Notes Of Decisions

In general

In cases brought under the Wrongful Discharge from Employment Act (WDEA), courts afford employers the greatest discretion where an employee occupies a sensitive managerial position and exercises broad discretion in her job duties. Moe v. Butte-Silver Bow County, 371 P.3d 415, 383 Mont. 297 (2016) , on remand 2016 WL 10830349 . Labor and Employment 758

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

In cases brought under the Wrongful Discharge from Employment Act (WDEA), courts afford employers the greatest discretion where an employee occupies a sensitive managerial position and exercises broad discretion in his job duties. Sullivan v. Continental Const. of Montana, LLC, 299 P.3d 832, 370 Mont. 8 (2013) . Labor and Employment 761

Under the Wrongful Discharge From Employment Act (WDFEA), outside of a probationary period of employment, an employer may not discharge an employee without good cause. MCA 39-2-904(2) . Whidden v. John S. Nerison, Inc., 1999, 294 Mont. 346, 981 P.2d 271 . Labor And Employment 758

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

Constitutional and statutory provisions

Application of provision in Wrongful Discharge From Employment Act allowing an employer to terminate an at-will, probationary employee for any reason or for no reason did not violate former hospital employee's right to equal protection under state constitution; provision was rationally related to purposes of Act, which included limiting scope of claims for wrongful discharge and defining respective rights of employers and employees, the Act sought to strike a balance between interests of employees and employers, and it provided significant protections to employees who completed their probationary period. Blehm v. St. John's Lutheran Hosp., 246 P.3d 1024, 358 Mont. 300 (2010) . Constitutional Law 3590 ; Labor and Employment 754

Probation provision in Wrongful Discharge From Employment Act allowing an employer to terminate an at-will employee for any reason or for no reason during employee's probationary period did not violate the Supremacy Clause based on discharged employee's contention that she was terminated for refusing to violate public policy; Act exempted wide range of claims based upon any other state or federal statute that provided a remedy for contesting the dispute. Blehm v. St. John's Lutheran Hosp., 246 P.3d 1024, 358 Mont. 300 (2010) . Labor and Employment 754 ; States 18.46

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

Nurse-anesthetist, who brought action against hospital upon ground that she had been wrongfully dismissed from her employment because she asserted rights under conscience statute, which defined certain rights of medical persons confronted with sterilization procedures as part of their employment, was not precluded from refusing to participate in sterilization procedures by reason of her past participation in such procedure, where right given by conscience statute was unqualified, irrespective of past participation. R.C.M.1947, § 69-5223. Swanson v. St. John's Lutheran Hospital, 1979, 182 Mont. 414, 597 P.2d 702 . Health 266

In action brought by nurse-anesthetist against hospital upon ground that she had been wrongfully dismissed from her employment because she asserted her rights under conscience statute, which defined certain rights of medical persons confronted with sterilization procedures as part of their employment, district court erred in holding that nurse was required to explain her reasons for nonparticipation in sterilization procedure at time of her refusal, where under conscience statute, nurse was not required to state her reasons unless "requested by the hospital," and no such request occurred in instant case. R.C.M.1947, § 69-5223. Swanson v. St. John's Lutheran Hospital, 1979, 182 Mont. 414, 597 P.2d 702 . Health 266

In action brought by nurse-anesthetist against hospital upon ground that she had been wrongfully dismissed from her employment because she had asserted her rights under conscience statute, which defined certain rights of medical persons confronted with sterilization procedures as part of their employment, district court erred in concluding that nurse's rights under conscience statute were outweighed by hospital-employer's necessities, and her inability to maintain herself as an effective employee, where, by so concluding, district court read into conscience statute provisos that legislature itself did not see fit to include. R.C.M.1947, § 69-5223. Swanson v. St. John's Lutheran Hospital, 1979, 182 Mont. 414, 597 P.2d 702 . Health 266

Public policy

One of the purposes of the Wrongful Discharge From Employment Act (WDEA) is to protect employees from wrongful discharge after the end of their probationary period. Dundas v. Winter Sports, Inc., 410 P.3d 177, 389 Mont. 223 (2017) . Labor and Employment 753

Common-law public policy exception to provision in Wrongful Discharge From Employment Act allowing employer to terminate at-will, probationary employee for any reason or for no reason could not be implied to allow at-will hospital employee to sue for retaliation based on her alleged refusal to violate public policy when she was discharged during her probationary period; Act provided the exclusive remedy for wrongful discharge from employment, and preempted common-law remedies. Blehm v. St. John's Lutheran Hosp., 246 P.3d 1024, 358 Mont. 300 (2010) . Labor and Employment 852

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

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

Public policy violation arising from termination of employment can be shown by violation of administrative rules, termination for employee's refusal to participate in illegal or immoral activities, or breach of implied covenant of good faith and fair dealing. Kittelson v. Archie Cochrane Motors, Inc., 1991, 248 Mont. 512, 813 P.2d 424 . Labor And Employment 759 ; Labor And Employment 782 ; Labor And Employment 843

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

Former employee's claim in tort for wrongful discharge from employment was unsupported by any showing of a violation of public policy. Gates v. Life of Montana Ins. Co., 1982, 196 Mont. 178, 638 P.2d 1063 . Labor And Employment 759

When an employment contract is terminable at will, discharge by the employer does not give rise to a claim for wrongful discharge in the ordinary sense, even though the discharge may have been unjustified; it is only

when a public policy has been violated in connection with the wrongful discharge that a cause of action arises. Keneally v. Orgain, 1980, 186 Mont. 1, 606 P.2d 127 . Labor And Employment 759

Rational basis

Application of provision in Wrongful Discharge From Employment Act allowing an employer to terminate an at-will, probationary employee for any reason or for no reason did not violate former hospital employee's right to equal protection under state constitution; provision was rationally related to purposes of Act, which included limiting scope of claims for wrongful discharge and defining respective rights of employers and employees, the Act sought to strike a balance between interests of employees and employers, and it provided significant protections to employees who completed their probationary period. Blehm v. St. John's Lutheran Hosp., 246 P.3d 1024, 358 Mont. 300 (2010) . Constitutional Law 3590 ; Labor and Employment 754

Rational basis, rather than strict scrutiny, standard of review applied in wrongful discharge action to determination of whether provision in Wrongful Discharge From Employment Act allowing an employer to terminate an at-will, probationary employee for any reason or for no reason violated equal protection under state constitution; employee's probationary status involved no suspect classification such as race or gender, and fundamental right to life was not even remotely implicated by employee's discharge during her probationary period. Blehm v. St. John's Lutheran Hosp., 246 P.3d 1024, 358 Mont. 300 (2010) . Constitutional Law 3590

Manuals, handbooks, and policy statements

Employer did not violate express provisions of its own written employee discipline policy under Montana Wrongful Discharge from Employment Act when it discharged employee; although employee argued that employer failed to provide him due process, and thus violated its policy, employee was afforded approximately 15 minutes to review findings that served as basis for termination, gather his thoughts, and provide any contradictory information, employee was provided with appeal process conducted by committee comprised of five employer officers, three of whom employee selected, and committee upheld termination after employee failed to provide information to contradict findings upon which his termination was based. Golden v. Northwestern Corp., 13 F.Supp.3d 1052 (2014) , dismissed. Constitutional Law 4159 ; Labor and Employment 840

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

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

Genuine issues of material fact as to whether employee's failure to satisfactorily perform his job duties was result of employer's failure to provide sufficient training, tools, and resources precluded summary judgment on employee's claim under Montana's Wrongful Discharge from Employment Act. Weber v. Delta Dental Ins. Co., 882 F.Supp.2d 1195 (2012) . Federal Civil Procedure 2497.1

Employer was in compliance with its express written policies when it terminated managerial employee for unsatisfactory performance and neglecting her job duties, 10 years after issuing her written warning concerning an accounts receivable (AR) problem, and thus, discharge was not wrongful under Wrongful Discharge from Employment Act (WDEA); employer's written policy did not mandate a time limit between when warning was issued and when termination could occur, reserved the right for employer to skip disciplinary steps and

terminate at its discretion, and did not require written warning for every reason listed in termination notice. Putnam v. Central Montana Medical Center, 460 P.3d 419, 399 Mont. 241 (2020) . Labor and Employment 830

Employer did not involuntarily discharge facility programs bureau chief for Department of Corrections (DOC) in violation of its written personnel policy and, thus, discharge was not wrongful; while chief asserted that she was subjected to official investigation without providing procedural protections that went along with investigation, she provided no citation or analysis of any specific policy that employer violated when it discharged her, regardless of employer's after-the-fact characterization of it as official investigation, meeting called by deputy director to confront and question chief did not constitute formal disciplinary action as defined by state personnel policy, and process utilized by employer from its pre-determination letter forward substantially complied with procedural requirements of state policy for formal disciplinary action. Speer v. Department of Corrections, 458 P.3d 1016, 399 Mont. 67 (2020) . Prisons 396 ; Public Employment 456

Employer did not violate provisions of its employee handbook when it terminated employee, in action brought by employee under the Wrongful Discharge from Employment Act (WDEA); handbook provided no guarantee that employee would receive two written warnings before termination for serious misconduct that included the types of activities for which employer terminated employee, and handbook did not guarantee, as employee argued, that employer would “fairly” and “thoroughly” discuss disciplinary matters with an employee before it terminates employment. Sullivan v. Continental Const. of Montana, LLC, 299 P.3d 832, 370 Mont. 8 (2013) . Labor and Employment 830 ; Labor and Employment 840

Employee handbook did not require progressive discipline prior to termination of an employee for violation of employment policy; handbook clearly contemplated that a termination of employment could be appropriate depending on the seriousness of the situation, thus, the discharge of an employee for a significant infraction was within the purview of the handbook. Kuszmaul v. Sterling Life Ins. Co., 282 P.3d 665, 365 Mont. 390 (2012) . Labor and Employment 840

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

Evidence that employee handbook stated that employees were assured of steady employment as long as they were producing, that discharged employee had been producing, that employer was not in financial trouble, and that employee declined the offer of a different position because he did not believe that it was a genuine offer and felt that it would actually result in a later dismissal could support a cause for discharge in violation of employer's employment policies. MCA 39-2-904(3) . Buck v. Billings Montana Chevrolet, Inc., 1991, 248 Mont. 276, 811 P.2d 537 . Labor And Employment 51 ; Labor And Employment 840

Reasons or grounds for adverse action, generally

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

In an action for wrongful discharge, the balance between the employer's discretion over who it will employ and the employee's equally legitimate right to secure employment should favor an employee who presents evidence, and not mere speculation or denial, upon which a jury could determine that the reasons given for his termination were false, arbitrary or capricious, and unrelated to the needs of the business. Reinlasoder v. City

of Colstrip, 376 P.3d 110, 384 Mont. 143 (2016) , rehearing denied, on remand 2016 WL 9735467 . Labor and Employment 761

The Wrongful Discharge from Employment Act (WDEA) did not require trial court to conduct independent fact finding to determine the truth of the allegations against employee, for purposes of determining whether employer possessed a legitimate business reason to terminate employee, in action brought by employee under the WDEA. Sullivan v. Continental Const. of Montana, LLC, 299 P.3d 832, 370 Mont. 8 (2013) . Labor and Employment 850

Employer could rely on hearsay statements of other employees when deciding whether to terminate employee, in action brought under the Wrongful Discharge from Employment Act (WDEA); evidence rule that limited the admissibility of hearsay evidence applied only to courts, not to private businesses. Sullivan v. Continental Const. of Montana, LLC, 299 P.3d 832, 370 Mont. 8 (2013) . Labor and Employment 761

For purpose of determining whether an employer had good cause for terminating an employee under the Wrongful Discharge from Employment Act (WDEA), a company's interest in running its business as it sees fit would not apply to a decision to terminate a lower echelon employee. Sullivan v. Continental Const. of Montana, LLC, 299 P.3d 832, 370 Mont. 8 (2013) . Labor and Employment 761

Wrongful Discharge Act provides that after completion of an employee's probationary period of employment he cannot be discharged without good cause. MCA 7-32-4113 . Hobbs v. City of Thompson Falls, 15 P.3d 418, 303 Mont. 140 (2000) . Labor And Employment 761

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) . Koepplin v. Zortman Min., Inc., 1994, 267 Mont. 53, 881 P.2d 1306 . Labor And Employment 761

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

Under Wrongful Discharge From Employment Act, a valid ground for maintaining cause of action against former employer is when employee's discharge was not for good cause and employee has completed employer's probationary period of employment. MCA 39-2-904(2) . Cecil v. Cardinal Drilling Co., 1990, 244 Mont. 405, 797 P.2d 232 . Labor And Employment 761

Three causes of action for “wrongful discharge” exists 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

Legitimate business reason

Sexual harassment is a “legitimate business reason” or “reasonable job-related grounds for dismissal” that satisfies the “good cause” standard in the Wrongful Discharge From Employment Act. Reinlasoder v. City of Colstrip, 376 P.3d 110, 384 Mont. 143 (2016) , rehearing denied, on remand 2016 WL 9735467 . Labor and Employment 763

Employer possessed a legitimate business reason to terminate employee, a construction site supervisor who, according to other employees, made demeaning comments to staff and subcontractors, made derogatory comments about management, and disappeared for extended periods of time during the working shift, thus

precluding employee's action under the Wrongful Discharge from Employment Act (WDEA). Sullivan v. Continental Const. of Montana, LLC, 299 P.3d 832, 370 Mont. 8 (2013) . Labor and Employment 763

Good cause for termination of employment under the Wrongful Discharge from Employment Act (WDEA) includes a legitimate business reason that involves a reason that is neither false, whimsical, arbitrary, or capricious and it must have some logical relationship to the needs of the business. Sullivan v. Continental Const. of Montana, LLC, 299 P.3d 832, 370 Mont. 8 (2013) . Labor and Employment 761

Good cause for termination of employment includes a “legitimate business reason,” which is defined as a reason that is neither false, whimsical, arbitrary or capricious, and it must have some logical relationship to the needs of the business. MCA 39-2-904(1)(b) . McConkey v. Flathead Electric Co-op., 125 P.3d 1121, 330 Mont. 48 (2005) . Labor And Employment 762

If the discharge was for a legitimate business reason, it does not amount to wrongful discharge Braulick v. Hathaway Meats, Inc., 1999, 294 Mont. 1, 980 P.2d 1 . Labor And Employment 769

Evidence that employer was “really busy,” contracted with others to do some of the deliveries former employee did, and that business before alleged work reduction was the same after reduction was sufficient to support former employee's claim that he was wrongfully terminated because he missed work due to nonwork related injury to hand and was not discharged due to downsizing of business. Braulick v. Hathaway Meats, Inc., 1999, 294 Mont. 1, 980 P.2d 1 . Labor And Employment 769

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

Employer discretion

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

In determining whether an employee was involuntarily discharged for good cause, the employer's right and discretion to run its business as it sees fit is particularly broad in the case of employees who hold managerial or confidential positions. Speer v. Department of Corrections, 458 P.3d 1016, 399 Mont. 67 (2020) . Labor and Employment 761

Without diminishing the legitimate interests of an employee to maintain employment, the statutory good cause standard for an involuntary discharge from employment embodies the right of an employer to exercise discretion over the employer's particular needs and expectations in carrying on or performing the employer's business or function. Speer v. Department of Corrections, 458 P.3d 1016, 399 Mont. 67 (2020) . Labor and Employment 761

Misconduct

In determining whether employee's statements to manager were threat for purposes of determining whether employer had good cause under Wrongful Discharge From Employment Act to discharge employee, proper emphasis was not whether employee intended them as threat, but, rather, whether statements were heard as threat by manager. MCA 39-2-903(5) , 39-2-904(2) . Koepplin v. Zortman Min., Inc., 1994, 267 Mont. 53, 881 P.2d 1306 . Labor And Employment 763

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) . Koepplin v. Zortman Min., Inc., 1994, 267 Mont. 53, 881 P.2d 1306 . Labor And Employment 763

Competence or performance of employee

Employer had good cause to terminate employee from position as rural sales representative, and thus, the termination did not violate Montana Wrongful Discharge from Employment Act (MWDEA); under employer's written employment policies, employer was entitled to place employee on formal performance improvement plan (PIP) when employee's three-month rolling average for sales fell below 85 percent of quota, and employee failed to comply with the PIP's requirements. MCA 39-2-904 . Sternad v. West Publishing Corp., 197 Fed.Appx. 701, 2006 WL 2404581 , Unreported (2006). Labor And Employment 765 ; Labor And Employment 830

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 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

Electric cooperative had good cause to terminate general manager, where decisions made based on manager's recommendations caused substantial rate increases to members, negatively impacted the cooperative's finances, and necessitated the need to retain bankruptcy counsel. MCA 39-2-904(1)(b) . McConkey v. Flathead Electric Co-op., 125 P.3d 1121, 330 Mont. 48 (2005) . Labor And Employment 765

Employer did not violate its policy that stated that disciplinary actions could be taken if an employee demonstrated an inability to meet standards of job performance in its termination of general manager; manager's recommendations which negatively impacted employer's finances and necessitated the need for bankruptcy counsel demonstrated an inability to meet standards of job performance. MCA 39-2-904(1)(c) . McConkey v. Flathead Electric Co-op., 125 P.3d 1121, 330 Mont. 48 (2005) . Labor And Employment 829

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

Covenant of good faith and fair dealing did not apply to wrongful discharge case of union hospital employee whose employment was terminated for unsatisfactory work performance and whose claim did not invoke state interest outweighing the interest in supporting collective bargaining. Riley v. Warm Springs State Hosp., Dept. of Institutions, State of Mont., 1987, 229 Mont. 518, 748 P.2d 455 . Labor And Employment 1284(1)

Disobedience or insubordination

Under Montana law, tire company which had tire service contract at mine site had good cause to discharge employee upon his expulsion from mine site by mining company for violating mining company policy by giving used o-rings to striking miner without obtaining property issuance ticket, as employee's expulsion precluded him from performing his job duties, thereby giving tire company “legitimate business reason” for discharge; whether mine company strictly enforced policy and whether o-rings had been discarded were of little or no relevance. MCA 39-2-903(5) , 39-2-904 . Fortman v. Decker Coal Co., 1989, 793 F.Supp. 255 , reconsideration denied 1990 WL 255543 , affirmed 955 F.2d 47 . Labor And Employment 766

Employee's mailing of unapproved marketing material constitutes good cause for termination under the Wrongful Discharge from Employment Act (WDEA), where employee admitted that she had read, signed, and understood the employment policy that required prior approval of all marketing material, and that she sent out her unapproved letter, and policy clearly stated that a violation of the policy resulted in immediate termination. Kuszmaul v. Sterling Life Ins. Co., 282 P.3d 665, 365 Mont. 390 (2012) . Labor and Employment 763

Employee’s failure to communicate with his supervisor as instructed qualified as insubordination and provided employer with legitimate business reason to terminate his employment, such that he was not terminated without “good cause” in violation of Montana’s Wrongful Discharge from Employment Act (WDEA); employee presented no evidence that employer’s stated reason for terminating him based on this insubordination was pretext for discriminating against him for his disability or otherwise. Mickealson v. Cummins, Inc., 792 Fed.Appx. 438, 2019 WL 6040270 (2019) . Labor and Employment 766

Motive, intent, and pretext

County did not wrongfully discharge human resources director under Wrongful Discharge From Employment Act (WDFEA) by virtue of violating either its own personnel policies or public policies; there was no evidence that her discharge was in retaliation for her refusal to violate public policy or for reporting a violation of public policy. Moe v. Butte-Silver Bow County, 371 P.3d 415, 383 Mont. 297 (2016) , on remand 2016 WL 10830349 . Counties 67 ; Public Employment 289 ; Public Employment 294

Employee's termination due to violation of employer's grazing policy, which prohibited employees from eating employer's food products without paying for them, was not pretext for some illegitimate reason, and thus employee could not prevail on pretext claim under state Wrongful Discharge from Employment Act (WDEA); even if employee's immediate supervisor expressed desire to eliminate costs through terminating employees, supervisor did not have power to discharge employee, only executive vice-president had power to terminate employee, and supervisor did not have any contact with executive vice-president regarding employee. MCA 39-2-904(1)(b) . Johnson v. Costco Wholesale, 152 P.3d 727, 336 Mont. 105 (2007) . Labor And Employment 773

Pretext claims are considered under the good-cause prong of the state Wrongful Discharge from Employment Act (WDEA), not under prong relating to employer's violation of personnel policy. MCA 39-2-904(1)(b, c) . Johnson v. Costco Wholesale, 152 P.3d 727, 336 Mont. 105 (2007) . Labor And Employment 773

In order for an employee to create an issue of fact on the issue of good cause in regards to a pretext in an action brought under state Wrongful Discharge from Employment Act (WDEA), the employee must prove that the given reason for the discharge is a pretext and not the honest reason for the discharge; mere denial or

speculation will not suffice. MCA 39-2-904(1)(b) . Johnson v. Costco Wholesale, 152 P.3d 727, 336 Mont. 105 (2007) . Labor And Employment 773

Whistleblowers

Wrongful Discharge From Employment Act (WDEA) prohibition against a discharge "in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy" is in effect a protection for whistle blowers. Dundas v. Winter Sports, Inc., 410 P.3d 177, 389 Mont. 223 (2017) . Labor and Employment 776 ; Labor and Employment 782

Congress impliedly repealed the National Banking Act's "at pleasure" bank officer termination provision to the extent necessary to effectuate the whistleblower protection set forth in the Federal Deposit Insurance Act, which protects national bank employees from being terminated for having reported potential statutory or regulatory, and such whistleblower provision is consistent in purpose with the Montana Wrongful Discharge Employment Act (WDEA), and therefore, the WDEA does not conflict with federal law so as to be preempted, even though the WDEA whistleblower provision more broadly extends protection to bank employees who have reported potential violations of public policy. Fenno v. Mountain West Bank, 192 P.3d 224, 345 Mont. 161 (2008) , rehearing denied, certiorari dismissed 130 S.Ct. 458, 555 U.S. 1219, 173 L.Ed.2d 670 . Finance, Banking, And Credit 10; Finance, Banking, And Credit 346; States 18.19

As long as employer's conduct is consistent with employers personnel policies, only basis for challenging discharge of probationary employee is that employer discharged employee in retaliation for refusing to violate public policy or for reporting violation of public policy. MCA 39-2-904(1) . Motarie v. Northern Montana Joint Refuse Disposal Dist., 1995, 274 Mont. 239, 907 P.2d 154 . Labor And Employment 776 ; Labor And Employment 782

Even if false reasons were given for discharge of employee, that would not provide the basis for a claim for wrongful discharge in retaliation for refusal to violate public policy or for reporting a violation of public policy. MCA 39-2-904(1) . Buck v. Billings Montana Chevrolet, Inc., 1991, 248 Mont. 276, 811 P.2d 537 . Labor And Employment 779 ; Labor And Employment 785

No public policy was violated by cash register company's termination of its account manager's employment and, therefore, the account manager had no cause of action for wrongful discharge, despite account manager's allegation that one of the principal grounds for his discharge was that he complained to his supervisors that the company was not fulfilling its promise to customers that it would provide adequate service and maintenance for its machines. Keneally v. Orgain, 1980, 186 Mont. 1, 606 P.2d 127 . Labor And Employment 780

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

Discharge or layoff

Employee's demotion did not qualify as a "discharge" within meaning of Wrongful Discharge From Employment Act and as such, the Act was inapplicable; employee was never terminated and did not resign and there was no cessation of employment followed by offer of inferior position. MCA 39-2-904 . Clark v. Eagle Systems, Inc., 1996, 279 Mont. 279, 927 P.2d 995 . Labor And Employment 825

Employee, who alleged she was wrongfully discharged by employer for violating its personnel policy, did not identify any written personnel policies specific enough to support a viable claim that employer was obligated to rehire her pursuant to Montana's Wrongful Discharge from Employment Act (WDEA). Asper v. Costco Wholesale Corp., 598 Fed.Appx. 494, 2015 WL 367098 (2015) . Labor and Employment 840

Procedural requirements for adverse action

Employer was not required to impose progressive discipline prior to terminating general manager, where the employer's disciplinary policy did not expressly state that the termination of a general manager required a progressive disciplinary procedure. MCA 39-2-904(1)(c) . McConkey v. Flathead Electric Co-op., 125 P.3d 1121, 330 Mont. 48 (2005) . Labor And Employment 829

Employer did not fail to adopt an appropriate disciplinary procedure in regards to general manager, as required under the employer's policies; a disciplinary procedure was adopted by employer's board when it held several meetings to consider manager's performance and continued employment, put him on paid administrative leave while these discussions progressed, voted to terminate him, and then provided him with written notice and justification for the termination. MCA 39-2-904(1)(c) . McConkey v. Flathead Electric Co-op., 125 P.3d 1121, 330 Mont. 48 (2005) . Labor And Employment 829

Negligence was proper basis for recovery in wrongful termination case given expert testimony revealing that former employer and manager committed 13 different violations of firing policies in connection with former employee. 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 829

Existence of other remedies

Wrongful Discharge From Employment Act (WDFEA) does not limit claimant's right to plead independent cause of action in conjunction with claim under the Act. MCA 39-2-913 . Mysse v. Martens, 1996, 279 Mont. 253, 926 P.2d 765 . 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

Federal preemption

For purposes of conflict preemption, the Montana Wrongful Discharge Employment Act (WDEA)'s retaliatory discharge provision comports with the purpose of the whistleblower protection set forth in the Federal Deposit Insurance Act, as the WDEA does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the United States Congress. Fenno v. Mountain West Bank, 192 P.3d 224, 345 Mont. 161 (2008) , rehearing denied, certiorari dismissed 130 S.Ct. 458, 555 U.S. 1219, 173 L.Ed.2d 670 . Finance, Banking, And Credit 10; States 18.19

Railroad employee's common law claim for wrongful discharge, which was based on an allegation of neglect or mismanagement by railroad, did not necessarily require the interpretation of the collective bargaining agreement (CBA), and thus, the claim was not preempted by the federal Railway Labor Act (RLA) or the federal Labor Management Relations Act (LMRA). Labor Management Relations Act, § 301, 29 U.S.C.A. § 185 ; Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq. Winslow v. Montana Rail Link, Inc., 16 P.3d 992, 302 Mont. 289 (2000) . Labor And Employment 757 ; States 18.46

Former employee's action for wrongful conduct committed during interrogation by security guards which led to employee's discharge was not preempted by § 301 of the Labor Management Relations Act; decision on merits could be made without reference to or interpretation of collective bargaining agreement, and state had substantial interest in regulating conduct. Rules Civ.Proc., Rule 56(c) ; Labor Management Relations Act, 1947, §§ 301, 301(a), 29 U.S.C.A. §§ 185 , 185(a) ; U.S.C.A. Const. Art. 6, cl. 2 . Hanley v. Safeway Stores, Inc., 1992, 254 Mont. 379, 838 P.2d 408 . Labor And Employment 757 ; States 18.46

Insurance coverage

Alleged intentional conduct of employer in firing employee for refusing to violate state law could be expected to cause emotional and mental suffering claimed by employee; therefore, claim of wrongful discharge was not an

"occurrence" covered by policy. Daly Ditches Irr. Dist. v. National Sur. Corp., 1988, 234 Mont. 537, 764 P.2d 1276 . Insurance 2275

Voluntary resignation

Absent evidence that former employee who voluntarily resigned her position was wrongfully discharged, employer was not liable for negligent infliction of emotional distress. Frigon v. Morrison-Maierle, Inc., 1988, 233 Mont. 113, 760 P.2d 57 . Damages 57.58

Constructive discharge

Genuine issue of material fact existed as to whether employee's leaving her position as result of mental breakdown amounted to "constructive discharge," under Montana law, precluding summary judgment on employee's claims for wrongful discharge and breach of implied covenant of good faith and fair dealing, where employee maintained that her manager embarked upon course of conduct which eventually led to employee's mental breakdown and resultant loss of her job. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A . Oedewaldt v. J.C. Penney Co., Inc., 1988, 687 F.Supp. 517 . Federal Civil Procedure 2497.1

At-will-employees

Under terms of employer's probation policy, probationary period during which former at-will hospital employee could be terminated "for any reason or for no reason" under the Wrongful Discharge from Employment Act began when employee actually began to work for her employer, rather than when she accepted the employer's offer of employment. Blehm v. St. John's Lutheran Hosp., 246 P.3d 1024, 358 Mont. 300 (2010) . Labor and Employment 758

Former at-will hospital employee's alleged wrongful discharge in violation of the Wrongful Discharge from Employment Act was governed by employer's specific probationary period of either the "first" 180 days under the employee handbook in effect when employee started working or the "first six months of employment" under the amendment adopted by the human resources manager, rather than statutory default probationary period of 6 months from the date of hire. Blehm v. St. John's Lutheran Hosp., 246 P.3d 1024, 358 Mont. 300 (2010) . Labor and Employment 758

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)

Probationary employees

Seasonal ski resort employee could not maintain wrongful discharge in violation of public policy claim under the Wrongful Discharge From Employment Act (WDEA) absent showing which constitutional provision, statute or administrative rule that employer violated or that he reported. Dundas v. Winter Sports, Inc., 410 P.3d 177, 389 Mont. 223 (2017) . Labor And Employment 857

Seasonal ski resort employee was a "probationary employee" who could be terminated for any reason under the Wrongful Discharge From Employment Act (WDEA), although he had worked during each winter season for years, where handbook clearly stated that seasonal employees were terminated at the end of each season and could reapply for employment but "are considered a new employee for all purposes," and stated that new employees were subject to probationary period for six months of employment. Dundas v. Winter Sports, Inc., 410 P.3d 177, 389 Mont. 223 (2017) . Labor And Employment 759 ; Labor And Employment 778

County employees

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

Wrongful Discharge From Employment Act (WDFEA) barred former county employee's claim against county for breach of implied covenant of good faith and fair dealing, where former employee did not allege any separate circumstances apart from her discharge to support claim for breach of implied covenant of good faith and fair dealing or any separate damages arising from such breach. MCA 39-2-913 . Mysse v. Martens, 1996, 279 Mont. 253, 926 P.2d 765 . Counties 67 ; Public Employment 251

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

Where attorney was acting within the scope of his official duties as county attorney when he discharged secretary and county was named as defendant in her wrongful discharge action because of its liability for the county attorney's conduct within the scope of his duties, county attorney was immune from individual liability. MCA 2-9-102 , 2-9-305 . Kenyon v. Stillwater County, 1992, 254 Mont. 142, 835 P.2d 742 . District And Prosecuting Attorneys 10

Firefighters

City's extension of discharged firefighter's probationary status beyond initial six months, such that he was reviewed on a monthly basis, was valid, and thus firefighter could not sue under Wrongful Discharge from Employment Act when he was terminated before confirmation as a permanent employee, despite claims that statute limited probation period to six months, and that probation period was not defined at outset of employment; statute stated that “appointment shall be made for a probationary term of [six] months,” but did not limit period, policy manual set out rules for promotion that required more than six months experience, and possibility of extension was explained during orientation. MCA 7-33-4122 , 39-2-904(1)(b), (2) . Hunter v. City of Great Falls, 61 P.3d 764, 313 Mont. 231 (2002) . Municipal Corporations 197 ; Public Employment 1088

Police officers

Town preserved for appellate review claim that statute governing probationary periods and appointments to police force controlled former town marshall's wrongful discharge claim, even though summary judgment relied on application of wrongful termination statute, where town presented statute to court. MCA 7-32-4113 ; MCA 39-2-904 (2000) . Ritchie v. Town of Ennis, 86 P.3d 11, 320 Mont. 94 (2004) . Municipal Corporations 183(3) ; Public Employment 762

Statutory remedies for wrongful termination under Wrongful Discharge from Employment Act (WDEA) did not effectively repeal town mayor's discretion to dismiss town marshall who was still on probation, under statute specifically governing probationary periods and appointments of municipal police force; two statutes did not have same object in view, because WDEA did not address mayor's discretion to choose appropriate police officers for employment, and both statutes were reconcilable with each other, in that police officer could still bring action under WDEA if he had completed probationary period. MCA 7-32-4113 ; MCA 39-2-904 (2000) . Ritchie v. Town of Ennis, 86 P.3d 11, 320 Mont. 94 (2004) . Municipal Corporations 183(3) ; Public Employment 254 ; Public Employment 792

City police officer could not be terminated from his employment following completion of his probationary period, absent good cause, despite city's contention that officer's employment was subject to confirmation by city

council within 30 days following completion of officer's probationary period, and thus officer was not protected by “good cause” requirements as his probationary period was in effect extended until confirmation occurred. MCA 7-32-4113(2) , 39-2-904(2) . Hobbs v. City of Thompson Falls, 15 P.3d 418, 303 Mont. 140 (2000) . Municipal Corporations 184(1) ; Public Employment 1085

Probationary police officer's performance evaluations and superior's comment that probationary period should not be problem for officer, who had elsewhere served as police chief, were not objective manifestations of job security and did not establish implied covenant of good faith and fair dealing, even if oral warnings about jeopardy of probationary status were not given; although satisfactory overall, second performance evaluation gave officer indications that he needed to improve performance. Rupnow v. City of Polson, 1988, 234 Mont. 66, 761 P.2d 802 . Municipal Corporations 185(3) ; Public Employment 460(1)

Colleges and universities

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

Res judicata

Employee's claim of wrongful discharge for reporting a violation of employment conditions, hostile work environment, and wage and hour laws, was actually litigated in prior action against employer under Montana's Wrongful Discharge from Employment Act, as required for application of issue preclusion, even though the subsequent claim was brought under the FLSA, where employee could have raised the subsequent claim in the previous litigation. Joseph v. Linehaul Logistics, Inc., 291 F.R.D. 511 (2013) . Judgment 713(2) ; Judgment 720

The factual basis and substance of employee's prior claim against employer under Montana's Wrongful Discharge from Employment Act was identical to subsequent action against employer for wrongful termination under the FLSA, as required for application of claim preclusion, even though the claims had different statutory bases, where employee did not offer an explanation for why she was unable to timely bring her FLSA claim in the previous litigation. Joseph v. Linehaul Logistics, Inc., 291 F.R.D. 511 (2013) . Judgment 585(2) ; Judgment 587

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

District court's determination that state employee was terminated for good cause did not preclude finding that state department of health and public services was liable for wrongful discharge under Montana's Wrongful Discharge from Employment Act (WDEA); WDEA provided for three separate causes of action, any of which was sufficient to support wrongful discharge action. Pritchard-Sleath v. Montana Department of Public Health and Human Services, 687 Fed.Appx. 654, 2017 WL 1404711 (2017) . Public Employment 256 ; States 53

District court's determination that state employee was terminated for good cause did not preclude finding that state department of health and public services was liable for wrongful discharge under Montana’s Wrongful Discharge from Employment Act (WDEA); WDEA provided for three separate causes of action, any of which

was sufficient to support wrongful discharge action. Pritchard-Sleath v. Montana Department of Public Health and Human Services, 687 Fed.Appx. 654, 2017 WL 1404711 (2017) . Public Employment 256 ; States 53

Discovery

Employer did not waive attorney-client privilege or work product protection it claimed in documents outlining investigations and complaints against terminated employee, or employee's grievance of his termination, by raising the defense that it had terminated employee for good cause and properly followed its policies and grievance procedures in doing so, since the defense had been asserted merely in response to employee's wrongful termination complaint, rather than raised as new issue. Ivins v. Corrections Corp. of America, 291 F.R.D. 517 (2013) . Federal Civil Procedure 1604(2) ; Privileged Communications and Confidentiality 168

Action taken by privately operated correctional facility in terminating its assistant warden was not “state action” as would invoke privacy provision in Montana's Constitution precluding disclosure, in discovery, of assistant warden's co-workers' personnel records relevant to his alleged wrongful termination. Ivins v. Corrections Corp. of America, 291 F.R.D. 517 (2013) . Constitutional Law 1228 ; Privileged Communications and Confidentiality 413

Information contained in co-workers' personnel files was relevant to terminated assistant warden's claims against private correctional facility for wrongful discharge and defamation/blacklisting, under Montana law, as factor in determining whether production would be compelled, since it could shed light upon assistant warden's contention that the facility had improperly terminated his employment without good cause; assistant warden sought non-medical, non-family related information as to what, if any, discipline had been imposed on co-workers who had allegedly led termination campaign against him, as well as any communications co-workers had had with facility's executives who had made termination decision. Ivins v. Corrections Corp. of America, 291 F.R.D. 517 (2013) . Federal Civil Procedure 1591

Summary judgment

In order to defeat a motion for summary judgment on the issue of good cause in an action for wrongful discharge under Montana law, 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. Golden v. Northwestern Corp., 13 F.Supp.3d 1052 (2014) , dismissed. Federal Civil Procedure 2497.1 ; Labor and Employment 761 ; Labor and Employment 762

Employee's unsupported allegation that several individuals called him to report that they had also used their company computers for personal reasons without consequence was hearsay, and was insufficient to create genuine issue of material fact as to whether employee's dismissal for using employer's computers for personal reasons was arbitrary and capricious at summary judgment stage of action under Montana Wrongful Discharge from Employment Act. Golden v. Northwestern Corp., 13 F.Supp.3d 1052 (2014) , dismissed. Federal Civil Procedure 2497.1

Whether employer's 90-day performance management plan was written personnel policy, which employer violated in terminating employee, was fact question precluding summary judgment on employee's claim under Montana's Wrongful Discharge from Employment Act. Weber v. Delta Dental Ins. Co., 882 F.Supp.2d 1195 (2012) . Federal Civil Procedure 2497.1

Summary judgment is proper in a Wrongful Discharge from Employment Act (WDEA) if the employee fails to provide evidence, beyond mere speculation, that the given reasons for the termination are a pretext and not the honest reason. Putnam v. Central Montana Medical Center, 460 P.3d 419, 399 Mont. 241 (2020) . Judgment 185.3(13)

Former police chief's equivocation regarding his alleged acts of workplace sexual harassment, repeatedly stating he “could not recall,” did not create a material issue of fact as to whether sexual harassment occurred and, thus, did not create question for the jury in wrongful discharge action as to whether city had good cause to discharge police chief. Reinlasoder v. City of Colstrip, 376 P.3d 110, 384 Mont. 143 (2016) , rehearing denied, on remand 2016 WL 9735467 . Municipal Corporations 182 ; Public Employment 810

Uncontested evidence that former police chief sexually harassed dispatcher, by inviting her to view pornography with him because he thought she looked like “a freaky kind of girl that would like porn,” established “good cause” for termination, defeating former police chief's wrongful discharge claim against city. Reinlasoder v. City of Colstrip, 376 P.3d 110, 384 Mont. 143 (2016) , rehearing denied, on remand 2016 WL 9735467 . Municipal Corporations 182 ; Public Employment 277

In an action for wrongful discharge, factual disputes do not render judgment as a matter of law inappropriate where there are facts not in dispute that provide “good cause” for discharge from employment. Reinlasoder v. City of Colstrip, 376 P.3d 110, 384 Mont. 143 (2016) , rehearing denied, on remand 2016 WL 9735467 . Judgment 199(3.14)

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)

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)

Genuine issue of material fact existed as to whether accounting discrepancies provided former employer with good cause to discharge employee from her position as an invoice production clerk, precluding summary judgment on employee's claim under the Wrongful Discharge from Employment Act. MCA 39-2-904 . Andrews v. Plum Creek Mfg., LP., 27 P.3d 426, 305 Mont. 194 (2001) , rehearing denied. Judgment 181(21)

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)

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)

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 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)

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)

Material issue of fact as to whether profit sharing distribution actually made to employee who had signed termination agreement was improperly calculated and therefore disproportionately small precluded granting summary judgment in favor of employer in wrongful discharge action brought by employee who had signed a termination agreement. Rules Civ.Proc., Rule 56(c) . Somersille v. Columbia Falls Aluminum Co., 1992, 255 Mont. 101, 841 P.2d 483 . Judgment 181(21)

It was error to grant summary judgment on former employee's claim of wrongful discharge where the issue of good cause is related to wrongful discharge was not raised or argued by either party. MCA 2-9-111 . Kenyon v. Stillwater County, 1992, 254 Mont. 142, 835 P.2d 742 . Judgment 181(27)

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)

Genuine issues of material fact existed as to whether assistant store manager's conduct of consuming alcohol with her subordinates after hours during a business trip violated employer's policies and whether employer applied its policies to manager arbitrarily, precluding summary judgment in employer's favor on employee's wrongful discharge claim under Montana's Wrongful Discharge From Employment Act (WDEA) with respect to issue of whether employer had good cause to terminate employee. Pedersen v. TJX Companies, Inc., 634 Fed.Appx. 186, 2015 WL 9259063 (2015) . Federal Civil Procedure 2497.1

Burden of proof

Upon a supported showing that an employer had reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason, the summary judgment burden shifts to the employee claiming wrongful discharge to show specific facts upon which to reasonably conclude that the given reason for discharge was not a job or business related reason, false, not the true reason for discharge, or was arbitrary, capricious, or whimsical. Speer v. Department of Corrections, 2020, 2020 WL 896693 . Judgment 185.3(13)

In action brought by nurse-anesthetist against hospital upon ground that she had been wrongfully dismissed from her employment because she had asserted her rights under conscience statute, which defines certain rights of medical persons confronted with sterilization procedures as part of employment, once nurse established that her discharge was brought about in substantial part by her refusal to participate in sterilization, it then became burden of hospital to prove by preponderance of evidence that it would have discharged her without exercise of her protected conduct, and hospital did not meet such burden under state of record. R.C.M.1947, § 69-5223. Swanson v. St. John's Lutheran Hospital, 1979, 182 Mont. 414, 597 P.2d 702 . Health 266

Presumptions and burden of proof

Upon a supported showing that an employer had reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason, the summary judgment burden shifts to the employee claiming wrongful discharge to show specific facts upon which to reasonably conclude that the given reason for discharge was not a job or business related reason, false, not the true reason for discharge, or was arbitrary, capricious, or whimsical. Speer v. Department of Corrections, 2020, 2020 WL 896693 . Judgment 185.3(13)

In action brought by nurse-anesthetist against hospital upon ground that she had been wrongfully dismissed from her employment because she had asserted her rights under conscience statute, which defines certain rights of medical persons confronted with sterilization procedures as part of employment, once nurse established that her discharge was brought about in substantial part by her refusal to participate in sterilization, it then became burden of hospital to prove by preponderance of evidence that it would have discharged her without exercise of her protected conduct, and hospital did not meet such burden under state of record.

R.C.M.1947, § 69-5223. Swanson v. St. John's Lutheran Hospital, 1979, 182 Mont. 414, 597 P.2d 702 . Health 266

Admissibility of evidence

Employee interview notes and depositions of employees was not inadmissible hearsay but was instead admissible evidence upon which trial court could rely in determining whether employer possessed a legitimate business reason to terminate employee, in action under the Wrongful Discharge from Employment Act (WDEA). Sullivan v. Continental Const. of Montana, LLC, 299 P.3d 832, 370 Mont. 8 (2013) . Evidence 318(1)

Evidence offered by employer, that employee elected to retire when given choice to retire or be fired, was relevant and admissible in employee's action asserting statutory claims of wrongful discharge and retaliation; therefore, bifurcation of employer's counterclaim to recover early retirement benefits paid to employee was not required to avoid prejudice to employee. MCA 39-2-904 , 39-2-905(2) . Jarvenpaa v. Glacier Elec. Co-op., Inc., 1998, 292 Mont. 118, 970 P.2d 84 . Labor And Employment 862 ; Trial 3(5.1)

Refusal to allow former employee's expert to testify in wrongful discharge action that employer had a written personnel policy evidenced by a combination of documents was not abuse of discretion, though employer's management consultant and general manager testified on that issue; trial court determined that proper foundation had not been laid for opinion by employee's expert, and employee was allowed to sufficiently present his theory through permitted questioning of expert, cross-examination of employer's agents, and jury instructions. MCA 39-2-904(3) . Jarvenpaa v. Glacier Elec. Co-op., Inc., 1998, 292 Mont. 118, 970 P.2d 84 . Labor And Employment 862

Trial court did not err in allowing proposed release into evidence in wrongful discharge action; employee's claim for severance pay was not disputed at time he was asked to sign document, and document was not offered for prohibited purposes, but rather to show that employer did not intend to find employee another position. Rules of Evid., Rule 408 . Kestell v. Heritage Health Care Corp., 1993, 259 Mont. 518, 858 P.2d 3 . Evidence 213(4)

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

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

Scope of expert testimony

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)

Expert opinion testimony about covenant of good faith and fair dealing was admissible in wrongful termination case. 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 512

Jury questions

Jury issue existed as to whether employer arbitrarily applied grazing policy, which prohibited employees from eating employer's food products without paying for them, and thus as to whether employer had good cause

to discharge employee in employee's action under state Wrongful Discharge from Employment Act (WDEA). MCA 39-2-904(1)(b) . Johnson v. Costco Wholesale, 152 P.3d 727, 336 Mont. 105 (2007) . Labor And Employment 873

Issue of whether employer had established express policy of performing annual evaluations that it violated with respect to employee was one for jury on statutory claim for wrongful discharge. MCA 39-2-904(3) . Kearney v. KXLF Communications, Inc., 1994, 263 Mont. 407, 869 P.2d 772 . Labor And Employment 873

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

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

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

Jury instructions

District Court did not abuse its discretion in refusing motel employees' proposed jury instruction, which set forth elements of wrongful discharge, where employees never advanced theory that employer discharged them in retaliation for refusing to violate public policy, and no facts existed to support this theory. MCA 39-2-904 . Moore v. Imperial Hotels Corp., 1998, 291 Mont. 164, 967 P.2d 382 . Labor And Employment 874

In wrongful discharge case, trial court did not err in instructing jury on tortious interference with contract, infliction of emotional distress, and piercing corporate veil; such instructions clearly referred to employee's claims against codefendant corporation and its directors, not to his wrongful discharge claim against employer. Kestell v. Heritage Health Care Corp., 1993, 259 Mont. 518, 858 P.2d 3 . Labor And Employment 874

Former employer and manager were not entitled to jury instruction on comparative negligence in wrongful termination action where negligence relied upon involved negligent failure to review prior performance and work history, and there was no contention that former employee violated any duty in that regard. 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 874

Sufficiency of evidence

Fact that wrongfully terminated employee was never offered job was not sufficient to prove damages, in view of substantial evidence that he suffered no damages. Dawson v. Billings Gazette, Div. of Lee Enterprises, 1986, 223 Mont. 415, 726 P.2d 826 . Labor And Employment 871

Employer who introduced evidence of drinking, hangovers, and other matters in an effort to establish cause for discharge but whose superintendent testified to discharged employee's good work and testified that employer instructed him to tell employee, upon termination of employment, that employer did not have any more work, was running out of money, and could not carry a crew through the winter failed to establish that employee's discharge was for cause. R.C.M.1947, §§ 41-305, 41-307. Ameline v. Pack & Co., 1971, 157 Mont. 301, 485 P.2d 689 . Labor And Employment 863(1)

Notes of Decisions for 39-2-904. Elements of wrongful discharge--presumptive...

Amount of damages

Plaintiff employee established damages from lost wages, in action under Wrongful Discharge From Employment Act, alleging constructive discharge; plaintiff testified concerning his “annual salary” during his employment with defendant employer, he derived such amount from statement provided by employer during discovery and from last “pay plan” that he had received before his demotion, and he testified that he had calculated his lost wages by subtracting the salary from his new job, based off of his Internal Revenue Service (IRS) Form W-2 for his new job, from his annual salary at defendant employer. Hager v. J.C. Billion, Inc., 184 P.3d 340, 343 Mont. 353 (2008) . Labor And Employment 871

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

Amount awarded to employee in action against employer for wrongful termination was properly offset by amount of unemployment benefits previously awarded employee following termination where parties agreed to offsets prior to trial. Myers v. Department of Agriculture, 1988, 232 Mont. 286, 756 P.2d 1144 . Stipulations 14(12)

Punitive damages

Award of punitive damages was proper in employee's action against employer asserting wage claims and constructive discharge, where, although employee's wage claims were barred by the statute of limitations, the jury still properly could have found that employee's refusal to violate public policy by asserting his statutory right to wages prompted his constructive discharge, verdict form clearly showed that jury found that employer acted with actual fraud and actual malice, and the evidence was sufficient to establish that employer retaliated against employee for refusing to waive his right to overtime and vacation, for insisting on fair pay for the work that he was performing, and for challenging employer's practices that he believed were unfair to its female employees. 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 870

Trial court could deny former employee's motion to amend his wrongful-discharge complaint against employer to add a claim for punitive damages based on employer's alleged act of discharging former employee in retaliation for his refusal to violate public policy, where trial court had granted employer's motion for summary judgment on former employee's claim that his discharge was based on his refusal to violate public policy. Cartwright v. Scheels All Sports, Inc., 310 P.3d 1080, 370 Mont. 369 (2013) . Pleading 250 ; Pleading 251

Even if former employer and manager preserved for review on appeal issue that punitive damages were excessive, punitive damages of $1,300,000 in wrongful termination were within discretion of jury and not raised as error in posttrial motions. 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 870

Mitigation of damages

Wrongfully terminated reporter did not mitigate damages by applying to only four newspapers, restricting his job search to papers with high circulation located in the western United States, and refusing to take salary cut. Dawson v. Billings Gazette, Div. of Lee Enterprises, 1986, 223 Mont. 415, 726 P.2d 826 . Labor And Employment 868(4)

Award of zero damages was supported by evidence that wrongfully terminated reporter failed to mitigate damages, and that there was job market for person of his skills. Dawson v. Billings Gazette, Div. of Lee Enterprises, 1986, 223 Mont. 415, 726 P.2d 826 . Labor And Employment 871

To mitigate damages, wrongfully discharged employee is not required to seek employment in another line of work or to move to different locality, but he must exercise ordinary diligence to procure other employment. Dawson v. Billings Gazette, Div. of Lee Enterprises, 1986, 223 Mont. 415, 726 P.2d 826 . Labor And Employment 868(4)

Former employee was not required to mitigate her damages arising out of alleged wrongful termination by accepting inferior employment with former employer. 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 868(5)

A wrongfully terminated person has a duty to reasonably seek and maintain other employment, but has no duty to accept inferior employment. 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 868(4)

Costs and attorney fees

Attorney's filing of a wrongful termination action in state court under the FLSA, while the appeal of an identical claim of wrongful termination under Montana's Wrongful Discharge from Employment Act was pending, supported the imposition of Rule 11 sanctions, where a reasonable attorney would have conducted a reasonable and competent inquiry before signing and filing the complaint, and no reasonable attorney could have concluded that client's second wrongful termination claim was not barred by res judicata. Joseph v. Linehaul Logistics, Inc., 291 F.R.D. 511 (2013) . Federal Civil Procedure 2771(16) ; Federal Civil Procedure 2783(1)

District court was not required to exercise its equity power to award attorney fees and costs to state employee who brought wrongful termination action against his former employer, where employee's award was offset by unemployment compensation benefits, and each party acted in good faith in bringing and defending lawsuit. Myers v. Department of Agriculture, 1988, 232 Mont. 286, 756 P.2d 1144 . States 215

Former government employee was not entitled to award of attorney fees and costs in wrongful termination action under state statute providing for award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith, where government acted in good faith in defending lawsuit. MCA 25-10-711 . Myers v. Department of Agriculture, 1988, 232 Mont. 286, 756 P.2d 1144 . States 215

Preservation of error

While some specific arguments former employee offered on appeal of his wrongful discharge claim were not offered in the district court, former employee's overall theory or claim had not significantly changed, and thus, former employee did not waive arguments on appeal; all of former employee's appellate arguments fell within the ambit of the Wrongful Discharge from Employment Act's good cause requirement and were raised in his complaint and brief in opposition to summary judgment. Becker v. Rosebud Operating Services, Inc., 191 P.3d 435, 345 Mont. 368 (2008) . Appeal And Error 179(1)

In wrongful discharge case, plain error doctrine did not entitle employer to review of its claim that evidence relating to good faith and fair dealing was improperly allowed, where employer did not make specific and timely objection on record, and substantial rights of employer had not been affected. Rules of Evid., Rule 103(a)(1) ; MCA 39-2-904 . Guertin v. Moody's Market, Inc., 1994, 265 Mont. 61, 874 P.2d 710 . Appeal And Error 230 ; Appeal And Error 231(3)

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