b>Retaliation</b>	<b>7</b>
<b>Discrimination Poster</b>	<b>8</b>

## INTRODUCTION

It is unlawful for an employer to treat an employee or applicant for employment differently because of his or her race, creed, religion, color, national origin, physical or mental disability, marital status, or sex. Montana's public employers are further prohibited from treating an employee or applicant differently because of his or her political ideas.

The Human Rights Bureau strongly encourages all Montana employers to develop effective discrimination policies and grievance procedures. Effective policies and procedures will protect your employees from discrimination and may prevent liability for violations of those laws.

Montana has over 30,000 private businesses and a variety of public employers. Consequently, there is no "one size fits all" discrimination policy. The sample policies shown in this pamphlet are for a fictitious employer, Widget Inc., and are only intended to serve as guidance. As an employer you will want to customize your discrimination policy to fit your needs.

Remember in order for a discrimination policy to be effective it must be adequately disseminated and consistently applied. The policy should indicate what the consequences are for a violation of the policy. Discrimination policies should be referenced and incorporated into other business-related documents such as job announcements, job descriptions, or corrective action materials. It is important for a discrimination policy to clearly identify appropriate and current contact information for discrimination complaints, including alternate contacts in the case the harasser is the contact. After it has been developed, the policy should guide the development and implementation of all aspects of people management in your business. Be sure to provide a clear explanation of the responsibilities of both management and the applicant or employees.

**Information contained in the book is not intended to be and should not be used as a substitute for specific legal advice, since legal opinions may only be given in response to inquiries regarding specific factual situations.**



## BASIC DISCRIMINATION POLICY

Consider the development of a discrimination policy as an opportunity for your business to make an explicit commitment to the principles for equality. Choose a language and style that reflects your values and suits your business needs. Example:

Widget Inc. is committed to valuing diversity. We believe that all employees and applicants should be treated with dignity and respect. At Widget Inc., we do not discriminate in employment based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex or political beliefs. Any applicant for employment or employee who believes that he or she has been subjected to discrimination based upon any of these factors should immediately contact our Human Resources Department (include contact information). You may also contact the Montana Human Rights Bureau and/or the federal Equal Employment Opportunity Commission. We will not retaliate for making or participating in a complaint of discrimination.

**Only public employers must also protect persons based on their political belief. A private employer is not obligated to offer such protections under the Montana Human Rights Act.**

## DISABILITY

An employer may not discriminate against an otherwise qualified worker or applicant with a disability who can perform the essential functions of the job with or without a reasonable accommodation. These protections include all phases of the employment relationship including hiring decisions, hours of work, wage rate, reasons for discipline, and terminations. In addition, an employer has an obligation to attempt a reasonable accommodation to enable the disabled worker to perform the essential functions of the job. Accommodations that would place an undue hardship on an employer or that would endanger the health and safety of any person are not considered reasonable.

Both the Montana Human Rights Act and the Governmental Code of Fair Practices prohibit discrimination against persons with physical or mental disabilities. These laws define "physical or mental disability" in three different ways" (1) a physical or mental impairment that substantially limits one or more of a person's major life activities; (2) a record of such an impairment; or (3) a condition regarded as such an impairment. Example:

Widget Inc. does not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms privileges or conditions of employment due to physical or mental disability.

Widget Inc. provides reasonable accommodation to an otherwise qualified applicant or employee with a known disability that prevents the individual from participating in the application process, competing in the selection process, performing the essential functions of the job, and enjoying equal benefits and privileges of employment. Any otherwise qualified applicant for employment or employee with a disability who needs reasonable accommodation should advise our Human Resources Department and/or his or her immediate supervisor of the nature of the disability and the accommodation requested.

## SEXUAL HARASSMENT

Prevention is the best tool to eliminate sexual harassment in the workplace. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when the conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Employers should take steps necessary to prevent sexual harassment from occurring. Clearly communicate to your employees that sexual harassment will not be tolerated. It is important to establish an effective complaint or grievance process that allows your business to take immediate and appropriate action when an employee complains about unwelcome behavior.

As an employer, you are responsible for harassment by a supervisor that culminates in a "tangible employment action." If the harassment did not lead to a tangible employment action, the employer is liable unless it can prove that: (1) it exercised reasonable care to prevent and promptly correct any harassment; and (2) the employee unreasonably failed to complain to management or to avoid harm otherwise.

A "tangible employment action" means a significant change in employment status. Examples include hiring, firing, promotion, demotion, undesirable reassignment, a decision causing a significant change in benefits, compensation decisions, and work assignment.

Example:

It is the policy of Widget Inc. to provide a work environment free from sexual harassment of employees, customers, clients and any other persons. At Widget Inc., we prohibit unwelcome sexual conduct that unreasonably interferes with an employee's job performance or creates an intimidating, hostile or offensive working environment. This includes displaying sexually suggestive emails, objects, pictures, cartoons or posters. Widget Inc. prohibits verbal abuse of a sexual nature, sexually oriented jokes, innuendoes, or obscenities.

Sexual conduct sought in return for job benefits or opportunities, such as the loss or threatened loss of a job for failing to comply with a supervisor's sexual demands is considered discrimination. This may include situations that began as mutual attractions, but later ceased to be reciprocal.

Harassment not involving sexual activity or language is also discriminatory if it is sufficiently patterned or pervasive and directed at employees because of their sex. For example, hazing an employee based on gender because he or she is in a non-traditional work environment.

**Employers should take reasonable care to prevent, and promptly and effectively correct any harassment, and provide a mechanism for employees to report the harassment.**

## PREGNANCY

In Montana, women who are pregnant or have conditions related to pregnancy must be treated in the same manner as other applicants or employees with similar abilities or limitations.

It is unlawful to refuse a reasonable leave of absence for a pregnancy. Whether pregnancy leave is reasonable is determined case-by-case based on the ability of the employee to perform her job. In the case of normal pregnancy and delivery, medical providers typically consider a reasonable leave to be six to eight weeks after delivery.

If the employee is unable to perform her job prior to delivery, or if there are complications such as illness or surgical delivery, necessary leave may be longer than normally required. If the employer and the employee cannot agree in establishing a reasonable period of time for the leave, the employer should rely on the judgment of the employee's physician or other medical provider who has actually examined the employee. Example:

Widget Inc. will not discriminate against any applicant or employee in hiring, firing promotions, compensation, job assignments and other terms, conditions or privileges of employment based upon a temporary disability resulting from pregnancy, childbirth, or related medical conditions.

Widget Inc. will grant a request by an employee for a reasonable leave of absence for that period of time during which a female employee is incapable of performing normal job duties due to pregnancy. Widget Inc. may require medical verification of disability.

Widget Inc. will treat pregnancy leave the same as leave for any other disability that qualifies for benefits under Widget Inc.'s disability leave plan. Widget Inc. will not require any employee to take a mandatory pregnancy leave for an unreasonable length of time.

If an employee requires pregnancy leave, the employee will provide Widget Inc. with reasonable notice of the expected date of leave. An employee returning from pregnancy leave shall provide reasonable notice of her intent to return to work. Upon receiving notice of an employee's intent to return to work, Widget Inc. will reinstate the employee as soon as reasonably possible. Widget Inc. will reinstate an employee who has taken a reasonable leave of absence for pregnancy to her original job or to an equivalent job with equivalent pay and accumulated seniority and other benefits.

**Except as required by a bona fide occupational qualification (BFOQ) or compliance with a lawful affirmative action plan or government reporting requirement, employers should not elicit information concerning race, color, national origin, age, marital status, religion, creed or sex (including pregnancy) from applicants prior to hire. (Government employees add political belief)**

## UNLAWFUL HARASSMENT

Harassment violates the law if it involves discriminatory treatment based on any one of the protected classes, including sex. The law does not prohibit simple teasing, offhand comments, or isolated incidents that are not serious. Rather, the conduct must be sufficiently frequent or severe to create a hostile work environment or result in a “tangible employment action,” such as hiring, firing, promotion, or demotion. Example:

Widget Inc.’s policy is to provide employees with a work environment free of harassment. Harassment of employees, clients, customers, and any other persons doing business with Widget Inc. because of a person’s race, color, national origin, age, physical or mental disability, marital status, religion, creed, or sex is prohibited.

Examples of other prohibited harassment include, but are not limited to: Coercion of employees, clients, or customers in the participation or non-participation in religious activities. Also, ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person’s nationality, race, color, age, physical or mental disability, marital status, religion, creed or sex are prohibited if these actions create an intimidating, hostile, or offensive working environment.

It is an unlawful discriminatory practice for an employer to discriminate because of religion. The term religion includes all aspects of religious observance, practice and belief. For example, an employer may not refuse to hire individuals of a certain religion, and may not impose stricter promotion requirements for persons of a certain religion, and may not impose more or different work requirements on an employee because of that employee’s religious beliefs or practices. When it comes to religious expression, an employer may not place more restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency.

For purposes of providing equal employment opportunities, an employer has a duty to accommodate an employee’s religion unless to do so would cause an undue hardship on the employer. An employer can show undue hardship if accommodating an employee’s religious practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on the other employees’ job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee’s share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation. Example:

Widget Inc. does not treat employees or applicants less or more favorably because of religious beliefs or practices. Widget Inc. will make reasonable accommodation for religious beliefs or practices. An employee whose religion conflicts with an employment requirement has a duty to inform Widget Inc. of the conflict in a timely manner. Once informed of a religion-based conflict, Widget Inc. will initiate good faith efforts to accommodate the conflict. Widget Inc. and the employee will work together to find a reasonable resolution to conflicts that may arise between an employer’s business and an employee’s religion. An accommodation that creates an undue hardship on a department is not a reasonable accommodation.

## **GRIEVANCE PROCEDURE**

The difference between a good employer and a bad employer is not that good employers do not have discrimination complaints, but that the good employers have a process in place and will investigate and deal promptly, thoroughly, and fairly with complaints.

### **Sample Grievance Procedure:**

If you believe you have been subjected to a violation of our discrimination policies, immediately report the incident to your immediate supervisor and/or Human Resources:

Human Resources Equal Employment  
Officer Bob Widgetson  
(406) 555-1212  
123 Lake Shore Drive  
Helena, Montana 59601

If your immediate supervisor is involved in the matter, inform your immediate supervisor's supervisor or Human Resources. Once informed, the supervisor who received a report of a violation will immediately notify his or her immediate supervisor and Human Resources.

Widget Inc.'s Human Resource Equal Employment Officer will begin an investigation as soon as possible and make a factual report no later than 10 working days after receiving notice of the alleged violation. The investigation will include interviewing as many persons as possible that have knowledge of the matter and reviewing any relevant documents.

Upon receipt of the complaint alleging harassment, Human Resources will take all appropriate steps to prevent the alleged conduct from continuing, pending completion of the investigation. Human Resources will determine the steps to be taken by balancing the rights of the alleged victim, including the severity of the alleged conduct, and the rights of the alleged harasser.

Within 2 working days of receiving the factual report, Widget Inc. will, in writing, inform the complainant, any other employees directly involved, and their immediate supervisor of the result of the investigation. Otherwise, the factual report in the decision will remain confidential and will be disseminated only to persons having a need or right to know which outweighs the privacy rights of the persons involved.

If the results of the investigation establish that there is insufficient evidence to find that a policy violation occurred, Human Resources will inform all the parties involved that the matter is concluded.

If the results of the investigation established that a policy violation occurred, Widget Inc. will take appropriate action, including, but not limited to, disciplinary measures pursuant to our disciplinary policy – which may include termination.

Widget Inc. will not retaliate against any employee for filing a discrimination grievance or for participating in any way in a grievance procedure.

## **GRIEVANCE PROCEDURE cont.**

If in addition to following the grievance procedures as described above, any employee who believes he or she, or another employee or applicant for employment, has been subject to unlawful discrimination, he or she may contact:

### **Montana Human Rights Bureau**

P.O. Box 1728  
Helena, Montana 59624-1728  
(406) 444-2884, or  
1-800-542-0801

### **United States Equal Employment Opportunity Commission**

Seattle, Washington  
1-800-669-4000

[www.eeoc.gov](http://www.eeoc.gov)

## **RETALIATION**

It is unlawful for an employer to retaliate against or otherwise discriminate against an employee, past employee or applicant because he or she has complained about discrimination, is associated with a person who was complained about discrimination or exercised his or her rights under discrimination laws. Sample:

Widget Inc. will not retaliate against any applicant, employee, or past employee for opposing unlawful discriminatory practices, filing a discrimination complaint and/or testifying or participating in any other matter in a discrimination proceeding.

## **FOR MORE INFORMATION**

**State of Montana Human Rights Bureau** (406) 444-2884  
P.O. Box 1728 Toll free 1-800-542-0807  
Helena, MT 59624-1728

You can view this policy guide along with administrative rule, the Montana Human Rights Act, human rights decisions, statistics, employment and housing discrimination information, informational presentations, training opportunities and information on filing a complaint at our website:

[www.montanadiscrimination.com](http://www.montanadiscrimination.com)

-Page 7-



# *Discrimination is Against the Law!*

## **Discrimination is against the law**

**in:** Employment

Housing

Public Accommodations

Education or Training

Financing

Insurance (sex & marital status only)

Government Services

**The law prohibits  
retaliation for filing a  
complaint, being a  
witness or opposing a  
discriminatory  
practice.**

## **Discrimination is illegal if it is based on:**

Age

Race, color, national origin

Religion, creed

Physical or mental disability

Marital status

Sex (includes maternity, pregnancy & sexual harassment)

Familial status (housing only)

Political belief (government employment or service)

State of Montana Human Rights Bureau

P.O. Box 1728

Helena, MT 59624-1728

(406) 444-2884 or 1-800-542-0807

[www.montanadiscrimination.com](http://www.montanadiscrimination.com)

Relay Service 711

