Notes Of Decisions

In general

Under the Wrongful Discharge from Employment Act (WDEA), an employer has the right to exercise discretion over whom it will employ and keep in employment. Bird v. Cascade County, 386 P.3d 602, 386 Mont. 69 (2016) . Labor and Employment 758

Threshold determination in cases alleging wrongful termination is whether the parties' relationship is governed by a written contract for a specific term or whether it falls under the provisions of the Wrongful Discharge from Employment Act (WDEA). MCA 39-2-901 et seq. Solle v. Western States Ins. Agency, Inc., 999 P.2d 328, 299 Mont. 237 (2000) . Labor And Employment 758 ; Labor And Employment 835

The Wrongful Discharge From Employment Act (WDFEA), by providing that outside of a probationary period of employment an employer may not discharge an employee without good cause, has effectively eliminated and impliedly repealed the At-Will Act; overruling Medicine Horse v. Big Horn County Sch. Dist., 251 Mont. 65, 823 P.2d 230 . MCA 39-2-503 , 39-2-904(2) . Whidden v. John S. Nerison, Inc., 1999, 294 Mont. 346, 981 P.2d 271 . Labor And Employment 752

To prevail under Wrongful Discharge from Employment Act, employee must first prove that employee was discharged within the meaning of the Act, and employee must then prove that the discharge was wrongful. MCA 39-2-901 et seq. , 39-2-904 . Delaware v. K-Decorators, Inc., 1999, 293 Mont. 97, 973 P.2d 818 . Labor And Employment 758

All remedies provided by the Wrongful Discharge from Employment Act run against the employer, and the Act does not envision lawsuits against corporate employees, officers, or shareholders. MCA 39-2-901 et seq. Buck v. Billings Montana Chevrolet, Inc., 1991, 248 Mont. 276, 811 P.2d 537 . Corporations And Business Organizations 1644 ; Corporations And Business Organizations 1951

Employer is entitled to be motivated by and serve its own legitimate business interest and must be given discretion who it will employ and retain in employment. MCA 39-2-901 et seq. Cecil v. Cardinal Drilling Co., 1990, 244 Mont. 405, 797 P.2d 232 . Labor And Employment 23 ; Labor And Employment 769

Three causes of action for “wrongful discharge” exist under Wrongful Discharge From Employment Act: discharge or retaliation for employee's refusal to violate public policy or for reporting violation of public policy; discharge in violation of express provisions of employer's written personnel policy; and discharge for reasons other than good cause as defined by Act. MCA 39-2-901 to 39-2-914 . Meech v. Hillhaven West, Inc., 1989, 238 Mont. 21, 776 P.2d 488 . Labor And Employment 761 ; Labor And Employment 776 ; Labor And Employment 782 ; Labor And Employment 839

Due process

Court would not consider claim that Wrongful Discharge Act violated substantive due process where parties challenging Act cited no legal authority and did not explain their claim beyond reiteration that Act was discriminatory. MCA 39-2-901 et seq. ; Const. Art. 2, § 17 ; Rules App.Proc., Rule 23(a)(4) . Allmaras v. Yellowstone Basin Properties, 1991, 248 Mont. 477, 812 P.2d 770 . Appeal And Error 756 ; Appeal And Error 761

Constitutional and statutory provisions

Full legal redress provision of Montana Constitution did not require that State demonstrate compelling state interest justifying classifications created under Wrongful Discharge From Employment Act; legislature could alter common-law causes of action, remedies, and redress without demonstrating that compelling state interest justified classifications created by such modifications. MCA 39-2-901 to 39-2-914 ; Const. Art. 2, § 16 . Johnson v. State, 1989, 238 Mont. 215, 776 P.2d 1221 . Constitutional Law 2312 ; Labor And Employment 754

Even if legislature must provide adequate substitute for causes of action as abrogated by statute, Wrongful Discharge From Employment Act satisfies such requirement, where Act, in some situations, could benefit

employees by eliminating common-law defenses formerly available, and amount awarded for lost wages, pensions, insurance benefits and vacation time could be considered as fringe benefits under statute. MCA 39-2-901 to 39-2-914 . Meech v. Hillhaven West, Inc., 1989, 238 Mont. 21, 776 P.2d 488 . Labor And Employment 754

Article of Constitution governing access to courts and guaranteeing remedy does not create fundamental right of full legal redress, and therefore, article does not render Wrongful Discharge From Employment Act unconstitutional as depriving individual of fundamental right to common-law actions. MCA 39-2-901 to 39-2-914 ; Const. Art. 2, § 16 . Meech v. Hillhaven West, Inc., 1989, 238 Mont. 21, 776 P.2d 488 . Constitutional Law 2312 ; Labor And Employment 754

Statutory provisions

Full legal redress provision of Montana Constitution did not require that State demonstrate compelling state interest justifying classifications created under Wrongful Discharge From Employment Act; legislature could alter common-law causes of action, remedies, and redress without demonstrating that compelling state interest justified classifications created by such modifications. MCA 39-2-901 to 39-2-914 ; Const. Art. 2, § 16 . Johnson v. State, 1989, 238 Mont. 215, 776 P.2d 1221 . Constitutional Law 2312 ; Labor And Employment 754

Even if legislature must provide adequate substitute for causes of action as abrogated by statute, Wrongful Discharge From Employment Act satisfies such requirement, where Act, in some situations, could benefit employees by eliminating common-law defenses formerly available, and amount awarded for lost wages, pensions, insurance benefits and vacation time could be considered as fringe benefits under statute. MCA 39-2-901 to 39-2-914 . Meech v. Hillhaven West, Inc., 1989, 238 Mont. 21, 776 P.2d 488 . Labor And Employment 754

Article of Constitution governing access to courts and guaranteeing remedy does not create fundamental right of full legal redress, and therefore, article does not render Wrongful Discharge From Employment Act unconstitutional as depriving individual of fundamental right to common-law actions. MCA 39-2-901 to 39-2-914 ; Const. Art. 2, § 16 . Meech v. Hillhaven West, Inc., 1989, 238 Mont. 21, 776 P.2d 488 . Constitutional Law 2312 ; Labor And Employment 754

Public policy

Adoption of regulation by Commissioner of Higher Education authorizing him, with adequate notice, not to renew one year employment contract did not violate public policy requiring just cause for termination or deprive employee of remedies available under Wrongful Discharge From Employment Act, as Act itself excluded from just cause requirement discharge of employee covered under written contracts of employment similar to employee's. MCA 39-2-901 et seq. , 39-2-902 , 39-2-904 , 39-2-912 , 39-2-913 . Farris v. Hutchinson, 1992, 254 Mont. 334, 838 P.2d 374 . Education 1123(2) ; Public Employment 257

In cases not controlled by Wrongful Discharge from Employment Act, plaintiff must show violation of public policy. MCA 39-2-901 to 39-2-914 . Kittelson v. Archie Cochrane Motors, Inc., 1991, 248 Mont. 512, 813 P.2d 424 . Labor And Employment 759

In action for wrongful discharge, it was not essential that employee rely upon or establish violation of public policy through employer's failure to apply administrative rules, since public policy violations may conceivably arise on other facts or theories than violation of administrative rules. Dare v. Montana Petroleum Marketing Co., 1984, 212 Mont. 274, 687 P.2d 1015 . Labor And Employment 759

Law governing

Montana had subject matter jurisdiction over former employee's Wrongful Discharge From Employment Act (WDEA) claims against former employer, although employment contract was made when parties were in other states and parties did not know where work was to be performed, and WDEA did not expressly provide for extraterritorial application, where parties agreed that income taxes, unemployment insurance premiums, and wages were to be paid to Montana, and former employee was Montana resident. MCA 1-1-215 , 39-2-901 et

seq. ; Restatement (Second) of Laws §§ 6, 187, 188. Burchett v. MasTec North America, Inc., 93 P.3d 1247, 322 Mont. 93 (2004) . Labor And Employment 756

Governmental immunity

That Wrongful Discharge from Employment Act was passed later than governmental immunity statute did not mean that wrongful discharge statute limited county's immunity in area of wrongful discharge. MCA 2-9-111 , 39-2-901 et seq. Burgess v. Lewis and Clark City-County Bd. of Health, 1990, 244 Mont. 275, 796 P.2d 1079 . Counties 67

City-county board of health was acting as agent of county commissioners when it fired employee of landfill district and, thus, governmental immunity precluded wrongful discharge suit against board. MCA 2-9-111 , 39-2-901 et seq. Burgess v. Lewis and Clark City-County Bd. of Health, 1990, 244 Mont. 275, 796 P.2d 1079 . Health 364 ; Public Employment 795

Equitable estoppel

Former employee was judicially estopped from claiming that he suffered compensable loss under state Wrongful Discharge From Employment Act (WDEA) in wrongful-discharge action; former employee was aware that he had been terminated from employment when he filed first report of injury concerning workers' compensation claim, former employee succeeded in maintaining in workers' compensation proceeding his original position that his injury rendered him unable to perform time-of-injury job, current claim was entirely inconsistent with original position, and allowing former employee to change position would have injuriously affected former employer. MCA 39-2-901 et seq. Vogel v. Intercontinental Truck Body, Inc., 137 P.3d 573, 332 Mont. 322 (2006) . Estoppel 68(2)

City's letter stating that there was no contract or grievance procedure in effect or available during dates of suspension of employee was conclusively presumed to be true and estopped city from arguing that employee was covered by collective bargaining agreement at time of discharge and that federal law preempted suit under Wrongful Discharge from Employment Act. MCA 26-1-601 , 39-2-901 et seq. Dagel v. City of Great Falls, 1991, 250 Mont. 224, 819 P.2d 186 . Estoppel 62.4

Federal preemption

National Labor Relations Act (NLRA) preempted claim by former employee under Montana Wrongful Discharge from Employment Act (WDA) in which he alleged that he was discharged after expiration of collective bargaining agreement for engaging in protected conduct; although WDA expressly excluded from coverage those employees covered by collective bargaining agreement, application of WDA could interfere with collective bargaining process before parties reached impasse, and issues of hiring and firing were central to negotiations. MCA 39-2-901 et seq. , 39-2-912(2) ; National Labor Relations Act, § 1 et seq., as amended, 29 U.S.C.A. 151 et seq. Barnes v. Stone Container Corp., 1991, 942 F.2d 689 . Labor And Employment 1967 ; States 18.49

A state law interfering with the union business manager's authority to choose his or her own staff would be in conflict with union's constitution, a document integral to protecting union democracy and responsiveness to its members, and thus, would frustrate the goals and objectives Congress sought to promote in enacting the Labor-Management Reporting and Disclosure Act (LMRDA); thus, to the extent that the Wrongful Discharge From Employment Act interferes with the constitutional appointment authority of duly elected union officers, it is in direct conflict with the LMRDA, and is preempted accordingly. Labor-Management Reporting and Disclosure Act of 1959, § 2 et seq., 29 U.S.C.A. § 401 et seq. ; MCA 39-2-901 et seq. Vitullo v. International Broth. of Elec. Workers, Local 206, 75 P.3d 1250, 317 Mont. 142 (2003) . Labor And Employment 995 ; States 18.53

Montana Wrongful Discharge From Employment Act stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, as expressed in the Labor-Management Reporting and Disclosure Act (LMRDA), and thus allowing former assistant business manager for local union, who was discharged by business manager pursuant to his powers under union constitution, to proceed against union

with his claim under the state Act would directly conflict with and frustrate those objectives, such that LMRDA preempted the state Act. Labor-Management Reporting and Disclosure Act of 1959, § 2 et seq., 29 U.S.C.A. § 401 et seq. ; MCA 39-2-901 et seq. Vitullo v. International Broth. of Elec. Workers, Local 206, 75 P.3d 1250, 317 Mont. 142 (2003) . Labor And Employment 757 ; States 18.53

Employment at-will

While law still provides that, absent provisions to the contrary, employment is "at will," under Wrongful Discharge From Employment Act, employer in most cases must have good cause to fire employee. MCA 39-2-901 et seq. Jarvenpaa v. Glacier Elec. Co-op., Inc., 1995, 271 Mont. 477, 898 P.2d 690 . Labor And Employment 40(2) ; Labor And Employment 761

Protective devices implemented to curb harsh effects of employment at-will rule do not obliterate the rule. MCA 28-2-903(1)(a) , 39-2-901 et seq. Scott v. Eagle Watch Investments, Inc., 1991, 251 Mont. 191, 828 P.2d 1346 . Labor And Employment 40(1)

Legitimate reason for discharge

Under Montana law, as predicted by Court of Appeals, employer's stated reason for employee's discharge is not legitimate under Wrongful Discharge from Employment Act (WDEA) if the reason given for the employee's discharge is invalid as a matter of law under WDEA, rests on mistaken interpretation of the facts, or is not the honest reason for the discharge, but rather is a pretext for some other illegitimate reason; discharged employee need only prove that one of these three types is true in his or her case to demonstrate that reason for discharge was not legitimate. MCA 39-2-901 et seq. Marcy v. Delta Airlines, 1999, 166 F.3d 1279 . Labor And Employment 761 ; Labor And Employment 762

Executives

In a wrongful discharge case, where the complaining employee is in an executive position, makes top level policy and strategic decisions, and great trust is placed in his judgment, courts must be cautious in second guessing employment decisions of the company's board. McConkey v. Flathead Electric Co-op., 125 P.3d 1121, 330 Mont. 48 (2005) . Labor And Employment 762

Pretext

Under Montana law, as predicted by Court of Appeals, Wrongful Discharge from Employment Act (WDEA) does not require terminated employee to demonstrate employer's bad faith through the existence of a pretext; rather, proof that employer acted in bad faith by using pretext to discharge employee is only one possible way of demonstrating that employer's stated reason was not a legitimate one. MCA 39-2-901 et seq. Marcy v. Delta Airlines, 1999, 166 F.3d 1279 . Labor And Employment 762

Misconduct

Employee was not wrongfully discharged when he was discharged for violating company policy by using company funds for personal use of financing gambling trip, in view of evidence that policy existed, that policy was well known to employees, and employees knew violator of policy would be subject to discharge. Majerus v. Skaggs Alpha Beta, Inc., 1990, 245 Mont. 58, 799 P.2d 1053 . Labor And Employment 763

Economic or competitive interests of employer

Economic conditions constitute a "legitimate business reason" for discharging employees under the Wrongful Discharge From Employment Act. MCA 39-2-901 et seq. Cecil v. Cardinal Drilling Co., 1990, 244 Mont. 405, 797 P.2d 232 . Labor And Employment 769

Executive of oil drilling company was discharged for legitimate business reasons where crude oil prices were falling resulting in a reduction of business for company, and employee did not offer any other motive or reason for termination, even though record might arguably show that it was possible for company to keep employee during decline in oil prices. MCA 39-2-901 et seq. Cecil v. Cardinal Drilling Co., 1990, 244 Mont. 405, 797 P.2d 232 . Labor And Employment 769

Notes of Decisions for 39-2-901. Short title

Demotion

Rule that absolute and final termination from managerial position followed by the offer of an inferior position may be a termination of employment for purposes of Wrongful Discharge From Employment Act was not applicable to case where employee was demoted and was never terminated or resigned; there was no cessation of employment followed by offer of inferior position so as to trigger the rule's application. MCA 39-2-901 et seq. Clark v. Eagle Systems, Inc., 1996, 279 Mont. 279, 927 P.2d 995 . Labor And Employment 825

Constructive discharge

Even if employee “voluntarily resigned” from his employment as result of constructive discharge, such that employer's internal grievance policy would not be applicable, defendant's departure from work would have been “voluntary” and not in response to conduct of employer, and thus employee would not have wrongful discharge claim under state Wrongful Discharge from Employment Act (WDEA). MCA 39-2-901 to 39-2-915 . Haynes v. Shodair Children's Hosp., 137 P.3d 518, 332 Mont. 286 (2006) . Labor And Employment 826

Plaintiff shareholder-employee of family farm corporation did not establish, in action under Wrongful Discharge from Employment Act, that corporation constructively discharged him by reducing his salary; plaintiff did not voluntarily terminate his employment and instead continued to reside in corporation's ranch house and performed operational tasks for corporation, salary cuts were consistent with past practices of reducing salaries for economic purposes and occasionally paying wages in wheat, and salary cuts affected each shareholder equally. MCA 39-2-901 et seq. Pankratz Farms, Inc. v. Pankratz, 95 P.3d 671, 322 Mont. 133 (2004) , rehearing denied. Labor And Employment 826

Constructive discharge is no less wrongful, under the Wrongful Discharge from Employment Act, than an actual firing without cause. MCA 39-2-901 et seq. Pankratz Farms, Inc. v. Pankratz, 95 P.3d 671, 322 Mont. 133 (2004) , rehearing denied. Labor And Employment 826

While elements of age discrimination claim differ from those in wrongful discharge case under Wrongful Discharge From Employment Act, issues involved in determining whether presenting employee with retire or be fired choice is in fact forced termination or voluntary retirement are substantially the same and, therefore, Supreme Court would look to age discrimination cases for guidance. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq. ; MCA 39-2-901 et seq. Jarvenpaa v. Glacier Elec. Co-op., Inc., 1995, 271 Mont. 477, 898 P.2d 690 . Labor And Employment 826

Discharge letter

In wrongful discharge action, only reason for discharge that can be considered is reason set forth in discharge letter. McGillen v. Plum Creek Timber Co., 1998, 290 Mont. 264, 964 P.2d 18 , rehearing denied. Labor And Employment 831

Good faith and fair dealing

Former contract employee could not maintain a claim against employer for wrongful termination apart from either the Wrongful Discharge from Employment Act (WDEA) or employment contract which contained arbitration clause; employee's claims of breach of the implied covenant of good faith and fair dealing were inextricably intertwined with and based upon her termination from employment. MCA 39-2-901 et seq. Solle v. Western States Ins. Agency, Inc., 999 P.2d 328, 299 Mont. 237 (2000) . Labor And Employment 852

Implied covenant of good faith and fair dealing, as it existed before Wrongful Discharge From Employment Act, did not apply so as to provide terminated employee with remedies in addition to those under Act, since cause of action could not accrue until all elements of cause existed, and all elements to establish breach of implied covenant were present, if at all, when employee received notice of termination, which he received after Act's effective date. MCA 27-2-102(1)(a) , 39-2-901 et seq. Sullivan v. Sisters of Charity of Providence of Montana, 1994, 268 Mont. 71, 885 P.2d 488 . Labor And Employment 852

Breach of covenant of good faith and fair dealing is tort separate from wrongful discharge, but is applicable only in cases of employee termination. Frigon v. Morrison-Maierle, Inc., 1988, 233 Mont. 113, 760 P.2d 57 . Labor And Employment 843 ; Labor And Employment 852

Existence of other remedies

Claims may be filed concurrently under Wrongful Discharge Act and other state or federal statutes, but if affirmative determination of claim is obtained under other statutes, Wrongful Discharge Act may no longer be applied. MCA 39-2-901 to 39-2-914 ; Age Discrimination in Employment Act of 1967, §§ 2-17, as amended, 29 U.S.C.A. §§ 621 - 634 . Tonack v. Montana Bank of Billings, 1993, 258 Mont. 247, 854 P.2d 326 . Labor And Employment 852

Whether discharge of employee will ultimately be subject to any other state or federal statute providing procedure or remedy for contesting dispute so that Wrongful Discharge Act may not be applied is established only when finder of fact has made that determination or when judgment on the claim has otherwise been entered. MCA 39-2-901 to 39-2-914 ; Age Discrimination in Employment Act of 1967, §§ 2-17, as amended, 29 U.S.C.A. §§ 621 - 634 . Tonack v. Montana Bank of Billings, 1993, 258 Mont. 247, 854 P.2d 326 . Labor And Employment 852

Discharged employee could not recover for employer's age discrimination under both Age Discrimination in Employment Act (ADEA) and Wrongful Discharge Act; Wrongful Discharge Act did not apply following district court's factual determination that ADEA applied to employee's discharge from employment. MCA 39-2-901 to 39-2-914 ; Age Discrimination in Employment Act of 1967, §§ 2-17, as amended, 29 U.S.C.A. §§ 621 - 634 . Tonack v. Montana Bank of Billings, 1993, 258 Mont. 247, 854 P.2d 326 . Civil Rights 1502 ; Civil Rights 1704

Wrongful Discharge Act does not limit claimant's right to plead independent cause of action in conjunction with claim under Act. MCA 39-2-901 et seq. Beasley v. Semitool, Inc., 1993, 258 Mont. 258, 853 P.2d 84 . Labor And Employment 852

Wrongful Discharge Act is exclusive remedy for claims arising from employee's wrongful discharge. MCA 39-2-901 et seq. Beasley v. Semitool, Inc., 1993, 258 Mont. 258, 853 P.2d 84 . Labor And Employment 852

Wrongful Discharge Act did not preclude employee from asserting claims against employer for breach of express and implied contract and breach of covenant of good faith and fair dealing in addition to claims under Act; the additional claims arose from employer's alleged breach of employment contract rather than from alleged wrongful discharge. MCA 39-2-901 et seq. , 39-2-902 , 39-2-913 . Beasley v. Semitool, Inc., 1993, 258 Mont. 258, 853 P.2d 84 . Labor And Employment 852

Statutory exemption from Wrongful Discharge from Employment Act for discharge subject to another statutory remedy is not limited to remedies for unlawful discrimination; list of examples of statutory remedies is not intended to be exclusive, in light of term “and other similar grounds.” MCA 39-2-901 et seq. , 39-2-912 . Deeds v. Decker Coal Co., 1990, 246 Mont. 220, 805 P.2d 1270 . Labor And Employment 852

Wrongful discharge suit by former employees who were terminated for alleged “serious strike misconduct” was not yet exempt from Wrongful Discharge from Employment Act under provision exempting discharges subject to state or federal statute providing a remedy for contesting the dispute, where no such procedure had yet taken place, and thus, district court was premature in ruling that wrongful discharge suit was exempted. MCA 39-2-901 et seq. , 39-2-912 . Deeds v. Decker Coal Co., 1990, 246 Mont. 220, 805 P.2d 1270 . Labor And Employment 852

Former employees who were discharged for alleged “serious strike misconduct” were not exempt from the Wrongful Discharge from Employment Act as being covered by collective bargaining agreement, where expiration of collective bargaining agreement gave rise to strike and set suit in motion. MCA 39-2-901 et

seq. , 39-2-912 . Deeds v. Decker Coal Co., 1990, 246 Mont. 220, 805 P.2d 1270 . Labor And Employment 852 ; Labor And Employment 1302

Former employee's claim that former employer breached implied covenant of good faith and fair dealing was not barred by Wrongful Discharge From Employment Act; cause of action accrued on date employee was informed that she would be terminated, which was before effective date of Act. MCA 39-2-901 et seq. Martin v. Special Resource Management, Inc., 1990, 246 Mont. 181, 803 P.2d 1086 . Labor And Employment 852 ; Limitation Of Actions 46(7)

Accrual of right of action

Testimony by laid off employee that employee never intended to quit job and admission by employer's management that employee never actually stated that he was quitting supported jury's finding that employee did not voluntarily terminate position and, thus, one-year limitations for bringing action under Wrongful Discharge From Employment Act did not commence until employer refused to recall or rehire employee. MCA 39-2-901 to 39-2-914 . Arnold v. Boise Cascade Corp., 1993, 259 Mont. 259, 856 P.2d 217 . Limitation Of Actions 58(9)

Filing of grievance

Former state employee's letter to Department of Natural Resources and Conservation (DNR), which did not specify the violation and the remedy sought but merely stated his intent “to follow the grievance procedure as directed by the Department in their discharge letter,” did not constitute a formal grievance filing in connection with his discharge, and thus former employee did not exhaust administrative remedies prior to filing wrongful termination action, although he argued that meeting in which DNR invited him to respond in person was an acknowledgement that he had filed a grievance. Mont.Admin.R. 2.21.8017(2) . Offerdahl v. State, Dept. of Natural Resources and Conservation, 43 P.3d 275, 308 Mont. 94 (2002) . Public Employment 436

The burden of timely initiating the grievance process regarding a wrongful termination from a government position falls on the individual who is terminated. Mont.Admin.R. 2.21.8017(2) . Offerdahl v. State, Dept. of Natural Resources and Conservation, 43 P.3d 275, 308 Mont. 94 (2002) . Public Employment 436

Former state employee's oral statement over the telephone of intent to file a grievance in connection with his discharge from Department of Natural Resources and Conservation (DNR) did not constitute the filing of a formal grievance, and thus former employee did not exhaust administrative remedies prior to filing wrongful termination action; grievance was not filed or in writing, did not state the law, rule, policy, or procedure violated, when the violation occurred, or the remedy sought, and was not dated or signed by employee. Mont.Admin.R. 2.21.8017(2) . Offerdahl v. State, Dept. of Natural Resources and Conservation, 43 P.3d 275, 308 Mont. 94 (2002) . Public Employment 436

Arbitration

Under Montana's Wrongful Discharge From Employment Act, once an offer to arbitrate an alleged wrongful discharge has been accepted, neither the district court nor the parties have a right to continue the lawsuit. Ensey v. Mini Mart, Inc., 300 P.3d 1144, 369 Mont. 476 (2013) . Alternative Dispute Resolution 152

Harmless error

Even if trial court should have submitted former employee's negligence to jury in wrongful termination case, any error in that regard would have been harmless since negligence was not a defense to willful conduct. Flanigan v. Prudential Federal Sav. & Loan Ass'n, 1986, 221 Mont. 419, 720 P.2d 257 , appeal dismissed 107 S.Ct. 564, 479 U.S. 980, 93 L.Ed.2d 570 . Appeal And Error 4423

Preservation of issues

Issues that were raised for the first time on appeal in former city employee's wrongful discharge action against her former supervisor were not properly preserved for review. MCA 39-2-901 et seq. Dagel v. Manzer, 1991, 251 Mont. 176, 823 P.2d 874 . Appeal And Error 169

Decisions reviewable

Supreme Court would accept petition for supervisory control to resolve the issue as to whether the Wrongful Discharge from Employment Act applied to the relationship between worker and clinic, which informed worker three days before she was to start her employment and after she had signed an employment contract that it would not employ her after all; issue was purely one of law and settling the issue would further judicial economy and materially aid the parties. Great Falls Clinic LLP v. Montana Eighth Judicial District Court, 381 P.3d 550, 385 Mont. 95 (2016) , on remand 2017 WL 9535145 . Courts 207.1

Trial court order denying partial summary judgment motion filed by former employee of justice department on claim that employee did not violate constitutional rights of suspect during questioning was not final appealable judgment in wrongful discharge action against state, where order failed to adjudicate parties' rights. Rules Civ.Proc., Rule 54(a) ; Rules App.Proc., Rule 1(b)(1) . Losleben v. Oppedahl, 83 P.3d 1271, 319 Mont. 269 (2004) . Appeal And Error 78(1)

Collective bargaining agreement

Wrongful Discharge From Employment Act did not apply to nonrenewal of contract of nontenured teacher who was covered by collective bargaining agreement. MCA 39-2-901 et seq. , 39-2-912(2) . Irving v. School Dist. No. 1-1A, Valley County, 1991, 248 Mont. 460, 813 P.2d 417 . Education 564 ; Public Employment 252

Attorneys

Application of Wrongful Discharge from Employment Act to lawyers does not violate provision of State Constitution giving Supreme Court sole authority to regulate conduct of lawyers. Const. Art. 7, § 2 (3); MCA 39-2-901 et seq. Burkhart v. Semitool, Inc., 5 P.3d 1031, 300 Mont. 480 (2000) . Attorneys And Legal Services 4; Constitutional Law 2374

Wrongful Discharge from Employment Act applies to “in-house” counsel. MCA 39-2-901 et seq. Burkhart v. Semitool, Inc., 5 P.3d 1031, 300 Mont. 480 (2000) . Attorneys And Legal Services 184

Sexual harassment

Sexual harassment is against public policy, for purposes of cause of action for discharge from employment that violates public policy. Foster v. Albertsons, Inc., 1992, 254 Mont. 117, 835 P.2d 720 . Civil Rights 1182

Performance review

Supervisor's informal notes made following meeting in which he placed employee on probation was not “performance review” for purposes of age discrimination and wrongful discharge action. Age Discrimination in Employment Act of 1967, §§ 2-17, as amended, 29 U.S.C.A. §§ 621 - 634 ; MCA 39-2-901 to 39-2-914 . Tonack v. Montana Bank of Billings, 1993, 258 Mont. 247, 854 P.2d 326 . Civil Rights 1203

Religious institutions

Denial of application of tort of bad faith and fair dealing in employment in wrongful discharge complaint by teacher against parochial school did not result in intrusion into church affairs to such a degree as to violate establishment clause. U.S.C.A. Const.Amend. 1 ; Const. Art. 2, § 5 . Miller v. Catholic Diocese of Great Falls, Billings, 1986, 224 Mont. 113, 728 P.2d 794 . Constitutional Law 1368(1)

Rights to open courts, remedies, and justice

Wrongful Discharge From Employment Act does not deny full legal redress or speedy remedy, but rather, simply defines what constitutes facts which must be established to obtain remedy and redress in context of wrongful discharge. MCA 39-2-901 to 39-2-914 . Meech v. Hillhaven West, Inc., 1989, 238 Mont. 21, 776 P.2d 488 . Constitutional Law 2314 ; Labor And Employment 754

Provisions of Wrongful Discharge From Employment Act which expressly prohibit recovery of noneconomic damages and limit recovery of punitive damages do not violate individual's right to full legal redress or equal protection. MCA 39-2-901 to 39-2-914 ; Const. Art. 2, §§ 4 , 16 . Meech v. Hillhaven West, Inc., 1989,

238 Mont. 21, 776 P.2d 488 . Constitutional Law 2314 ; Constitutional Law 3746 ; Constitutional Law 3759 ; Labor And Employment 754

Summary judgment

Issue of material fact existed as to whether employee acted intentionally in submitting inaccurate payroll records, precluding summary judgment as to whether, under Montana law as predicted by Court of Appeals, employer's discharge decision rested on mistaken interpretation of the facts, so as to violate Wrongful Discharge from Employment Act (WDEA). MCA 39-2-901 et seq. ; Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A . Marcy v. Delta Airlines, 1999, 166 F.3d 1279 . Federal Civil Procedure 2497.1

Genuine issue of material fact as to whether good cause existed for termination of employee, who worked as a nurse and allegedly abused nursing home patient, precluded summary judgment on employee's wrongful discharge claim under Montana's Wrongful Discharge From Employment Act (WDFEA). MCA 39-2-901 et seq. Ruzicka v. First Healthcare Corp., 1997, 45 F.Supp.2d 809 . Federal Civil Procedure 2497.1

Material issue of fact as to lack of good faith on part of parochial school administrator precluded summary judgment in wrongful discharge complaint by teacher against parochial school. Miller v. Catholic Diocese of Great Falls, Billings, 1986, 224 Mont. 113, 728 P.2d 794 . Judgment 181(21)

In action for wrongful discharge, where parties related widely divergent versions of employee's work performance and reasons for her termination, genuine issues of material fact regarding wrongful discharge claim remained, including representations regarding job security, reason for employee's termination and whether she was fired for cause, thus precluding summary judgment on claims of discharge for illness in violation of public policy, and breach of covenant of good faith and fair dealing, and claim of emotional, mental and financial distress. Dare v. Montana Petroleum Marketing Co., 1984, 212 Mont. 274, 687 P.2d 1015 . Judgment 181(21)

Standing

Former employees did not have standing to challenge Wrongful Discharge Act under the equal protection and privileges and immunities clauses because of the Act's exclusion of claims brought by employees covered by collective bargaining agreements or other written employment contracts and claims covered by specific statutory remedies, as such employees were precluded from maintaining a wrongful discharge action at common law. MCA 39-2-901 et seq. , 49-2-509(7) , 49-3-312(7) ; Const. Art. 2, §§ 4 , 31 . Allmaras v. Yellowstone Basin Properties, 1991, 248 Mont. 477, 812 P.2d 770 . Constitutional Law 731 ; Constitutional Law 928

Right to trial by jury

Trial court was within its discretion in bifurcating employee's discrimination claim from his wrongful discharge claim, and disallowing employee's demand for jury trial of discrimination claim, since district court was allowed broad discretion to segregate claims, and state law did not guarantee right to jury trial in discrimination claims. MCA 39-2-901 et seq. , 49-1-101 et seq. Sullivan v. Sisters of Charity of Providence of Montana, 1994, 268 Mont. 71, 885 P.2d 488 . Jury 14.5(1) ; Trial 3(5.1)

Former employees who were found not to have been wrongfully discharged were not entitled to damages under the Wrongful Discharge Act and thus could not challenge the Act's cap on damages on the theory that it violated the right of trial by jury. MCA 39-2-901 et seq. ; Const. Art. 2, § 26 . Allmaras v. Yellowstone Basin Properties, 1991, 248 Mont. 477, 812 P.2d 770 . Jury 31.1

Admissibility of evidence

Generally, in wrongful discharge cases, reasons for discharge other than those set forth in a discharge letter are irrelevant, and thus inadmissible. McConkey v. Flathead Electric Co-op., 125 P.3d 1121, 330 Mont. 48 (2005) . Labor And Employment 862

Witnesses' personal opinions about whether they thought that former employee's conduct violated company policy were irrelevant in wrongful discharge action where former employee admitted that he violated company rules. Rules of Evid., Rule 701 . McGillen v. Plum Creek Timber Co., 1998, 290 Mont. 264, 964 P.2d 18 , rehearing denied. Evidence 481(1)

Witnesses' personal opinions about whether they thought former employee's conduct violated company policy involved matter for jury to decide and, thus, were not admissible in wrongful discharge action. McGillen v. Plum Creek Timber Co., 1998, 290 Mont. 264, 964 P.2d 18 , rehearing denied. Evidence 481(1)

In wrongful discharge action, evidence which suggested that employee was discharged for reasons other than reason set forth in discharge letter could not be admitted; any collateral reasons for discharge suggested by the evidence were irrelevant. Rules of Evid., Rule 402 . Galbreath v. Golden Sunlight Mines, Inc., 1995, 270 Mont. 19, 890 P.2d 382 . Labor And Employment 862

District court did not abuse its discretion in wrongful discharge action in allowing state employer to submit evidence of derogatory statements and exhibits involving former employee's job performance for purpose of rebutting former employee's testimony as to his diligent work habits. Weber v. State, 1992, 253 Mont. 148, 831 P.2d 1359 . Evidence 106(1)

Derogatory testimony regarding former state employee's job performance was not character evidence excluded by evidentiary rule but, rather, was evidence admissible in wrongful discharge action as to former employee's conduct. Rules of Evid., Rule 404 . Weber v. State, 1992, 253 Mont. 148, 831 P.2d 1359 . Evidence 106(1)

A summary of teller transactions performed by various tellers during the few days that former employee worked as teller prior to her termination was inadmissible in wrongful termination case since it was a compilation of after-acquired evidence and that information was not known to former employer at time of termination. Flanigan v. Prudential Federal Sav. & Loan Ass'n, 1986, 221 Mont. 419, 720 P.2d 257 , appeal dismissed 107 S.Ct. 564, 479 U.S. 980, 93 L.Ed.2d 570 . Evidence 177

Expert testimony

Testimony that former employee had been disciplined for sleeping on the job was necessary to place in context his later discharge for harassing his supervisor and, thus, was admissible in wrongful discharge action, despite employee's claim that testimony went beyond reason given in discharge letter. McGillen v. Plum Creek Timber Co., 1998, 290 Mont. 264, 964 P.2d 18 , rehearing denied. Labor And Employment 862

In former manager's suit alleging wrongful discharge, breach of implied covenant of good faith and fair dealing, and negligence, testimony of plaintiff's expert in employment relations that employer breached implied covenant of good faith and fair dealing and that its reduction in force was not legitimate constituted legal conclusions on issues to be decided by jury and exceeded scope of allowable expert testimony. Rules of Evid., Rule 704 . Kizer v. Semitool, Inc., 1991, 251 Mont. 199, 824 P.2d 229 . Evidence 571(3)

Testimony of experts

Testimony that former employee had been disciplined for sleeping on the job was necessary to place in context his later discharge for harassing his supervisor and, thus, was admissible in wrongful discharge action, despite employee's claim that testimony went beyond reason given in discharge letter. McGillen v. Plum Creek Timber Co., 1998, 290 Mont. 264, 964 P.2d 18 , rehearing denied. Labor And Employment 862

In former manager's suit alleging wrongful discharge, breach of implied covenant of good faith and fair dealing, and negligence, testimony of plaintiff's expert in employment relations that employer breached implied covenant of good faith and fair dealing and that its reduction in force was not legitimate constituted legal conclusions on issues to be decided by jury and exceeded scope of allowable expert testimony. Rules of Evid., Rule 704 . Kizer v. Semitool, Inc., 1991, 251 Mont. 199, 824 P.2d 229 . Evidence 571(3)

Jury questions

Evidence supported submission to jury of former employee's wrongful termination case against former employer and manager based upon breach of implied covenant of good faith and fair dealing. Flanigan v. Prudential Federal Sav. & Loan Ass'n, 1986, 221 Mont. 419, 720 P.2d 257 , appeal dismissed 107 S.Ct. 564, 479 U.S. 980, 93 L.Ed.2d 570 . Labor And Employment 873

Sufficiency of evidence

Substantial evidence supported award of $33,230 in favor of former state employee for wrongful discharge. MCA 39-2-905(1) . Weber v. State, 1992, 253 Mont. 148, 831 P.2d 1359 . Public Employment 810 ; States 53

Evidence supported jury finding that state employee was wrongfully discharged. Weber v. State, 1992, 253 Mont. 148, 831 P.2d 1359 . Public Employment 807 ; States 53

Amount of damages

Damage award in wrongful discharge action was not excessive as matter of law; jury took into account employee's testimony on interim earnings and, accordingly, reduced maximum award allowed by Wrongful Discharge Act. MCA 39-2-901 et seq. , 39-2-905(1) . Kestell v. Heritage Health Care Corp., 1993, 259 Mont. 518, 858 P.2d 3 . Labor And Employment 867

Costs and attorney fees

Private Attorney General exception which allows for prevailing party to receive award of costs and attorney fees when government fails to enforce interest significant to its citizens did not apply to wrongful discharge action brought by former state employee. Weber v. State, 1992, 253 Mont. 148, 831 P.2d 1359 . Costs 215

District court did not abuse its discretion in determining that equity and justice did not require award of costs and attorney fees to former state employee in connection with his wrongful discharge action; former state employee failed to establish that state's conduct in discharging him was so extreme as to entitle him to costs and attorney fees. Weber v. State, 1992, 253 Mont. 148, 831 P.2d 1359 . States 215

District court was not clearly erroneous in determining that state defended wrongful discharge action in good faith and that former employee was not entitled to attorney fees and costs; former employee originally valued his case at $500,000 and later offered to settle for $100,000 while jury evaluated claim at $33,230 following trial on the case. MCA 25-10-711 . Weber v. State, 1992, 253 Mont. 148, 831 P.2d 1359 . States 215

Motion for new trial

In denying former employee's motion for new trial in wrongful-termination action, trial court was not required to articulate that it had made a conscientious judgment as to motion for new trial; trial court stated that it considered parties' arguments, and former employee did not establish that anything more was required. Bailey v. Beartooth Communications Co., 92 P.3d 1, 321 Mont. 305 (2004) . New Trial 163(1)

Statements that were made by former employer's attorney during closing arguments and that referred to page in employee handbook that seemingly referred to at-will employment did not warrant new trial in former employee's wrongful-termination action, although Montana was not an at-will employment state; handbook had been admitted into evidence, page had been shown to jury during trial without objection, and even if page was improperly shown to jury, court cured any error by immediately admonishing jury that Montana was not an at-will employment state. Bailey v. Beartooth Communications Co., 92 P.3d 1, 321 Mont. 305 (2004) . New Trial 29 ; New Trial 32