Notes Of Decisions

In general

Ohio law, rather than Montana law, governed the alleged parties' employer-employee relationship for employee's wrongful discharge claim, and therefore employee could not rely on Montana Wrongful Discharge from Employment Act (WDEA), even though employee traveled to Montana and held frequent telephone meetings with Montana staff, where employee's office and supervisor were in Ohio, employee performed the majority of his duties in Ohio, and the employment agreement was made in Ohio. Harrington v. Energy West Inc., 356 P.3d 441, 380 Mont. 298 (2015) . Labor and Employment 756

Police Commission statutes governing wrongful discharge claims were not the exclusive remedy for terminated officer who sought award for lost wages; officer had completed his probationary period of employment and thus could benefit from the protections of the Wrongful Discharge From Employment Act (WDEA). Rooney v. City of Cut Bank, 286 P.3d 241, 365 Mont. 375 (2012) . Municipal Corporations 186(4) ; Public Employment 433

Not all tort or contract claims are barred by Wrongful Discharge From Employment Act, merely because they arise from employment; rather, only those tort or contract claims which are “for discharge” are barred. MCA 39-2-912(2) , 39-2-913 . Basta v. Crago, Inc., 1996, 280 Mont. 408, 930 P.2d 78 . 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

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

Except for causes of action for discharge governed by other state or federal statutory procedure, Wrongful Discharge From Employment Act provides exclusive remedy and procedure for actions formerly governed by common-law requirements and prior statutes governing employment relationship. MCA 39-2-503 , 39-2-902 to 39-2-904 , 39-2-912 , 39-2-913 ; MCA 39-2-504 , 39-2-505 (Repealed). Meech v. Hillhaven West, Inc., 1989, 238 Mont. 21, 776 P.2d 488 . Labor And Employment 852

Construction and application

The Wrongful Discharge from Employment Act (WDEA) effectively implies an employment contract requiring good cause to terminate where there is no express contract. Harrington v. Energy West Inc., 356 P.3d 441, 380 Mont. 298 (2015) . Labor and Employment 835

Statutory grievance procedure governing employment disputes for employees of Department of Transportation, which was exclusive remedy for former employee's claim for wrongful discharge, did not violate equal protection under Montana Constitution based on employee's claim that exclusive remedy deprived him of opportunity to pursue claim under Wrongful Discharge from Employment Act (WDEA); former employee was not similarly situated to all other workers with right to pursue wrongful discharge claim under WDEA, as WDEA exempted other classes of employees from seeking remedy under Act, and remedies available under WDEA varied both in scope and in nature of rights provided. Kershaw v. Montana Dept. of Transp., 257 P.3d 358, 361 Mont. 215 (2011) . Constitutional Law 3595 ; Labor and Employment 852

Notes of Decisions for 39-2-912. Exemptions

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

Former railroad employee's claims that railroad used false pretext to fire him in order to intimidate other employees from filing injury reports was rooted in state statute governing liability of railroads for negligence of its servants, rather than based on collective bargaining agreement, and, thus, claim was not preempted by the federal Railroad Liability Act (RLA). Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq. Winslow v. Montana Rail Link, Inc., 121 P.3d 506, 328 Mont. 260 (2005) , rehearing denied. Labor And Employment 757 ; States 18.46

Collective bargaining agreement

School district superintendent's assertion that speech-language pathologist could not avail herself of collective bargaining agreement grievance procedures incorporated by reference in her employment contract because the collective bargaining agreement did not apply to her employment was a legal, as opposed to a factual, representation, and thus school district was not estopped from arguing that pathologist's failure to file a grievance barred her from raising claims in district court for breach of contract, breach of implied covenant of good faith and fair dealing, wrongful discharge, and violation of her right to due process. U.S.C.A. Const.Amend. 14 . Wurl v. Polson School Dist. No. 23, 127 P.3d 436, 330 Mont. 282 (2006) . Estoppel 62.5

Speech-language pathologist's employment contract clearly and unambiguously incorporated by reference the entirety of separate collective bargaining agreement between school district and education association, including the provisions relating to termination procedures, where employment contract provided that pathologist assented to the provisions of the salary schedule set forth in the collective bargaining agreement, as well as “other provisions” of the agreement, and phrase “other provisions” was not modified by any language limiting which agreement provisions were included. Wurl v. Polson School Dist. No. 23, 127 P.3d 436, 330 Mont. 282 (2006) . Labor And Employment 1251

Failure to exhaust grievance procedures contained in collective bargaining agreement bars an employee from bringing suit in district court. Wurl v. Polson School Dist. No. 23, 127 P.3d 436, 330 Mont. 282 (2006) . Labor And Employment 1320(1)

Speech-language pathologist's employment contract's language regarding separate collective bargaining agreement between school district and education association was clear and unambiguous, and thus issue of whether the employment contract incorporated the entirety of the collective bargaining agreement by reference was a question of law rather than fact. Wurl v. Polson School Dist. No. 23, 127 P.3d 436, 330 Mont. 282 (2006) . Labor And Employment 1328(2)

School district speech-language pathologist's failure to pursue collective bargaining agreement grievance procedures incorporated by reference in her employment contract barred her from raising claims in district court for breach of contract, breach of implied covenant of good faith and fair dealing, wrongful discharge, and violation of her right to due process. U.S.C.A. Const.Amend. 14 . Wurl v. Polson School Dist. No. 23, 127 P.3d 436, 330 Mont. 282 (2006) . Labor And Employment 1320(14)

An employee covered by a collective bargaining agreement which contains grievance procedures must exhaust the remedy afforded by the grievance procedures before bringing suit. Wurl v. Polson School Dist. No. 23, 127 P.3d 436, 330 Mont. 282 (2006) . Labor And Employment 1320(1)

Former state employee failed to establish in her wrongful-discharge action against state agency that Wrongful Discharge from Employment Act (WDEA), which did not apply to discharge of employee covered by collective bargaining agreement (CBA), violated constitutional rights to full legal redress and to jury trial, since former employee produced nothing to overcome presumption that WDEA provision concerning employees covered by CBAs was constitutional, and former employee provided no analysis regarding how case cited by former employee supported constitutional challenge. Const. Art. 2, §§ 16 , 26 ; MCA 39-2-912(2) . LaFournaise v. Montana Developmental Center, 77 P.3d 202, 317 Mont. 283 (2003) . Constitutional Law 2314 ; Jury 31.1 ; Public Employment 807 ; States 53

The Wrongful Discharge from Employment Act (WDEA) did not apply to railroad employee's statutory claim that his termination from employment was caused by the mismanagement of another railroad employee, where the plaintiff employee was covered by a collective bargaining agreement (CBA). MCA 39-2-703 , 39-2-912(2) . Winslow v. Montana Rail Link, Inc., 16 P.3d 992, 302 Mont. 289 (2000) . Labor And Employment 857

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

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

Wrongful Discharge from Employment Act (WDEA) did not apply to union employee who was covered by a collective bargaining agreement. Johnson v. Columbia Falls Aluminum Co., LLC, 213 P.3d 789, 350 Mont. 562, 2009 WL 865308 , Unreported (2009). Labor And Employment 852

Contract for term

If an employment contract for a specific term also allows the employer to terminate at will after completion of the probationary period, it is not a “written contract for a specific term,” to which the Wrongful Discharge from Employment Act does not apply, and, thus, a discharged employee covered by such a contract is not excluded from bringing a claim under the Act. Brown v. Yellowstone Club Operations, LLC, 255 P.3d 205, 361 Mont. 124 (2011) . Labor and Employment 857

Employment agreement setting forth three-year term of employment, but that also allowed employer to terminate employee at will, for no cause, was not a “written contract for a specific term,” to which the Wrongful Discharge from Employment Act did not apply, and, thus, employee, who employer had terminated without cause, was not excluded from bringing a claim against the employer under the Act. Brown v. Yellowstone Club Operations, LLC, 255 P.3d 205, 361 Mont. 124 (2011) . Labor and Employment 857

A claim for relief which is predicated on discharge from employment is barred if the employment is for a specific term under a written contract of employment and that term has expired. MCA 39-2-912(2) , 39-2-913 . Stowers v. Community Medical Center, Inc., 172 P.3d 1252, 340 Mont. 116 (2007) . Labor And Employment 40(2)

Business manager documents signed by employee of school district after she was promoted to business manager did not constitute written contracts of employment for specific term and did not modify employee's status as permanent employee attained after she successfully completed six months probationary period under prior position, and, thus, business manager documents executed each year did not come within exemption from statutory requirement that employee not be discharged after completing probationary period except for good cause; documents did not explicitly state ending term date of employment, and employee was hired, and was promoted to business manager prior to updated handbook providing that employees hired after effective date of handbook were employed under annual contracts of specified term. MCA 39-2-912(2) . Cromwell v. Victor School Dist. No. 7, 140 P.3d 487, 333 Mont. 1 (2006) , on remand 2006 WL 6102825 . Education 417 ; Public Employment 141

Assuming memorandum from employer to employee was written employment contract, employer and employee did not enter into written employment contract “for a specific term” and, therefore, Wrongful Discharge From Employment Act barred employee's breach of contract and breach of implied covenant of good faith and fair dealing claims against employer; memorandum simply stated proposed salary for first two years of employment, did not specify termination date or hiring date, and employee's testimony indicated he was unclear as to what parties actually agreed would be specific term of his employment. MCA 39-2-912(2) , 39-2-913 . Basta v. Crago, Inc., 1996, 280 Mont. 408, 930 P.2d 78 . Labor And Employment 40(3) ; Labor And Employment 852

Nothing in state law forbids parties from entering into employment contract for specific term and allowing termination of employee by simply not entering into new contract, thus exempting contract from Wrongful Discharge From Employment Act. MCA 39-2-912 . Farris v. Hutchinson, 1992, 254 Mont. 334, 838 P.2d 374 . Labor And Employment 34(1) ; Labor And Employment 48

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

Bad faith claim

Former employee's posttermination bad faith claim against employer, based on employer's failure to rehire employee, did not constitute separate tort unrelated to alleged wrongful discharge, and thus, claim was not actionable under and was precluded by the Wrongful Discharge From Employment Act (WDFEA), which provides exclusive remedy for wrongful discharge, where employee admitted employer had no duty to rehire him and employee could not establish existence of contract after termination. MCA 39-2-902 . Kneeland v. Luzenac America, Inc., 1998, 289 Mont. 201, 961 P.2d 725 , rehearing denied. Labor And Employment 852

Breach of implied covenant of 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

Mine safety and health act claim

Miner's filing of Mine Safety and Health Act claim against his employer did not provide him “procedure or remedy for contesting the dispute,” and thus miner was not precluded from recovering under Wrongful Discharge from Employment Act, where United States Department of Labor Mine Safety and Health Administration determined that discharge did not violate MSHA. MCA 39-2-912 . Schultz v. Stillwater Min. Co., 1996, 277 Mont. 154, 920 P.2d 486 . Labor And Employment 852

Age discrimination

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

Vested rights

Wrongful Discharge Act did not unconstitutionally deprive former employees of fundamental right to bring a claim for breach of implied covenant of good faith and fair dealing against their employer as they had no vested interest in former rule of law permitting such a claim. MCA 39-2-912 ; Const. Art. 2, § 31 . Allmaras v. Yellowstone Basin Properties, 1991, 248 Mont. 477, 812 P.2d 770 . Constitutional Law 2648 ; Labor And Employment 754 ; Labor And Employment 843

Obligation of contract

Wrongful Discharge Act did not impair obligation of contract for employee who did not enter into contract until after its effective date. MCA 39-2-912 ; Const. Art. 2, § 31 . Allmaras v. Yellowstone Basin Properties, 1991, 248 Mont. 477, 812 P.2d 770 . Constitutional Law 2751 ; Labor And Employment 754

Res judicata

Discharged police officer's action challenging his termination under Wrongful Discharge From Employment Act (WDEA) was precluded by operation of res judicata and collateral estoppel on account of his prior administrative challenge before the Police Commission and District Court's affirmance of Commission's decision on judicial review; although officer raised new theories in the subsequent action, such as retaliation and double standard, he provided no legal reason why he could not have raised those theories before the Commission. Rooney v. City of Cut Bank, 286 P.3d 241, 365 Mont. 375 (2012) . Municipal Corporations 185(11) ; Public Employment 741

Doctrine of claim preclusion barred former highway patrol officer's claim for wrongful discharge under the Wrongful Discharge from Employment Act, where former officer previously appealed his discharge following an administrative hearing, the District Court affirmed the administrative ruling, the Supreme Court affirmed that previous District Court ruling, and all required factors for claim preclusion had been satisfied. Tuttle v. Department of Justice, 211 P.3d 205, 348 Mont. 372, 2008 WL 5412904 , Unreported (2008). Judgment 548

Failure to state a claim

Employee's claim for violation of the Workers' Compensation Act by employer, which discharged employee after he neglected to inform it that he was using medical marijuana, failed drug test, and declined to sign last chance agreement, was actually a reworking of wrongful discharge claim and, thus, failed to state a claim upon which relief could be granted. Johnson v. Columbia Falls Aluminum Co., LLC, 213 P.3d 789, 350 Mont. 562, 2009 WL 865308 , Unreported (2009). Labor And Employment 851

Termination of employees at-will

Pursuant to the Wrongful Discharge from Employment Act, except for a probationary employee, the state no longer recognizes the right of an employer to terminate an employee at will, for no cause; however, the Act expressly does not apply to “an employee covered by a written contract of employment for a specific term.” Brown v. Yellowstone Club Operations, LLC, 255 P.3d 205, 361 Mont. 124 (2011) . Labor and Employment 758 ; Labor and Employment 857