

Notes of Decisions for 39-2-903. Definitions

Notes Of Decisions

Construction and application

Montana's Wrongful Discharge from Employment Act's "terms and conditions" language bars constructive discharge claims predicated on employer's failure to improve conditions above status quo baseline; it does not exclude claims alleging that conditions deteriorated to a point that a reasonable person would find them intolerable. *Johannsen v. Nike, Inc.*, 336 Fed.Appx. 600, 2009 WL 1566849 , Unreported (2009). Labor And Employment 826

Discharge

Worker was not an employee of clinic when it told her three days before she was to start employment under written contract that it would not employ her after all, and therefore, clinic did not "discharge" worker as term was defined in Wrongful Discharge from Employment Act, as would preempt worker's common law claim for breach of contract; when clinic canceled employment agreement, worker was still full-time employee of another entity, and clinic could not discharge worker before her first day on the job. *Great Falls Clinic LLP v. Montana Eighth Judicial District Court*, 381 P.3d 550, 385 Mont. 95 (2016) , on remand 2017 WL 9535145 . Labor And Employment 852

When employee was terminated from his managerial position, he was "discharged" from employment within meaning of Wrongful Discharge From Employment Act and employee's subsequent refusal to accept offer of a lesser position, at best, affected his duty to mitigate his damages. MCA 39-2-903(2) . *Howard v. Conlin Furniture No. 2, Inc.*, 1995, 272 Mont. 433, 901 P.2d 116 . Labor And Employment 825 ; Labor And Employment 868(5)

Employer was not entitled to jury instruction on entire statutory definition of discharge in wrongful discharge action where instruction given informed jury of two theories advanced by parties. MCA 39-2-903(2) . *Arnold v. Boise Cascade Corp.*, 1993, 259 Mont. 259, 856 P.2d 217 . Labor And Employment 874

Constructive discharge

Under Montana law, heavy equipment operator for lumber yard was not constructively discharged as result of employer's proposed transfer to allegedly more dangerous position at log landing, and thus operator was not entitled to protections of Worker Adjustment and Retraining Notification (WARN) Act, where operator never visited landing and never discovered if proper training and safety measures would be in place. Worker Adjustment and Retraining Notification Act, § 2 et seq., 29 U.S.C.A. § 2101 et seq. ; MCA 39-2-903(1) .

Childress v. Darby Lumber Inc., 126 F.Supp.2d 1310 (2001) , affirmed 357 F.3d 1000 . Labor And Employment 826 ; Labor And Employment 3217

Whether a constructive discharge has occurred is usually a question of fact determined by the totality of the circumstances. *Harrell v. Farmers Educational Co-op Union of America, Montana Div.*, 314 P.3d 920, 373 Mont. 92 (2013) , on remand 2014 WL 12744786 . Labor and Employment 873

Whether a constructive discharge has occurred is usually a question of fact determined by the totality of the circumstances. *Bellanger v. American Music Co.*, 104 P.3d 1075, 325 Mont. 221 (2004) , rehearing denied. Labor And Employment 826

Genuine issue of material fact as to whether a reasonable person in employee's shoes would have felt forced to resign due to intolerable working conditions precluded summary judgment in action for constructive discharge. *Bellanger v. American Music Co.*, 104 P.3d 1075, 325 Mont. 221 (2004) , rehearing denied. Judgment 181(21)

Assuming family farm corporation constructively discharged plaintiff shareholder-employee, the corporation had good cause for doing so, and thus, corporation was not liable under Wrongful Discharge from Employment Act; plaintiff had been directed to clean out feeders and repair a chicken coop, plaintiff had refused to do so, and the directive to plaintiff was reasonable, given the nature of the farming operation. MCA 39-2-903(5) . *Pankratz Farms, Inc. v. Pankratz*, 95 P.3d 671, 322 Mont. 133 (2004) , rehearing denied. Labor And Employment 826

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Employee who chose early retirement when given choice either to retire early or be fired had the right to assert a wrongful constructive discharge claim, but could not retain early retirement benefits after jury determined that discharge was not wrongful. *Jarvenpaa v. Glacier Elec. Co-op., Inc.*, 1998, 292 Mont. 118, 970 P.2d 84 . Labor And Employment 852

Substantial evidence supported jury finding that employee was not constructively discharged due to employer's alleged failure to accommodate him by removing him from hostile work environment but, rather, evidence established that employee was discharged for good cause; one incident of sexual harassment against a female employee occurred ten years previously, another incident involved employee who was terminated following incident, employer was willing to assign employee to a position where he would not be working with those he had complained about, and employee was not discharged until 11 months after his demotion, during which 11 months he failed to report for work. *Walker v. Montana Power Co.*, 1996, 278 Mont. 344, 924 P.2d 1339 . Civil Rights 1744 ; Labor And Employment 863(1)

Under Wrongful Discharge From Employment Act, determination of whether employer has rendered working conditions so intolerable that resignation is only reasonable alternative and, therefore, that employee has been constructively discharged, must be based on totality of circumstances, not on employee's subjective judgment that working conditions are intolerable. MCA 39-2-903(1) . *Jarvenpaa v. Glacier Elec. Co-op., Inc.*, 1995, 271 Mont. 477, 898 P.2d 690 . Labor And Employment 826

Material issue of fact as to whether retire or be fired ultimatum presented to employee constituted constructive discharge, even if employee accepted retirement, precluded summary judgment for employer in wrongful discharge action brought under Wrongful Discharge From Employment Act. MCA 39-2-903(1) . *Jarvenpaa v. Glacier Elec. Co-op., Inc.*, 1995, 271 Mont. 477, 898 P.2d 690 . Judgment 181(21)

To find constructive discharge under Wrongful Discharge From Employment Act, fact finder must decide whether employer has rendered working conditions so intolerable that resignation is only reasonably alternative. MCA 39-2-903(1) . *Sullivan v. Sisters of Charity of Providence of Montana*, 1994, 268 Mont. 71, 885 P.2d 488 . Labor And Employment 826

Because intolerable employment situation about which employee complained occurred after effective date of Wrongful Discharge From Employment Act, employee was not entitled to remedies for constructive discharge, in addition to his remedies under Act, despite his contention that documents discovered after trial indicated plan to terminate him before new law was enacted, and that documents constituted evidence of constructive discharge; employee was not informed that his position was eliminated until after Act became effective. MCA 39-2-903(1) . *Sullivan v. Sisters of Charity of Providence of Montana*, 1994, 268 Mont. 71, 885 P.2d 488 . Labor And Employment 852

Issue whether hospital rendered chemical dependency unit director's working conditions intolerable was for jury in action for wrongful constructive discharge; credible evidence in record showed that supervisor, who was highly qualified and experienced, was abruptly removed from his post, isolated in different wing of hospital, and deprived of meaningful activity. MCA 39-2-903(1) . *Kestell v. Heritage Health Care Corp.*, 1993, 259 Mont. 518, 858 P.2d 3 . Labor And Employment 873

Employer was not liable to former employee on claim of constructive discharge where former employee was never told she was going to be fired and her supervisor stated he wanted her to stay at her job, even though employer may have deliberately accepted supervisors' criticisms of former employee or recommendations of supervisors, contrary to employer's own policies. *Frigon v. Morrison-Maierle, Inc.*, 1988, 233 Mont. 113, 760 P.2d 57 . Labor And Employment 826

Regional sales representative for athletic apparel company did not resign after employer declined to improve "terms and conditions" of her employment, such that Montana's Wrongful Discharge from Employment Act prohibited finding of constructive discharge; employer affirmatively changed her job responsibilities such that they became intolerable. *Johannsen v. Nike, Inc.*, 336 Fed.Appx. 600, 2009 WL 1566849 , Unreported (2009). Labor And Employment 826

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Regional sales representative claiming she was constructively discharged from athletic apparel company in violation of Montana's Wrongful Discharge from Employment Act did not have reasonable alternatives to resigning; manager's offer to meet with her was made after Human Resources Department had already accepted her resignation, and employer did not respond to representative's email following offer in which she explained she was open to meeting only if subject of her expanded sales territory was still negotiable. *Johannsen v. Nike, Inc.*, 336 Fed.Appx. 600, 2009 WL 1566849 , Unreported (2009). Labor And Employment 826

Under Montana's Wrongful Discharge from Employment Act, whether constructive discharge has occurred is usually question of fact determined by totality of the circumstances. *Johannsen v. Nike, Inc.*, 336 Fed.Appx. 600, 2009 WL 1566849 , Unreported (2009). Labor And Employment 873

Good cause

Employee's violation of employer's policy regarding use of company computers to store and transmit sexually explicit material constituted good cause for termination under Montana Wrongful Discharge from Employment Act; employer had legitimate business interest in creating and enforcing policies that promoted pornography-free workplace. *Golden v. Northwestern Corp.*, 13 F.Supp.3d 1052 (2014) , dismissed. Labor and Employment 766

Employer's termination of employee for violating policy regarding use of company computers to store and transmit sexually explicit material was not arbitrary and capricious pursuant to Montana Wrongful Discharge from Employment Act, despite employee's contention that similar violations by coworkers resulted in less severe disciplinary penalties; there was no evidence that coworkers routinely violated policy under which employee was terminated, either before or after his termination. *Golden v. Northwestern Corp.*, 13 F.Supp.3d 1052 (2014) , dismissed. Labor and Employment 766

Employee's repeated use of employer's equipment for his personal real estate business, coupled with his prior censure for same offense, constituted good cause for termination under Montana Wrongful Discharge from Employment Act; employer's code of conduct explicitly stated that use of company equipment for conducting work related to personal business was not permitted, and that violation of policy could result in discipline, including possible termination, and employer had legitimate business interest in how its employees used company equipment and company time. *Golden v. Northwestern Corp.*, 13 F.Supp.3d 1052 (2014) , dismissed. Labor and Employment 766

Airline employee's drug test indicating presence of cocaine constituted good cause for her dismissal under Montana's Wrongful Discharge from Employment Act (WDEA). MCA 39-2-903 . *Baker v. Delta Air Lines, Inc.*, 108 Fed.Appx. 451, 2004 WL 1930289 , Unreported (2004). Labor And Employment 767

A "legitimate business reason," as good cause for an involuntary discharge from employment, is a reason that is neither false, whimsical, arbitrary or capricious, and that has some logical relationship to the needs of the employer's business. *Speer v. Department of Corrections*, 2020, 2020 WL 896693 . Labor and Employment 761

For purposes of determining whether an employee was involuntarily discharged for good cause, which embodies the broad right and discretion of an employer to run its business as it sees fit in the case of employees who hold managerial positions, whether an employee holds a managerial position is generally a question of fact under the totality of the circumstances including as pertinent, inter alia, the nature of employee's role, responsibilities, and discretion in the running or operation of the employer's business or function, the level of trust placed in the employee, the nature of the relationship between the employee and her superiors, and the nature and degree of the employee's interaction on behalf of the employer with third parties who do business with the employer. *Speer v. Department of Corrections*, 2020, 2020 WL 896693 . Labor and Employment 873

Managerial employee, whose job responsibilities included staffing and overseeing billing activities, demonstrated an inability throughout her employment to manage high accounts receivable (AR) figures and employee evaluations, such that reasons for her termination, unsatisfactory performance and neglecting

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job duties, among others, were legitimate business reasons constituting “good cause” under the Wrongful Discharge from Employment Act (WDEA). *Putnam v. Central Montana Medical Center*, 460 P.3d 419, 399 Mont. 241 (2020) . Labor and Employment 765

On a summary judgment motion record in a Wrongful Discharge from Employment Act (WDEA) case, upon an employer setting forth evidence demonstrating good cause for the discharge, the burden shifts to the employee to present evidence establishing either that the given reason for the discharge is not good cause in and of itself, or that the given reason is a pretext and not the honest reason for the discharge. *Putnam v. Central Montana Medical Center*, 460 P.3d 419, 399 Mont. 241 (2020) . Judgment 185.3(13)

When deciding the issue as to whether an employee's discharge was for good cause under Wrongful Discharge from Employment Act (WDEA), employer must present evidence of a reasonable job-related ground for the dismissal, including a legitimate business reason; thus, the reason for dismissal must bear some logical relationship to the needs of the business. *Putnam v. Central Montana Medical Center*, 460 P.3d 419, 399 Mont. 241 (2020) . Labor and Employment 761

In applying Wrongful Discharge from Employment Act's (WDEA) definition of “good cause” for termination, it is important to consider an employer's right to exercise discretion over whom it employs and keeps in employment. *Putnam v. Central Montana Medical Center*, 460 P.3d 419, 399 Mont. 241 (2020) . Labor and Employment 761

Employer showed good cause for involuntary discharge of facility programs bureau chief for Department of Corrections (DOC) and, thus, discharge was not wrongful; chief was management team member of agency division of state government and, thus, employer had broad discretion to determine whether she satisfactorily performed her duties, employer believed that chief repeatedly engaged in numerous incidents of unprofessional conduct or conduct violative of DOC policies governing employee conduct, chief provided no acceptable justification for cited infractions and failed to accept responsibility for them, and administrators discovered many emails over long period of time to both coworkers and third-party contractors that not only reflected poorly on chief's professional judgment but undermined integrity and operations of agency. *Speer v. Department of Corrections*, 458 P.3d 1016, 399 Mont. 67 (2020) . Prisons 396 ; Public Employment 259(1)

County commission's loss of trust in its human resources director's ability to handle sensitive personnel matters, to work collaboratively to resolve workplace concerns, and to handle key aspects of her position in accordance with applicable law and policy provided sufficient good cause, within meaning of Wrongful Discharge from Employment Act, for her termination; the director occupied a sensitive managerial position with the county administration, and the Commission was entitled to expect her to perform with the trust and sensitivity commensurate with her responsibilities. *Bird v. Cascade County*, 386 P.3d 602, 386 Mont. 69 (2016) . Counties 67 ; Public Employment 257

To defeat a motion for summary judgment on the issue of good cause for a discharge pursuant to the Wrongful Discharge from Employment Act, the employee must submit evidence demonstrating either that the reason for the discharge is not good cause in and of itself or that the given reason is a pretext and not the honest reason for the discharge. *Moe v. Butte-Silver Bow County*, 371 P.3d 415, 383 Mont. 297 (2016) , on remand 2016 WL 10830349 . Labor and Employment 761 ; Labor and Employment 762

Substantial undisputed evidence supported Department of Public Health and Human Services' claim of good cause for termination of employment of attorney who had repeatedly failed to report to work after a confrontation with her immediate supervisor and had not obtained an excused absence, and who had refused to attend two meetings arranged to discuss her concerns, and her supervisor had documented the disruption of the operation of the Department's business occasioned by those occurrences. *Davis v. State, Dept. of Public Health and Human Services*, 357 P.3d 320, 381 Mont. 59 (2015) . Public Employment 617 ; States 53

Department of Commerce had good cause, within meaning of Wrongful Discharge From Employment Act, for termination of administrator of the Tourism and Promotion Division, even though administrator had consistently received satisfactory or better performance evaluations, where administrator's management of division's budget left division open to having more than \$4 million in funds swept out of its budget and into general state fund,

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and administrator did not perceive this problem or act to rectify it. *Baumgart v. State*, Dept. of Commerce, 332 P.3d 225, 376 Mont. 1 (2014) , rehearing denied. Public Employment 262 ; States 53

Employer had good cause to terminate employee, where employee violated standards of conduct set forth in employee handbook by directing profanity at his supervisors after being told to calm down and leave the premises. *Becker v. Rosebud Operating Services, Inc.*, 191 P.3d 435, 345 Mont. 368 (2008) . Labor And Employment 763

A legitimate business reason for an employee termination under the Wrongful Discharge from Employment Act is one that is neither false, whimsical, arbitrary or capricious, and it must have some logical relationship to the needs of the business. *Becker v. Rosebud Operating Services, Inc.*, 191 P.3d 435, 345 Mont. 368 (2008) . Labor And Employment 769

For purposes of section of state Wrongful Discharge from Employment Act (WDEA) that defines “good cause” as reasonable job-related grounds for dismissal based on failure to satisfactorily perform job duties, disruption of employer's operation, or other legitimate business reason, a “legitimate business reason” for termination is defined as a reason that is not false, whimsical, arbitrary, or capricious and that has some logical relationship to the needs of the business. MCA 39-2-903(5) . *Johnson v. Costco Wholesale*, 152 P.3d 727, 336 Mont. 105 (2007) . Labor And Employment 765 ; Labor And Employment 769

In order for an employee to defeat a motion for summary judgment on the issue of good cause under Wrongful Discharge from Employment Act, the employee must prove that the given reason for the discharge is a pretext and not the honest reason for the discharge. MCA 39-2-903(5) , 39-2-904 . *Arnold v. Yellowstone Mountain Club, LLC*, 100 P.3d 137, 323 Mont. 295 (2004) . Judgment 185.3(13)

Evidence that employee who was allegedly terminated for good cause after she said “fuck this” and walked out of a meeting at which she was informed of her demotion had no prior disciplinary problems, and performed her duties well, and that employer indicated that employee's prospects of continued employment were “excellent” raised genuine issue of material fact as to whether there were reasons for employee's termination other than her outburst at meeting, precluding summary judgment in employee's action for wrongful discharge. MCA 39-2-903(5) , 39-2-904 . *Arnold v. Yellowstone Mountain Club, LLC*, 100 P.3d 137, 323 Mont. 295 (2004) . Judgment 185.3(13)

County had “good cause” within meaning of Wrongful Discharge From Employment Act (WDFEA) to terminate employee from her position as county's senior citizen transportation coordinator, despite employee's contention that she was being used as “scapegoat” for county's allegedly improvident purchase of bus for senior citizen program, where employee had refused to create regular transportation schedule and had refused to drive bus or to find volunteers to drive bus. MCA 39-2-903(5) , 39-2-904(2) . *Mysse v. Martens*, 1996, 279 Mont. 253, 926 P.2d 765 . Counties 67 ; Public Employment 265

In order for employee to defeat motion for summary judgment on issue of good cause under Wrongful Discharge From Employment Act (WDFEA), employee must prove that given reason for discharge, such as failure to perform services employee was hired to perform, is pretext and not honest reason for discharge. MCA 39-2-903(5) , 39-2-904(2) . *Mysse v. Martens*, 1996, 279 Mont. 253, 926 P.2d 765 . Judgment 185(2)

County had good cause to dismiss county employee under Wrongful Discharge From Employment Act for breach of county policy against allowing visitors into secure area of juvenile facility where employee admitted that he allowed visitors in twice after being warned both orally and in writing that visitors were not allowed and that violation of this rule could result in disciplinary action including termination. MCA 39-2-903(5) . *Fenger v. Flathead County, Montana*, 1996, 277 Mont. 507, 922 P.2d 1183 . Counties 67 ; Public Employment 262

Material issue of fact as to whether employee was terminated for good cause within meaning of Wrongful Discharge From Employment Act precluded summary judgment for employer on employee's wrongful

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discharge claim. MCA 39-2-903(5) . Howard v. Conlin Furniture No. 2, Inc., 1995, 272 Mont. 433, 901 P.2d 116 . Judgment 181(21)

Employee's calls to four managers after being warned not to threaten anyone involved in investigations of sexual harassment complaint against him provided "good cause" for discharge within meaning of Wrongful Discharge From Employment Act, notwithstanding employee's contention that he was merely utilizing employer's "open door" policy; two of managers hung up on employee and stated that they interpreted calls as threatening, first manager called sheriff after hanging up on employee and requested that sheriff be present at subsequent meeting with employee, employee told third manager to pack his suitcase for a "little trip to hell," employer's "open door" policy did not exist for purpose of allowing employee to threaten or intimidate management, and employee had opportunity to raise his concerns and did not do so. MCA 39-2-903(5) , 39-2-904(2) . Koeplin v. Zortman Min., Inc., 1994, 267 Mont. 53, 881 P.2d 1306 . Labor And Employment 763

For purposes of Wrongful Discharge From Employment Act's definition of "good cause," "legitimate business reason" for discharge is reason that is not false, whimsical, arbitrary, or capricious; it must have some logical relationship to needs of business. MCA 39-2-903(5) , 39-2-904(2) . Koeplin v. Zortman Min., Inc., 1994, 267 Mont. 53, 881 P.2d 1306 . Labor And Employment 761

In suit against supermarket under Wrongful Discharge from Employment Act, testimony of discharged manager of bakery/deli department created question for jury as to whether manager was performing her job satisfactorily, whether reasons for termination were arbitrary or capricious rather than supported by good cause, and whether manager's son's improprieties at store were motivation for her termination. MCA 39-2-903(5) . Guertin v. Moody's Market, Inc., 1994, 265 Mont. 61, 874 P.2d 710 . Labor And Employment 873

Issue whether director of hospital chemical dependency unit's termination was justified by legitimate business reason was for jury in wrongful discharge action; record showed that less qualified replacement assumed supervisor's position and that, contrary to hospital's allegations, position was not eliminated or even substantially changed, and evidence did not suggest any significant correlation between supervisor's replacement and hospital's business needs. MCA 39-2-903(5) . Kestell v. Heritage Health Care Corp., 1993, 259 Mont. 518, 858 P.2d 3 . Labor And Employment 873

Material issues of fact, precluding summary judgment, existed as to whether employee of automobile dealership had been discharged "for good cause," even though employer claimed that he did not get along with other employees and was disruptive. MCA 39-2-903(5) . Krebs v. Ryan Oldsmobile, 1992, 255 Mont. 291, 843 P.2d 312 . Judgment 181(21)

Operations officer at bank was terminated for "good cause," and did not have wrongful discharge claim against bank, based on officer's failure to implement new procedures and delay in completing tasks despite warnings from bank's new president. MCA 39-2-903(5) , 39-2-904 . Miller v. Citizens State Bank, 1992, 252 Mont. 472, 830 P.2d 550 . Finance, Banking, And Credit 345

In deciding whether employer acted with "good cause" in terminating employee, so as to preclude wrongful discharge claim, court is concerned only with whether termination was based on reasonable job-related grounds, and not with whether employee satisfied general statutory obligations of employee, whether employer followed industry standards of progressive discipline, or whether employer acted in bad faith. MCA 39-2-903(5) , 39-2-904 . Miller v. Citizens State Bank, 1992, 252 Mont. 472, 830 P.2d 550 . Labor And Employment 761 ; Labor And Employment 829 ; Labor And Employment 843

It was not inconsistent for court to dismiss corporation's owner and general manager from wrongful discharge lawsuit while at the same time taking their interests into consideration in determining that dismissal of the employee by the corporate employer was for a legitimate business reason. MCA 39-2-903(5) , 39-2-904(2) .

Buck v. Billings Montana Chevrolet, Inc., 1991, 248 Mont. 276, 811 P.2d 537 . Labor And Employment 862

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Legitimate business reason, which will support discharge of employee, is one that is neither false, whimsical, arbitrary, nor capricious and that has a logical relationship to the needs of the business. MCA 39-2-903(5) , 39-2-904(2) . Buck v. Billings Montana Chevrolet, Inc., 1991, 248 Mont. 276, 811 P.2d 537 . Labor And Employment 769

In applying the definition of legitimate business reason to determine whether a discharge is wrongful, one must take into account the right of an employer to exercise discretion over who it will employ and keep in employment, but of equal importance to that right is the legitimate interest of the employee to secure employment. MCA 39-2-903(5) , 39-2-904(2) . Buck v. Billings Montana Chevrolet, Inc., 1991, 248 Mont. 276, 811 P.2d 537 . Labor And Employment 769

Termination of general manager of automobile dealership was for legitimate business reason and was not wrongful where the discharge occurred when a new owner took over the business and continued his policy of buying automobile dealerships and placing his own long-term, faithful employees in the position of manager and giving them the chance to then buy the business. MCA 39-2-903(5) , 39-2-904(2) . Buck v. Billings Montana Chevrolet, Inc., 1991, 248 Mont. 276, 811 P.2d 537 . Labor And Employment 769

Company's interest in protecting its investment and in running its business as it sees fit is not as strong, for purposes of determining whether a discharge is for a legitimate business reason, when applied to lower echelon employees, and it may therefore be outweighed by their interest in continued, secure employment. MCA 39-2-903(5) , 39-2-904(2) . Buck v. Billings Montana Chevrolet, Inc., 1991, 248 Mont. 276, 811 P.2d 537 . Labor And Employment 769

Public policy

State wrongfully terminated employee's employment in violation of Wrongful Discharge From Employment Act (WDFEA) when it terminated him in retaliation for his refusal to abide by rule restricting ability of Department of Revenue (DOR) real estate appraisers to pursue outside employment, since such rule violated public policy in favor of right to pursue life's basic necessities protected under State Constitution. Const. Art. 2, § 3 ; MCA 39-2-903 et seq. Wadsworth v. State, 1996, 275 Mont. 287, 911 P.2d 1165 . Public Employment 260 ; Taxation 2434

Genuine issue of material fact remained as to whether probationary employee was fired in retaliation for his good faith reporting of potential violations of Occupational Safety and Health Act to Occupational Safety and Health Administration (OSHA), in violation of public policy and, thus, summary judgment was precluded.

Occupational Safety and Health Act of 1970, § 2 et seq., 29 U.S.C.A. § 651 et seq. ; MCA 39-2-903(7) , 39-2-904(1) . Motarie v. Northern Montana Joint Refuse Disposal Dist., 1995, 274 Mont. 239, 907 P.2d 154 . Judgment 181(21)

Whistleblowers

Wrongful Discharge Act protected employee who claimed he was discharged for whistle blowing activities, even though employer claimed that he was paid informant of police department akin to undercover police officer, not covered by statute; employee had voluntarily come to police with accusation that employer was carrying on illegal drug activities, had cooperated in efforts to gather evidence and had only been paid \$40 several weeks following discharge by employer. MCA 39-2-903(3) . Krebs v. Ryan Oldsmobile, 1992, 255 Mont. 291, 843 P.2d 312 . Labor And Employment 778

Summary judgment

Former county employee, who was discharged from her position as director of human resources for good cause within meaning of the Wrongful Discharge from Employment Act, failed to present summary judgment evidence establishing either that the given reason for the discharge was not good cause in and of itself, or that the given reason was a pretext and not the honest reason for the discharge; summary judgment evidence that former employee did not dispute was found to be sufficient to support a non-pretextual reason for her discharge, and even if she was singled out from a group of department heads who submitted letters of complaint to the board of commissioners, the letters themselves supported the county's assertion that former employee was unsuited to manage the human resources department when she attempted to organize a group

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of department heads to collectively bargain for market pay adjustments, failing to understand the basic principle that management officials had no legal authority to bargain collectively. *Bird v. Cascade County*, 386 P.3d 602, 386 Mont. 69 (2016) . Labor And Employment 758

Genuine issue of material fact as to whether employee was terminated for good cause within meaning of Wrongful Discharge From Employment Act precluded summary judgment for employer on employee's wrongful discharge claim. *Moe v. Butte-Silver Bow County*, 371 P.3d 415, 383 Mont. 297 (2016) , on remand 2016 WL 10830349 . Judgment 181(21)

Genuine issues of material fact existed as to whether pre-transfer evaluation form was part of employer's written personnel policy, whether employer violated that policy by demoting and transferring employee, whether the demotion was directly related to employee's termination, and whether employer was wrongfully discharged, precluding summary judgment in former employee's wrongful discharge action against former employer. *Williams v. Plum Creek Timber Co., Inc.*, 264 P.3d 1090, 362 Mont. 368 (2011) . Judgment 181(21)

If the moving party presents no evidence that there is an issue of material fact relating to the wrongful discharge claim, summary judgment is appropriate. *Becker v. Rosebud Operating Services, Inc.*, 191 P.3d 435, 345 Mont. 368 (2008) . Judgment 185.3(13)

To defeat a motion for summary judgment on the issue of good cause for a discharge pursuant to the Wrongful Discharge from Employment Act, the employee may either prove that the given reason for the discharge is not good cause in and of itself, or that the given reason is a pretext and not the honest reason for the discharge.

Becker v. Rosebud Operating Services, Inc., 191 P.3d 435, 345 Mont. 368 (2008) . Judgment 181(21) ; Labor And Employment 762

Employee seeking to defeat an employer's argument that the employee was discharged for a legitimate business reason at the summary judgment stage of wrongful discharge litigation must offer evidence upon which a fact-finder could determine that the reason given by the employer was false, whimsical, arbitrary or capricious, or unrelated to the needs of the business. MCA 39-2-903(5) . *Delaware v. K-Decorators, Inc.*, 1999, 293 Mont. 97, 973 P.2d 818 . Judgment 185(2)

Genuine issues of material fact existed, precluding summary judgment for either party in wrongful discharge action, about whether former employee's placement of classified ad in local newspaper that falsely stated that his supervisor had placed ad and suggested to prospective buyers of supervisor's truck that they should call late in the evening, in violation of company policy against harassment, was legitimate reason for employee's discharge; employee admitted violating company rules, but claimed that he legally used lawful product on his own time. MCA 39-2-903(5) . *McGillen v. Plum Creek Timber Co.*, 1998, 290 Mont. 264, 964 P.2d 18 , rehearing denied. Judgment 181(21)

In employee's action under Wrongful Discharge from Employment Act, material issues of fact existed, as to whether employee's vacation request was made according to employer's policy, whether employee's second job was with competitor of employer, and whether employee misled employer to obtain vacation time to work at second job, precluding summary judgment. MCA 39-2-903(5) , 39-2-904(2) . *Morton v. M-W-M, Inc.*, 1994, 263 Mont. 245, 868 P.2d 576 . Judgment 181(21)

Jury instructions

Evidence that employee handbook required defendant employer to give an oral warning and a written warning before discharging an employee, and that plaintiff employee did not receive an oral warning or a written warning before defendant demoted him and reduced his wage, warranted instruction that it is wrongful for an employer to discharge an employee if the employer violates the express provisions of its own written personnel policy, in plaintiff's action under Wrongful Discharge From Employment Act, alleging constructive discharge. *Hager v. J.C. Billion, Inc.*, 184 P.3d 340, 343 Mont. 353 (2008) . Labor And Employment 874

Damages

Plaintiff employee, to establish gross amount of wages that would have been reported to Internal Revenue Service (IRS) as gross income on IRS Form W-2, for purposes of establishing damages from lost wages in

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action under Wrongful Discharge From Employment Act alleging constructive discharge, was not required to submit into evidence any particular tax document, such as a tax return or an IRS Form W-2. *Hager v. J.C. Billion, Inc.*, 184 P.3d 340, 343 Mont. 353 (2008) . Labor And Employment 871

Limitation of actions

Plaintiff's action against bank, alleging that bank's termination of his employment violated letter agreements between the parties under which plaintiff would become the president of bank upon the happening of certain contingencies, was an action for wrongful termination under the Wrongful Discharge from Employment Act (WDEA), and thus one-year statute of limitations contained in the WDEA applied to action; plaintiff worked for bank for hire, received a salary and benefits, and he received income tax forms from bank. *Zier v. Hancock*, 189 P.3d 1193, 345 Mont. 89 (2008) . Finance, Banking, And Credit 345; Finance, Banking, And Credit 396

Res judicata

Issue decided in an administrative hearing for unemployment benefits was not identical to the issue of good cause in former employee's action against employer for wrongful discharge, and thus a finding that former employee was eligible for unemployment benefits did not trigger the doctrines of issue preclusion and claim preclusion, such that employer could litigate the issue of whether it had good cause to terminate former employee's employment, even assuming that former employee was not statutorily barred from asserting the doctrines; the administrative hearing involved a determination of whether former employee engaged in misconduct, which was not the same as the good cause at issue in an action for wrongful discharge. *Cartwright v. Scheels All Sports, Inc.*, 310 P.3d 1080, 370 Mont. 369 (2013) . Unemployment Compensation 301

Review

District court did not clearly err in finding that employer rendered employee's job objectively intolerable when it expanded the geographic reach of her sales territory such that no reasonable person could perform the job successfully and she was constructively discharged under Montana's Wrongful Discharge from Employment Act; record did not show that representative successfully covered the expanded territory prior to resigning. *Johannsen v. Nike, Inc.*, 336 Fed.Appx. 600, 2009 WL 1566849 , Unreported (2009). Labor And Employment 826

Legitimate business reason

A "legitimate business reason," for employee termination under Wrongful Discharge from Employment Act (WDEA), is one that is not false, whimsical, arbitrary, or capricious, and one that must have some logical relationship to the needs of the business. *Putnam v. Central Montana Medical Center*, 460 P.3d 419, 399 Mont. 241 (2020) . Labor and Employment 761

A legitimate business reason, as a requirement for finding good cause for discharge under the Wrongful Discharge from Employment Act, is a reason that is not false, whimsical, arbitrary, or capricious, and one that must have some logical relationship to the needs of the business. *Bird v. Cascade County*, 386 P.3d 602, 386 Mont. 69 (2016) . Labor and Employment 761

A "legitimate business reason," for an employee termination under Wrongful Discharge from Employment Act, is one that is not false, whimsical, arbitrary, or capricious and one that must have some logical relationship to the needs of the business; in applying this definition, it is important to take into account the right of an employer to exercise discretion over who it will employ and keep in employment. *Moe v. Butte-Silver Bow County*, 371 P.3d 415, 383 Mont. 297 (2016) , on remand 2016 WL 10830349 . Labor and Employment 761

Managerial employees

In determining whether an employee occupies a managerial position, and is therefore subject Under the Wrongful Discharge from Employment Act (WDEA) to the employer's broadest discretion when dealing with a managerial employee, the Supreme Court considers factors such as the employee's responsibilities in running the organization's day-to-day operations, the employee's discretion in undertaking those responsibilities,

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the level of trust placed in the employee, and the nature of the relationship between the employee and her superiors. Bird v. Cascade County, 386 P.3d 602, 386 Mont. 69 (2016) . Labor and Employment 758