

Montana is the first state to have adopted an alternative to the 'employment-at-will' law. The **Wrongful Discharge From Employment Act** (WDFEA) outlined in Montana Code Annotated 39-2-903 to 915, was initially adopted in 1987 in response to a series of Montana Supreme Court decisions beginning around 1980 that favored the plaintiff and resulted in large verdicts against employers who were ordered to pay compensatory and punitive damages.

The WDFEA was initially established as a way to protect both the employee and the employer. It currently allows an employee the right to lawfully dispute termination of employment or disparate treatment and it limits the amount of damages that an employee can receive for a wrongful discharge verdict. Damages are limited to up to four years of lost wages and benefits, with interest. Interim earnings are subtracted. Pain and suffering damages are excluded, however, punitive damages are allowed by law if it is established by "clear and convincing" evidence that the employer engaged in fraud or acted out of malice against the employee, 39-2-905.

Before the passage of WDFEA, job growth was in decline and the wrongful discharge cases prevalent at that time were seen as contributing because employers were paying what was considered exorbitant wrongful discharge penalties. Since its passage, the Montana job growth rate did return to a level of normalcy in comparison to the growth rate prior to 1980. The WDFEA is credited for this improvement since the damages that a discharged employee may receive was limited under the new law. Studies have shown that the WDFEA was a major factor that helped reestablish a stable economic environment in which employers realized greater profitability and business expansion and hired more employees.

An Amendment to the Montana Wrongful Discharge From Employment

Act passed through Montana Legislature and became effective October 1, 2001. It reads as follows:

SENATE BILL NO. 4 Introduced by D. Grimes

(2) (a) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason. (b) If an employer does not establish a specific probationary period or provide that there is no probationary period prior to or at the time of hire, there is a probationary period of 6 months from the date of hire.

See 39-2-904. Elements of wrongful discharge -- presumptive probationary period.

This amendment creates a presumptive probationary period and clarifies that the termination of employment outside of the probationary period must be for good cause, covers all non-union employees who are not otherwise subject to an employment contract, and provides the employee a right to protest a termination from employment in court or before an arbitrator.

According to Montana Code 39-2-903 (5) Definitions, "good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reasons. Within the definition of good cause, an employer would properly train, supervise, evaluate and communicate any problems with job performance with the employee. If an employer applies said guidelines and it still proves necessary to fire the employee, it would not have been due to any failure of the employer but because the employee failed to correct any performance deficiencies. The discharge becomes attributable more to the employee than to the employer.

An employer may not fire on the basis of unlawful discrimination covering race, national origin, sex, age,

physical or mental disability including pregnancy, creed, religion, political belief – public sector, color, and marital status or in retaliation for an employee's refusal to violate public policy or for reporting a violation of public policy as defined in 39-2-903 (7) Definitions. "Public policy" means a policy in effect at the time of the discharge concerning the public, health, safety, or welfare established by the constitutional provision, statute, or administrative rule. This includes employees who are still in their probationary period.

The Montana Wrongful Discharge From Employment Act has influenced other states to adopt similar passages into their employment laws, especially those that limit the amount of money that a discharged employee may receive. Interestingly, in 1991, the Conference of Commissioners On Uniform State Laws recommended a law similar to the Montana law for enactment in all States called the Model Employment Termination Act (META). Like WDFEA in Montana, META eliminates at-will employment for a "good cause" standard for termination and restricts damages that a plaintiff may receive to lost wages for back pay. Instead of lost wages for future earnings, under META, a plaintiff may receive reinstatement. The Montana WDFEA encourages arbitration in settling a case, 39-2-914, as an alternative to court but under META, arbitration would be mandatory and at the public's expense. No state has yet to enact META though it has been proposed in many states since 1991.

If you have questions or need more information or for a copy of Montana Codes Annotated, Visit <http://leg.mt.gov>

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