

Your Employee Rights Under the Family and Medical Leave Act

What is FMLA leave?

The Family and Medical Leave Act (FMLA) is a federal law that provides eligible employees with job-protected leave for qualifying family and medical reasons. The U.S. Department of Labor's Wage and Hour Division (WHD) enforces the FMLA for most employers.

Eligible employees can take up to **12 workweeks** of FMLA leave in a 12-month period for:

- The birth, adoption or foster placement of a child with you.
- Your serious mental or physical health condition that makes you unable to work.
- To care for your spouse, child or parent with a serious mental or physical health condition.
- Certain qualifying reasons related to the foreign deployment of your spouse, child or parent who is in a military service.

An eligible employee who is the spouse, child, parent or next of kin of a covered servicemember with a serious injury or illness may take up to **26 workweeks** of FMLA leave in a single 12-month period to care for the servicemember.

You have the right to use FMLA leave in one block of time. When it is medically necessary or otherwise permitted, you may take FMLA leave **intermittently in separate blocks of time, or on a reduced schedule** by working less hours each day or week. Head Fact Sheet #2816(j) for more information.

FMLA leave is **not paid leave**, but you may choose, or be required by your employer, to use any employer-provided paid leave if your employer's paid leave policy covers the reason for which you need FMLA leave.

Am I eligible to take FMLA leave?

You are an eligible employee if all of the following apply:

- You work for a covered employer.
- You have worked for your employer at least 12 months.
- You have at least 1,250 hours of service for your employer during the 12 months before your leave, and
- Your employer has at least 50 employees within 75 miles of your work location.

What does my employer need to do?

Employers with different "hours of service" requirements:

You work for a **covered employer** if one of the following applies:

- You work for a private employer that had at least 50 employees during at least 50 workweeks in the current or previous calendar year.
- You work for an elementary or public or private secondary school.
- You work for a public agency, such as a local, state or federal government agency. Most federal employees are covered by Title II of the FMLA, administered by the Office of Personnel Management.

How do I request FMLA leave?

Generally, to request FMLA leave you must:

- Follow your employer's normal policies for requesting leave.
- Give notice at least 30 days before your need for FMLA leave, or if advance notice is not possible, give notice as soon as possible.

You do not have to share a medical diagnosis but must provide enough information to your employer so they can determine whether the leave qualifies for FMLA protection. You must also inform your employer if FMLA leave was previously taken or approved for the same reason when requesting additional leave.

Your employer may request certification from a health care provider to verify medical leave and may request certification of a qualifying exigency.

The FMLA does not affect any federal or state law prohibiting discrimination or adverse any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

Call 1-866-487-9243 or visit dol.gov/fmla to learn more.

If you believe your rights under the FMLA have been violated, you may file a complaint with WHD or file a private lawsuit against your employer in court. **Scan the QR code to learn about our WHD complaint process.**

Where can I find more information?

Call 1-866-487-9243 or visit dol.gov/fmla to learn more.

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Ref: 29 CFR §625.300

WHD1420 REV 04/23

EMPLOYEE RIGHTS

EMPLOYEE POLYGRAPH PROTECTION ACT

The Employee Polygraph Protection Act prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment.

PROHIBITIONS Employers are generally prohibited from requiring or requesting any employee or job applicant to take a lie detector test, and from discharging, disciplining, or discriminating against an employee or prospective employee for refusing to take a test or for exercising other rights under the Act.

EXEMPTIONS Federal, State and local governments are not affected by the law. Also, the law does not apply to tests given by the Federal Government to certain private individuals engaged in national security-related activities.

The Act permits polygraph (a kind of lie detector) tests to be administered in the private sector, subject to restrictions, to certain prospective employees of security service firms (armed car, alarm, and guard), and of pharmaceutical manufacturers, distributors and dispensers.

The Act also permits polygraph testing, subject to restrictions, of certain employees of private firms who are reasonably suspected of involvement in a workplace incident (theft, embezzlement, etc.) that resulted in economic loss to the employer.

The law does not preempt any provision of any State or local law or any collective bargaining agreement which is more restrictive with respect to lie detector tests.

EXAMINEE RIGHTS Where polygraph tests are permitted, they are subject to numerous strict standards concerning the conduct and length of the test. Examinees have a number of specific rights, including the right to a written notice before testing, the right to refuse or discontinue a test, and the right not to have test results disclosed to unauthorized persons.

ENFORCEMENT The Secretary of Labor may bring court actions to restrain violations and assess civil penalties against violators. Employees or job applicants may also bring their own court actions.

THE LAW REQUIRES EMPLOYERS TO DISPLAY THIS POSTER WHERE EMPLOYEES AND JOB APPLICANTS CAN READILY SEE IT.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
www.dol.gov/agencies/whd

Ref: 29 CFR §801.6

WH1420 REV 07/22

Laws specific to Montana

Wage Payment Act

MCA 39-3-204 Payment of wages generally. (1) Except as provided in subsections (2) and (3), every employer of labor in the State of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable, except as provided in 39-3-205. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or as otherwise provided for by law.

39-3-205. Payment of wages when employee separated from employment prior to payday – exceptions.

(1) Except as provided in subsection (2) or (3), when an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.

(2) Except as provided in subsection (3), when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or to within 15 days from the separation, whichever occurs first.

(3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:

- the employee agrees in writing to the withholding; or
- the employer files a report of the theft with the local law enforcement agency within 7 business days of the separation from employment, subject to the following conditions:
 - if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within 30 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 30-day period.
 - if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest.

For additional information contact: Montana Department of Labor, Wage & Hour Unit, 406-444-6543.

Job Safety and Health

IT'S THE LAW!

All workers have the right to:

- A safe workplace.
- Raise a safety or health concern with your employer or OSHA, or report a work-related injury or illness, without being retaliated against.
- Receive information and training on job hazards, including all hazardous substances in your workplace.
- Request a confidential OSHA inspection of your workplace if you believe there are unsafe or unhealthy conditions. You have the right to have a representative contact OSHA on your behalf.
- Participate (or have your representative participate) in an OSHA inspection and speak in private to the inspector.
- File a complaint with OSHA within 30 days (by phone, online or by mail) if you have been retaliated against for using your rights.
- See any OSHA citations issued to your employer.
- Request copies of your medical records, tests that measure hazards in the workplace, and the workplace injury and illness log.

Employers must:

- Provide employees a workplace free from recognized hazards. It is illegal to retaliate against an employee for using any of their rights under the law, including raising a health and safety concern with you or with OSHA, or reporting a work-related injury or illness.
- Comply with all applicable OSHA standards.
- Notify OSHA within 8 hours of a workplace fatality or within 24 hours of any work-related inpatient hospitalization, amputation, or loss of an eye.
- Provide required training to all workers in a language and vocabulary they can understand.
- Prominently display this poster in the workplace.
- Post OSHA citations at or near the place of the alleged violations.

On-Site Consultation services are available to small and medium-sized employers, without citation or penalty, through OSHA-supported consultation programs in every state.

This poster is available free from OSHA.

Contact OSHA. We can help.

1-800-321-OSHA (6742) • TTY 1-877-889-5627 • www.osha.gov

Attention Montana Employers

RE: Unemployment Insurance and Workers' Compensation posters

The Montana Unemployment Insurance Division and Workers' Compensation Regulation Bureau control the distribution of these postings. As part of our promise to keep you in compliance with the Montana labor law posting requirements, we are providing the contact information to obtain these "mandatory" postings:

Unemployment Insurance Posting

To obtain this posting, call (406) 444-3834

Montana Administrative Rule §24.11.2701 POSTING NOTICE TO WORKERS

(1) Every employer must post and maintain a printed notice provided by the department showing that the employer is subject to Montana unemployment insurance law and has been registered by the department. This notice must be posted in conspicuous places near the locations where services are performed.

Workers' Compensation Posting

This posting is only available through your "Workers' Compensation" carrier.

Montana Code §39-71-401(6): Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation.

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WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
www.dol.gov/agencies/whd

Ref: 29 CFR §801.6

WH1420 REV 07/22

STATE AND FEDERAL LABOR LAW

EMERGENCY NUMBERS CALL 911

POLICE: _____

AMBULANCE: _____

PHYSICIAN: _____

HOSPITAL: _____

FIRE DEPARTMENT: _____

POISON CONTROL: _____

OSHA: _____

PAY DAY NOTICE

PAY DAY IS ON:

MONDAY FRIDAY

TUESDAY SATURDAY

WEDNESDAY SUNDAY

THURSDAY

PAY SCHEDULE IS:

WEEKLY SEMI MONTHLY

BIWEEKLY MONTHLY

PAYCHECKS ARE ISSUED ON THE: _____ **AND** _____ **OF THE MONTH**

AT: _____

TIME: _____

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE

\$7.25 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

OVERTIME PAY At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain work hours restrictions. Different rules apply in agricultural employment.

TIP CREDIT Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employer's tip combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

PUMP AT WORK The FLSA requires employers to provide reasonable break time for a nursing employee to express breast milk for their nursing child for one year after the child's birth each time the employee needs to express breast milk. Employers must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

ENFORCEMENT The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may initiate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Heightened civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions. Certain narrow exemptions also apply to the pump at work requirements.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some state laws provide greater employee protections; employers must comply with both.
- Some employers incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay protections and correctly classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
www.dol.gov/agencies/whd

Ref: 29 CFR §851.4

WH1068 REV 04/23

MONTANA'S MINIMUM WAGE

(Effective 1/1/2024)

\$10.30*

*The minimum wage is subject to a cost-of-living adjustment based on the Consumer Price Index no later than September 30th 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
PO BOX 201503
HELENA MT 59620-1503
PHONE (406) 444-6543
EMAIL: DLIERDWage@mt.gov

Please visit us on the web at: 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 GOVERNMENT 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

Ref: MCA 49-2-202

Know Your Rights: Workplace Discrimination is Illegal

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Federal laws that protect you from discrimination in employment. If you believe you've been discriminated against at work or in applying for a job, the EEOC may be able to help.

Who is Protected?

- Employees (current and former), including managers and temporary employees
- Job applicants
- Union members and applicants for membership in a union

What Organizations are Covered?

- Most private employers
- State and local governments (as employers)
- Educational institutions (as employers)
- Unions
- Staffing agencies

What Types of Employment Discrimination are Illegal?

Under the EEOC's laws, an employer may not discriminate against you, regardless of your immigration status, on the basis of:

- Race
- Color
- Religion
- National origin
- Sex (including pregnancy, childbirth, and related medical conditions, sexual orientation, or gender identity)
- Age (40 and older)
- Disability
- Genetic information (including employer requests for, or purchase, use, or disclosure of genetic tests, genetic services, or family medical history)
- Retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding
- Preference, opinion, or traits related to exercising rights regarding disability discrimination or pregnancy accommodation

What Employment Practices can be Challenged as Discriminatory?

All aspects of employment, including:

- Discharge, firing, or lay-off
- Discrimination (including unwelcome verbal or physical contact)
- Hiring or promotion

Assignment

- Pay (including wages or compensation)
- Failure to provide reasonable accommodation for a disability (pregnancy, childbirth, or related medical condition, or a sincerely-held religious belief, observance, or practice)
- Benefits
- Job training
- Classification
- Referral
- Obtaining or disclosing genetic information of employees
- Requesting or disclosing medical information of employees
- Conduct that might reasonably discourage someone from opposing discrimination, filing a charge, participating in an investigation or proceeding
- Conduct that coerces, intimidates, threatens, or interferes with someone exercising their rights, or someone assisting or encouraging someone else to exercise rights, regarding disability discrimination (including accommodation) or pregnancy accommodation

What can You Do if You Believe Discrimination has Occurred?

Contact the EEOC promptly if you suspect discrimination. Do not delay, because there are strict time limits for filing a charge of discrimination (180 or 300 days, depending on where you live/work). You can reach the EEOC in any of the following ways:

Submit an inquiry through the EEOC's public portal: <https://publicportal.eeoc.gov/PortalLogin.aspx>

Call 1-800-688-4000 (toll free) 1-800-688-6022 (T.V.) 1-844-234-5122 (ASL video phone)

Visit an EEOC field office (information at www.eeoc.gov/field)

E-Mail info@eeoc.gov

Additional information about the EEOC, including information about filing a charge of discrimination, is available at www.eeoc.gov.

EMPLOYERS HOLDING FEDERAL CONTRACTS OR SUBCONTRACTS

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces the non-discrimination and affirmative action commitments of companies doing business with the Federal Government. If you are applying for a job with, or are an employee of, a

company with a Federal contract or subcontract, you are protected under Federal law from discrimination on the following bases:

Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, National Origin

Executive Order 11246, as amended, prohibits employment discrimination by Federal contractors based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

Asking About, Disclosing, or Discussing Pay

Executive Order 11246, as amended, protects applicants and employees of Federal contractors from discrimination based on inquiring about, disclosing, or discussing their compensation on the compensation of other applicants or employees.

Disability

Section 503 of the Rehabilitation Act of 1973, as amended, prohibits qualified individuals with disabilities from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, tenure, and other aspects of employment by Federal contractors. Disability discrimination includes not making reasonable accommodation in the hiring process or other aspects of employment. It also includes not hiring or promoting a qualified individual with a disability who is an applicant or employee, barring undue hardship to the employer. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including with the executive level.

Protected Veteran Status

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), 38 U.S.C. § 4212, prohibits employment discrimination against, and requires affirmative action to recruit, employ, and advance in employment, disabled veterans, recently separated veterans, 10 or more years of discharge or release from active duty, active duty wartime or campaign badge veterans, or Armed Forces service medal veterans.

Retaliation

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination by

Federal contractors under these Federal laws. Any person who believes a contractor has violated its non-discrimination or affirmative action obligations under OFCCP's authorities should contact immediately.

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20010, 1-800-367-0233 (toll-free)

If you are deaf, hard of hearing, or have a speech disability, please dial 711 to access Telecommunications Relay Service. OFCCP may also be contacted by submitting a question online to OFCCP's Help Desk at <https://helpdesk.ofccp.dhs.gov/> or by calling an OFCCP regional or district office. TDD in most telephone offices under U.S. Government, Department of Labor and OFCCP's "Contact Us" webpage at <https://www.dhs.gov/government/contacts>

PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Race, Color, National Origin, Sex

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance or provision of employment, or whose employment discrimination causes or may cause discrimination in providing services under such programs. Title VI of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

Individuals with Disabilities

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in programs or activities which receive Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance. (Revised 6/27/2023)