



INVENTORY OF MONTANA'S STATUTES AND RULES ON STATE EMPLOYEE GREIVANCES, DISCHARGE, RETALIATION PROTECTIONS, AND ACCESS TO PERSONNEL INFORMATION

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Special Select Committee on State Settlement Accountability

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INTRODUCTION

This inventory is provided in response to an April 3, 2018, request by Rep. Ron Ehli, acting chairperson for the Special Select Committee on State Settlement Accountability, for an inventory of state statutes and policies regarding state employee terminations, settlements and whistle blowers.

Staff researched the key bodies of relevant statutes and conducted numerous key word searches of the entire Montana Code Annotated (MCA). Staff also researched the Administrative Rules of Montana (ARM). However, staff did not seek to gather the internal policies specific to each department.

Statutes and rules selected for this inventory are those that relate to definitions of confidential and public information, personnel administration, disciplinary actions and grievances, wrongful discharge, unfair labor practices, and protection of employees from discrimination and retaliation.

Staff's search did not reveal a specific statute about nondisclosure agreements with state employees. General statutes on civil liabilities, claims, arbitration, and settlements are not included in this inventory, but may be found in [Title 27, Chapter 5, MCA](#).

Online access to Montana's Constitution and the entire MCA is available at the following link: <http://leg.mt.gov/bills/mca/index.html>

The remaining hotlinks in this document are internal links to help readers navigate within this document.

Please note, this is an initial inventory of selected statutes and may not include every statute or administrative rule of eventual interest to the Special Select Committee on State Settlement Accountability.

ORGANIZATION

[Section 1 – Montana Code Annotated \(MCA\)](#)

- List of Contents
- Full Text of Statutes

[Section 2 – Administrative Rules of Montana \(ARM\)](#)

- List of Contents (for each subchapter)
- Full Text of ARMs

Section 1 – Montana Code Annotated Statutes

List of Contents

Statutes of special interest are highlighted with asterisk ()*

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 2. STANDARDS OF CONDUCT

Part 1. Code of Ethics

[*2-2-145](#). Retaliation unlawful — civil liability — remedies — statute of limitations — definitions.

(whistle blower protection, effective Oct. 1, 2017)

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 6. PUBLIC RECORDS

Part 10. General Provisions

[*2-6-1002](#). Definitions.

(includes definition of “confidential information” and “public information”)

[*2-6-1003](#). Access to public information — safety and security exceptions — Montana historical society exception.

(anyone may access public information, except as specified)

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 9. LIABILITY EXPOSURE AND INSURANCE COVERAGE

Part 3. Claims and Actions

[*2-9-303](#). Compromise or settlement of claim against state.

(government portion of a settlement is a public record)

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 15. EXECUTIVE BRANCH OFFICERS AND AGENCIES

Part 17. Department of Labor and Industry

[2-15-1705](#). Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial.

[2-15-1706](#). Commission for human rights — allocation — quasi-judicial.

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 18. STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

Part 1. General Provisions

[*2-18-102](#). Personnel administration — general policy setting — oversight.

(cited authority for administrative rules, see Section 2 - ARM inventory of this report)

[*2-18-103](#). Officers and employees excepted.

(certain employees are excepted from personnel policies)

[2-18-104](#). Exemption for personal staff — limit.

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION
CHAPTER 18. STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS
Part 10. Grievance Procedures

[2-18-1001](#). Department of transportation personnel grievances — hearing.

[2-18-1002](#). Grievance procedure — hearing — order.

[2-18-1003](#). Enforcement of board order — petition in district court.

[2-18-1011](#). Classification or compensation grievance -- retaliation -- hearing on complaint.

[2-18-1012](#). Grievance procedure.

[2-18-1013](#). Enforcement of board order -- petition to district court.

TITLE 5. LEGISLATIVE BRANCH
CHAPTER 12. LEGISLATIVE FINANCE ACT
Part 3. Legislative Fiscal Analyst

[5-12-303](#). Fiscal analysis information from state agencies.

TITLE 5. LEGISLATIVE BRANCH
CHAPTER 13. LEGISLATIVE AUDIT ACT
Part 3. Legislative Auditor

[5-13-309](#). Information from state agencies.

[5-13-314](#). Employment protection.

TITLE 17. STATE FINANCE
CHAPTER 8. DISBURSEMENT AND EXPENDITURE
Part 4. False Claims.

[17-8-401](#). Short title.

[17-8-403](#). False claims — procedures — penalties.

[17-8-405](#). Investigation and civil action by government attorney.

[17-8-406](#). Complaint by person — civil action.

[17-8-412](#). Retaliatory actions prohibited — remedies.

TITLE 19. PUBLIC RETIREMENT SYSTEMS.
CHAPTER 2. PUBLIC EMPLOYEES' RETIREMENT GENERAL PROVISIONS
Part 7. Service Credit and Additional Contributions

*[19-2-716](#). Compromise or settlement of claims by public employees regarding retirement service credits.

(retiree who is party to a settlement involving retirement service credits may waive individual privacy right)

TITLE 39. LABOR

CHAPTER 2. THE EMPLOYMENT RELATIONSHIP

***Part 9. Wrongful Discharge From Employment**

(The entire part is included because it explains what may be considered a “wrongful discharge” or a discharge for “good cause”, how disputes are to be handled, and remedies. However, nothing in these sections specifically addresses public employee settlement information.)

[39-2-901](#). Short title.

[39-2-902](#). Purpose.

[39-2-903](#). Definitions.

[39-2-904](#). Elements of wrongful discharge -- presumptive probationary period.

[39-2-905](#). Remedies.

[39-2-911](#). Limitation of actions.

[39-2-912](#). Exemptions.

[39-2-913](#). Preemption of common-law remedies.

[39-2-914](#). Arbitration.

[39-2-915](#). Effect of rejection of offer to arbitrate.

TITLE 39. LABOR

CHAPTER 31. COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 4. Unfair Labor Practices

[39-31-401](#). Unfair labor practices of public employer.

TITLE 49. HUMAN RIGHTS

CHAPTER 2. ILLEGAL DISCRIMINATION

Part 1. General Provisions

[49-2-102](#). Records to be kept.

TITLE 49. HUMAN RIGHTS

CHAPTER 2. ILLEGAL DISCRIMINATION

Part 3. Prohibited Discriminatory Practices

[49-2-301](#). Retaliation prohibited.

[49-2-302](#). Aiding, coercing, or attempting.

[49-2-303](#). Discrimination in employment.

[*49-2-308](#). Discrimination by the state

(includes subsection prohibiting discrimination based on political beliefs, except regarding certain policymaking positions and appointed positions)

TITLE 49. HUMAN RIGHTS
CHAPTER 3. GOVERNMENTAL CODE OF FAIR PRACTICES
Part 2. Duties of Governmental Agencies and Officials

[49-3-201](#). Employment of state and local government personnel.

[49-3-209](#). Retaliation prohibited.

TITLE 87. FISH AND WILDLIFE
CHAPTER 1. ORGANIZATION AND OPERATION
Part 2. Department of Fish, Wildlife, and Parks

[87-1-205](#). Grievance procedure.

TITLE 87. FISH AND WILDLIFE
CHAPTER 1. ORGANIZATION AND OPERATION
Part 4. Director of Fish, Wildlife, and Parks

[87-1-403](#). Regulation of employees by director.

FULL TEXT OF STATUTES

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 2. STANDARDS OF CONDUCT

Part 1. General Provisions

***2-2-145. Retaliation unlawful — civil liability — remedies — statute of limitations —**

definitions. (1) It is unlawful for a state agency, state officer, public officer, or public employee to retaliate against, or to condone or threaten retaliation against, an individual who, in good faith, alleges waste, fraud, or abuse.

(2) A person who violates a provision of this section is liable in a civil action in a court of competent jurisdiction. The provisions of 2-9-305 apply if the person is being sued in a civil action for actions taken within the course and scope of the person's employment and the person is a state officer, public officer, or public employee.

(3) For purposes of this section:

(a) "person" has the meaning provided in 2-5-103;

(b) "retaliate" means to take any of the following actions against an individual because the individual, in good faith, alleged waste, fraud, or abuse:

(i) terminate employment;

(ii) demote;

(iii) deny overtime, benefits, or promotion;

(iv) discipline;

(v) decline to hire or rehire;

(vi) threaten or intimidate;

(vii) reassign to a position that hurts future career prospects;

(viii) reduce pay, work hours, or benefits; or

(ix) take another adverse personnel action; and

(c) "state agency" has the meaning provided in 1-2-116.

(4) Remedies available to an aggrieved individual for a violation may include:

(a) reinstatement to a lost position;

(b) compensation for lost benefits, including service credit;

(c) compensation for lost wages;

(d) payment of reasonable attorney fees;

(e) payment of court costs;

(f) injunctive relief; and

(g) compensatory damages.

(5) A lawsuit alleging a violation of this section must be brought within 2 years of the alleged violation.

(6) If a state agency maintains written internal procedures under which an individual may appeal an action described in subsection (3)(b) within the agency's organizational structure, the individual shall first exhaust those procedures before filing an action under this section. The individual's failure to initiate or exhaust available internal procedures is a defense to an action brought under this section.

(7) For purposes of this subsection, if the state agency's internal procedures are not completed within 90 days from the date the individual may file an action under this section, the agency's internal procedures are considered exhausted. The limitation period in subsection (5) is tolled until the

procedures are exhausted. The provisions of the agency's internal procedures may not in any case extend the limitation period in subsection (5) more than 240 days.

(8) If the state agency maintains written internal procedures described in subsection (6), the agency shall, within 7 days of receiving written notice from the complaining individual of the action described in subsection (3)(b), notify the individual of the existence of the written procedures and supply the individual with a copy. If the agency fails to comply with this subsection, the individual is relieved from compliance with subsection (6).

(9) The commissioner of political practices is not required or authorized to enforce this section.

History: En. Sec. 1, Ch. 215, L. 2017.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 6. PUBLIC RECORDS

Part 10. General Provisions

***2-6-1002. Definitions.** As used in this chapter, the following definitions apply:

(1) "Confidential information" means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:

(a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;

(b) related to judicial deliberations in adversarial proceedings;

(c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and

(d) designated as confidential by statute or through judicial decisions, findings, or orders.

(2) "Constitutional officer" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected officials of the executive branch of government.

(3) "Constitutional officer record" means a public record prepared, owned, used, or retained by a constitutional officer.

(4) "Essential record" means a public record immediately necessary to:

(a) respond to an emergency or disaster;

(b) begin recovery or reestablishment of operations during and after an emergency or disaster;

(c) protect the health, safety, and property of Montana citizens; or

(d) protect the assets, obligations, rights, history, and resources of a public agency, its employees and customers, and Montana citizens.

(5) "Executive branch agency" means a department, board, commission, office, bureau, or other public authority of the executive branch of state government.

(6) "Historic record" means a public record found by the state archivist to have permanent administrative or historic value to the state.

(7) "Local government" means a city, town, county, consolidated city-county, special district, or school district or a subdivision of one of these entities.

(8) "Local government records committee" means the committee provided for in 2-6-1201.

(9) "Permanent record" means a public record designated for long-term or permanent retention.

(10) "Public agency" means the executive, legislative, and judicial branches of Montana state government, a political subdivision of the state, a local government, and any agency, department,

board, commission, office, bureau, division, or other public authority of the executive, legislative, or judicial branch of the state of Montana.

(11) "Public information" means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law.

(12) "Public officer" means any person who has been elected or appointed as an officer of state or local government.

(13) "Public record" means public information that is:

(a) fixed in any medium and is retrievable in usable form for future reference; and

(b) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.

(14) "Records manager" means an individual designated by a public agency to be responsible for coordinating the efficient and effective management of the agency's public records and information.

(15) "State records committee" means the state records committee provided for in 2-6-1107.

History: En. Sec. 2, Ch. 348, L. 2015.

***2-6-1003. Access to public information — safety and security exceptions — Montana historical society exception.** (1) Except as provided in subsections (2) and (3), every person has a right to examine and obtain a copy of any public information of this state.

(2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

(3) The Montana historical society may honor restrictions imposed by private record donors as long as the restrictions do not apply to public information. All restrictions must expire no later than 50 years from the date the private record was received. Upon the expiration of the restriction, the private records must be made accessible to the public.

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 9. LIABILITY EXPOSURE

Part 3. Claims and Actions

***2-9-303. Compromise or settlement of claim against state.** (1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

(3) An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the

employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

History: En. Sec. 19, Ch. 380, L. 1973; amd. Sec. 9, Ch. 360, L. 1977; R.C.M. 1947, 82-4319; amd. Sec. 1, Ch. 63, L. 1981; amd. Sec. 1, Ch. 97, L. 1987; amd. Sec. 1, Ch. 111, L. 1987; amd. Sec. 1, Ch. 172, L. 2001; amd. Sec. 1, Ch. 306, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 306 inserted (3) allowing employee who is a party to a settlement to waive right of individual privacy in order to release records or details of settlement that pertain to the employee personally. Amendment effective May 4, 2017.

Retroactive Applicability — Applicability: Section 6, Ch. 306, L. 2017, provided: "(1) For compromise or settlements entered into on or after July 1, 2010, until [the effective date of this act] [May 4, 2017], [this act] applies retroactively, within the meaning of 1-2-109, unless the compromise or settlement contract provides that the records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally may not be released.

(2) [This act] applies without limitation to compromise or settlements entered into on or after [the effective date of this act] [May 4, 2017]."

2001 Amendment: Chapter 172 at end of (2) inserted "unless a right of individual privacy clearly exceeds the merits of public disclosure"; and made minor changes in style. Amendment effective March 30, 2001.

1987 Amendments: Chapter 97 in second sentence of (1), after "deductible reserve fund", inserted "exceeding \$10,000".

Chapter 111 inserted (2) relating to public inspection of governmental portion of settlement agreement.

Case Notes

Settlement Agreement Involving Minor Child Open for Public Inspection — No Right of Privacy Recognized — Demands of Privacy Do Not Exceed Merits of Public Disclosure: Pengra and the state agreed to a settlement of Pengra's suit against the state on behalf of his daughter and himself involving the death of his wife. Pengra requested that the settlement document be sealed and thereby made unavailable for public inspection. In a challenge to the sealing of the settlement agreement, the Supreme Court held that: (1) minors have no greater right of privacy than adults in settlement agreements involving claims against the state; (2) Pengra had no subjective expectation of privacy in the settlement agreement; (3) by the Legislature's enactment of this section, society is not willing to recognize any privacy expectation of Pengra regarding the settlement agreement; (4) compelling policy reasons support the disclosure of the settlement; and (5) any right of privacy by Pengra in the settlement agreement did not outweigh the merits of public disclosure of that agreement. *Pengra v. St.*, 2000 MT 291, 302 M 276, 14 P3d 499, 57 St. Rep. 1231 (2000).

2-9-305. Immunization, defense, and indemnification of employees. (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against an employee, the employee shall give written notice to the employee's supervisor requesting that a

defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee who does not have a supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee must be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, omission, or other actionable conduct gave rise to the claim. In an action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If a judicial determination has not been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes that it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in that action holding that the employer did not have an obligation to defend the employee. The governmental entity employer does not have an obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

History: (1)En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974; Sec. 82-4322.1, R.C.M. 1947; (2) thru (4)En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974; Sec. 82-4323, R.C.M. 1947; R.C.M. 1947, 82-4322.1, 82-4323; amd. Sec. 1, Ch. 530, L. 1983; amd. Sec. 57, Ch. 61, L. 2007.

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION
CHAPTER 15. EXECUTIVE BRANCH OFFICERS AND AGENCIES
Part 17. Department of Labor and Industry

2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members and three substitute members appointed by the governor as follows:

(i) two members who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities and a substitute member with the same qualifications as the other two members who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending;

(ii) two members who are full-time employees or elected officials of a labor union or an association recognized by the board and a substitute member with the same qualifications as the other two members who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending; and

(iii) one other member having general labor-management experience who is the presiding officer and a substitute member with the same qualifications as the other member who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests of the organizations they represent.

(c) A substitute board member is entitled to the same compensation and per diem when serving as the other members of the board.

(4) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

2-15-1706. Commission for human rights — allocation — quasi-judicial. (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor with the consent of the senate.

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its members must be compensated and receive travel expenses as provided for in 2-15-124.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121.

History: En. 82A-1015 by Sec. 4, Ch. 283, L. 1974; amd. Sec. 1, Ch. 478, L. 1975; R.C.M. 1947, 82A-1015; amd. Sec. 24, Ch. 247, L. 1981; amd. Sec. 3, Ch. 474, L. 1981; amd. Sec. 4, Ch. 650, L. 1985; amd. Sec. 2, Ch. 467, L. 1997.

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 18. STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

Part 1. General Provisions

- *2-18-102. Personnel administration — general policy setting — oversight.** (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:
- (a) exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;
 - (b) foster and develop programs for recruitment and selection of capable persons for employment and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;
 - (c) foster, develop, and promote job sharing in agencies;
 - (d) investigate from time to time the operation and effect of parts 1 through 3 of this chapter and the policies made under those parts and report the findings and recommendations to the governor;
 - (e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;
 - (f) apply and carry out parts 1 through 3 and the policies under those parts and perform any other lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 through 3.
- (2) The department may delegate authority granted to it under parts 1 through 3 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 through 3, provided that the agencies remain in compliance with policies, procedures, timetables, and standards established by the department.
- (3) **The department shall develop and issue personnel policies for the state and shall adopt policies or rules to implement this part,** except 2-18-111. Adequate public notice must be given to all interested parties of proposed changes or additions to the personnel policies before the date on which they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date on which they are to take effect.
- (4) The department shall develop **model rules of conduct for all state employees** based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency.
- (5) Except as otherwise provided by law, the office of budget and program planning shall:
- (a) approve any salary increase proposed by an agency that exceeds an employee's occupational wage range prior to the increase going into effect;
 - (b) monitor the way each agency compensates its employees within the parameters of the occupational wage range for each occupation; and
 - (c) provide a report in an electronic format to the legislative finance committee identifying any agency that provides a base salary for an employee that exceeds the occupational wage range for the employee's occupation and the reasons for the differences.
- (6) The provisions of subsection (5)(a) do not apply to employees of the following agencies:
- (a) the department of justice;
 - (b) the office of public instruction;
 - (c) the public service commission;
 - (d) the secretary of state; and
 - (e) the state auditor's office.

(7) The agencies listed in subsection (6) shall provide required budget information on personal services, and pay increases above the occupational wage range for these agencies are not required to be included in the executive budget in accordance with Title 17, chapter 7, part 1.

(8) The department of administration shall adopt rules and procedures for job classification.

(9) An agency may not change the classification of an occupation or its related job evaluation factors until the agency submits the proposed changes to and receives approval from the department of administration.

History: En. Sec. 14, Ch. 440, L. 1973; R.C.M. 1947, 59-913; amd. Sec. 2, Ch. 568, L. 1979; amd. Sec. 2, Ch. 684, L. 1983; amd. Sec. 1, Ch. 84, L. 1995; amd. Sec. 11, Ch. 562, L. 1995; amd. Sec. 2, Ch. 339, L. 1997; amd. Sec. 2, Ch. 430, L. 2017.

***2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- (15) executive director of the Montana wheat and barley committee;
- (16) commissioner of banking and financial institutions;
- (17) training coordinator for county attorneys;
- (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- (19) chief information officer in the department of administration;
- (20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;
- (21) the following positions in the office of state public defender established in 2-15-1029:
 - (a) the public defender division administrator appointed as provided in 47-1-105;
 - (b) the deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the public defender division administrator;
 - (c) the appellate defender division administrator appointed as provided in 47-1-105;
 - (d) the conflict defender division administrator appointed as provided in 47-1-105; and
 - (e) the director of the office of state public defender provided for in 2-15-1029.

History: En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974; amd. Sec. 1, Ch. 391, L. 1975; amd. Sec. 2, Ch. 488, L. 1977; amd. Sec. 1, Ch. 565, L. 1977; R.C.M. 1947, 59-904; amd. Sec. 2, Ch. 365, L. 1979; amd. Sec. 2, Ch. 412, L. 1979; amd. Sec. 2, Ch. 512, L. 1979; amd. Sec. 1, Ch. 176, L. 1983; amd. Sec. 11, Ch. 161, L. 1987; amd. Sec. 17, Ch. 581, L. 1987; amd. Sec. 21, Ch. 316, L. 1989; amd. Sec. 39, Ch. 613, L. 1989; amd. Sec. 2, Ch. 660, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 447, L. 1991; amd. Sec. 2, Ch. 507, L. 1991; amd. Sec. 2, Ch. 395, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 3, Ch. 455, L. 1995; amd. Sec. 11, Ch. 545, L. 1995; amd. Sec. 24, Ch. 546, L. 1995; amd. Sec. 3, Ch. 339, L. 1997; amd. Sec. 3, Ch. 417, L. 1997; amd. Sec. 2, Ch. 549, L. 1997; amd. Sec. 32, Ch. 313, L. 2001; amd. Sec. 18, Ch. 483, L. 2001; amd. Sec. 16, Ch. 449, L. 2005; amd. Sec. 1, Ch. 24, L. 2011; amd. Sec. 3, Ch. 358, L. 2017.

2-18-104. Exemption for personal staff — limit. (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from parts 1 through 3 and 10.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10.

History: En. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; R.C.M. 1947, 59-903(part (3)); amd. Sec. 3, Ch. 512, L. 1979; amd. Sec. 1, Ch. 538, L. 1983; amd. Sec. 1, Ch. 661, L. 1987; amd. Sec. 3, Ch. 660, L. 1989; amd. Sec. 4, Ch. 339, L. 1997.

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 18. STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

Part 10. Grievance Procedures

2-18-1001. Department of transportation personnel grievances — hearing. (1) An employee of the department of transportation who is aggrieved by a serious matter of employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of transportation against an aggrieved employee because the employee has filed or attempted to file a grievance with the board is also a basis for a grievance and entitles the employee to a hearing before the board for resolution.

(3) A grievance under this part must be filed with the board of personnel appeals within 180 days after the alleged incident or action occurred. Failure to file the grievance within this period is a bar to proceeding with the grievance.

History: En. 32-2505.1 by Sec. 1, Ch. 377, L. 1975; Sec. 32-2505.1, R.C.M. 1947; En. 32-2505 by Sec. 2, Ch. 28, L. 1974; Sec. 32-2505, R.C.M. 1947; R.C.M. 1947, 32-2505(part), 32-2505.1; amd. Sec. 1, Ch. 14, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 128, Ch. 61, L. 2007.

2-18-1002. Grievance procedure — hearing — order. (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

(2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the department of transportation to require an action by the department to resolve the employee's grievance. In a hearing, the board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference.

History: (1)En. 32-2505 by Sec. 2, Ch. 28, L. 1974; Sec. 32-2505, R.C.M. 1947; (2)En. 32-2505.2 by Sec. 2, Ch. 377, L. 1975; Sec. 32-2505.2, R.C.M. 1947; R.C.M. 1947, 32-2505(part), 32-2505.2; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 90, L. 1995.

2-18-1003. Enforcement of board order — petition in district court. The board or the aggrieved employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: En. 32-2505.3 by Sec. 3, Ch. 377, L. 1975; R.C.M. 1947, 32-2505.3.

2-18-1011. Classification or compensation grievance — retaliation — hearing on complaint. (1) An employee or the employee's representative affected by the implementation of parts 1 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board is also a basis for a complaint and entitles the employee to file a complaint with the board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action that attempts to revise the determination of an employee's classification and that involves an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way that would adversely affect the employee prior to final resolution or entry of a final order with respect to the action is presumed to be interference, restraint, coercion, or retaliation prohibited by subsection (2) unless the review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part); amd. Sec. 14, Ch. 575, L. 1981; amd. Sec. 129, Ch. 61, L. 2007; amd. Sec. 14, Ch. 81, L. 2007; amd. Sec. 6, Ch. 430, L. 2017.

2-18-1012. Grievance procedure. If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government to require an action to resolve the employee's grievance. In a hearing, the board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part); amd. Sec. 3, Ch. 90, L. 1995.

2-18-1013. Enforcement of board order — petition to district court. The board or the employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(4)(d).

TITLE 5. LEGISLATIVE BRANCH

CHAPTER 12. LEGISLATIVE FINANCE ACT

Part 3. Legislative Fiscal Analyst

5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the legislative fiscal analyst when the values on the requested return, including estimated payments, are considered necessary by the legislative fiscal analyst to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.

(4) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(5) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department of revenue notifies the fiscal analyst that specified records or information may contain confidential information.

History: En. 43-1115 by Sec. 7, Ch. 448, L. 1975; R.C.M. 1947, 43-1115; amd. Sec. 1, Ch. 25, Sp. L. June 1986; amd. Sec. 1, Ch. 787, L. 1991; amd. Sec. 1, Ch. 20, L. 1993; amd. Sec. 1, Ch. 12, Sp. L. November 1993; amd. Sec. 40, Ch. 545, L. 1995; amd. Sec. 2, Ch. 347, L. 1997; amd. Sec. 2, Ch. 70, L. 2007.

TITLE 5. LEGISLATIVE BRANCH

CHAPTER 13. LEGISLATIVE AUDIT ACT

Part 3. Legislative Auditor

5-13-309. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, activities, and records.

(2) The legislative auditor may examine at any time the books, accounts, activities, and records, confidential or otherwise, of a state agency. This section may not be construed as authorizing the publication of information prohibited by law.

(3) The head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state money or property under that agency's control or for which the agency is responsible.

History: En. Sec. 12, Ch. 249, L. 1967; amd. Sec. 1, Ch. 270, L. 1971; Sec. 79-2312, R.C.M. 1947; amd. and redes. 79-2314 by Sec. 7, Ch. 367, L. 1974; amd. Sec. 62, Ch. 359, L. 1977; R.C.M. 1947, 79-2314; amd. Sec. 1, Ch. 232, L. 1981; amd. Sec. 256, Ch. 61, L. 2007; amd. Sec. 4, Ch. 91, L. 2007.

5-13-314. Employment protection. An employee of the state of Montana or an authorized contractor who provides information to the committee, the legislative auditor, or the legislative auditor's authorized designee may not be subject to any penalties, sanctions, retaliation, or restrictions in connection with the employee's or contractor's employment as a result of the disclosure of information unless the employee or contractor disclosing the information has violated state law.

History: En. Sec. 7, Ch. 91, L. 2007.

TITLE 17. STATE FINANCE

CHAPTER 8. DISBURSEMENT AND EXPENDITURE

Part 4. False Claims.

17-8-401. Short title. This part may be cited as the "Montana False Claims Act".

History: En. Sec. 1, Ch. 465, L. 2005.

17-8-403. False claims — procedures — penalties. (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than \$5,500 and not more than \$11,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains, along with expenses, costs, and attorney fees, if the person:

(a) knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

(c) conspires to commit a violation of this subsection (1);

(d) has possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivers or causes to be delivered less than all of the property or money;

(e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity; or

(h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than \$5,500 and not more than \$11,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains if the court finds all of the following:

(a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.

(b) The person fully cooperated with any investigation of the act by the government attorney.

(c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

(4) Liability under this section is joint and several for any act committed by two or more persons.

(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in:

(i) a criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) a state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation; or

(iii) the news media.

(b) The production of a record pursuant to Article II, section 9, of the Montana constitution or 2-6-1003 is not a public disclosure for purposes of this section.

(c) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

(7) A person may not file a complaint or civil action brought under 17-8-406 against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the state unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises.

(8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410.

(9) If a governmental entity does not intervene, the person who initiated the action has the same right to conduct the action as the government attorney would have had if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity.

History: En. Sec. 3, Ch. 465, L. 2005; amd. Sec. 2, Ch. 64, L. 2009; amd. Sec. 2, Ch. 388, L. 2013; amd. Sec. 43, Ch. 348, L. 2015.

17-8-405. Investigation and civil action by government attorney. The government attorney shall investigate an alleged violation of 17-8-403 and may file a civil action against any person who has violated or is violating 17-8-403.

History: En. Sec. 5, Ch. 465, L. 2005; amd. Sec. 4, Ch. 64, L. 2009.

17-8-406. Complaint by person — civil action. (1) A person may bring a civil action for a violation of 17-8-403 on behalf of the person and the governmental entity. The action must be brought in the name of the governmental entity. The action may be dismissed only if the court and the government attorney give written consent to the dismissal and provide their reasons for consenting to the dismissal.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information that the person possesses must be served on the government attorney pursuant to Rule 4(c)(2)(C), (c)(2)(D), and (d) through (s), Montana Rules of Civil Procedure. The complaint must be filed under seal and must remain under seal for at least 60 days. The complaint may not be served upon the defendant until the court orders that it be served.

(3) Within 60 days after receiving the complaint and the material evidence and information, the government attorney may elect to intervene and proceed with the action or to notify the court that the government attorney declines to take over the action. If the government attorney declines to intervene or take over the action, the person bringing the action has the right to conduct the action. The government attorney may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal.

(4) The defendant may not be required to respond to any complaint until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4(c)(2)(C), (c)(2)(D), and (d) through (s), Montana Rules of Civil Procedure.

(5) If the government attorney proceeds with the action, the government attorney has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action subject to the limitations set forth in this part.

(6) If the government attorney elects not to proceed with the action and the person who initiated the action conducts it:

(a) the person who initiated the action shall, upon the government attorney's request, serve the governmental entity with copies of all pleadings filed in the action and shall supply the government attorney with copies of all deposition transcripts at the government attorney's expense;

(b) the court, without limiting the status and rights of the person initiating the action, may permit the government attorney to intervene at a later date upon a showing of good cause.

(7) When a person files a civil action pursuant to this section, no person other than the government attorney may intervene or bring a related action based on the facts underlying the pending action.

(8) Upon a showing by the government attorney that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the government attorney's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may in its discretion impose limitations on the person's participation, including but not limited to:

(a) limiting the number of witnesses the person may call;

(b) limiting the length of testimony of witnesses called by the person;

(c) limiting the person's cross-examination of witnesses; or

(d) otherwise limiting the participation of the person in the litigation.

History: En. Sec. 6, Ch. 465, L. 2005; amd. Sec. 5, Ch. 64, L. 2009.

17-8-412. Retaliatory actions prohibited — remedies. (1) A governmental entity, private entity, or person may not adopt or enforce a rule, regulation, or policy preventing an employee, agent, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.

(2) A governmental entity, private entity, or person may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee, agent, or contractor in the terms and conditions of employment, agency, or contract because of the disclosure by the employee, agent, or contractor of information to a government or law enforcement agency pertaining to a violation of 17-8-403.

(3) An employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent or associated others in furtherance of an action under this part or other efforts to stop one or more violations of this part.

(4) Relief under subsection (3) includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. A civil action may be brought in the appropriate district court of the state for the relief provided in this subsection.

(5) A civil action under this section may not be brought more than 3 years after the date on which the retaliation occurred.

History: En. Sec. 12, Ch. 465, L. 2005; amd. Sec. 9, Ch. 64, L. 2009; amd. Sec. 6, Ch. 388, L. 2013.

TITLE 19. PUBLIC RETIREMENT SYSTEMS.

CHAPTER 2. PUBLIC EMPLOYEES' RETIREMENT GENERAL PROVISIONS

Part 7. Service Credit and Additional Contributions

***19-2-716. Compromise or settlement of claims by public employees regarding retirement service credits.** A retiree from a public employer who is a party to a compromise or settlement regarding retirement service credits or benefits may waive the right of individual privacy and allow a governmental entity to release any or all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

History: En. Sec. 3, Ch. 306, L. 2017.

TITLE 39. LABOR.

CHAPTER 2. THE EMPLOYMENT RELATIONSHIP

*Part 9. Wrongful Discharge From Employment

39-2-901. Short title. This part may be cited as the "Wrongful Discharge From Employment Act".

History: En. Sec. 1, Ch. 641, L. 1987.

39-2-902. Purpose. This part sets forth certain rights and remedies with respect to wrongful discharge. Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment.

History: En. Sec. 2, Ch. 641, L. 1987; amd. Sec. 1, Ch. 583, L. 2001.

39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason, unless the employer acts within the provisions of 39-2-313(3) or (4).

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

History: En. Sec. 3, Ch. 641, L. 1987; amd. Sec. 3, Ch. 193, L. 1993.

39-2-904. Elements of wrongful discharge — presumptive probationary period. (1) A discharge is wrongful only if:

(a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(b) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(c) the employer violated the express provisions of its own written personnel policy.

(2) (a) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

(b) If an employer does not establish a specific probationary period or provide that there is no probationary period prior to or at the time of hire, there is a probationary period of 6 months from the date of hire.

History: En. Sec. 4, Ch. 641, L. 1987; amd. Sec. 2, Ch. 583, L. 2001.

39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest on the lost wages and fringe benefits. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1)(a).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2).

History: En. Sec. 5, Ch. 641, L. 1987; amd. Sec. 1, Ch. 442, L. 1993; amd. Sec. 3, Ch. 583, L. 2001.

39-2-911. Limitation of actions. (1) An action under this part must be filed within 1 year after the date of discharge.

(2) If an employer maintains written internal procedures, other than those specified in 39-2-912, under which an employee may appeal a discharge within the organizational structure of the employer, the employee shall first exhaust those procedures prior to filing an action under this part. The employee's failure to initiate or exhaust available internal procedures is a defense to an action brought under this part. If the employer's internal procedures are not completed within 90 days from the date the employee initiates the internal procedures, the employee may file an action under this part and for purposes of this subsection the employer's internal procedures are considered exhausted. The limitation period in subsection (1) is tolled until the procedures are exhausted. In no case may the provisions of the employer's internal procedures extend the limitation period in subsection (1) more than 120 days.

(3) If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall within 7 days of the date of the discharge notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection (2).

History: En. Sec. 6, Ch. 641, L. 1987.

39-2-912. Exemptions. This part does not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. The statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age, disability, creed, religion, political belief, color, marital status, and other similar grounds.

(2) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term.

History: En. Sec. 7, Ch. 641, L. 1987; amd. Sec. 30, Ch. 472, L. 1997.

39-2-913. Preemption of common-law remedies. Except as provided in this part, no claim for discharge may arise from tort or express or implied contract.

History: En. Sec. 8, Ch. 641, L. 1987.

39-2-914. Arbitration. (1) A party may make a written offer to arbitrate a dispute that otherwise could be adjudicated under this part.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

(4) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

History: En. Sec. 9, Ch. 641, L. 1987; amd. Sec. 2, Ch. 442, L. 1993.

39-2-915. Effect of rejection of offer to arbitrate. A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

History: En. Sec. 3, Ch. 442, L. 1993.

TITLE 39. LABOR

CHAPTER 31. COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 4. Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization. However, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization. However, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member must have an amount equal to the union initiation fee and monthly dues deducted from the employee's wages in the same manner as checkoff of union dues.

(4) discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

TITLE 49. HUMAN RIGHTS

CHAPTER 2. ILLEGAL DISCRIMINATION

Part 1. General Provisions

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. **These records are confidential** and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

TITLE 49. HUMAN RIGHTS

CHAPTER 2. ILLEGAL DISCRIMINATION

Part 3. Prohibited Discriminatory Practices

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference, as provided for in 2-18-111 and 18-1-110, may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section:

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents; or

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse.

(6) The provisions of this chapter do not apply to a business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise required by a contract or other agreement under which preferential treatment may be given to an individual based on the individual's status as an Indian living on or near a reservation.

***49-2-308. Discrimination by the state.** (1) It is an **unlawful discriminatory practice** for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color,

age, or national origin or possessing a physical or mental disability is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of that person's political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1).

TITLE 49. HUMAN RIGHTS

CHAPTER 3. GOVERNMENTAL CODE OF FAIR PRACTICES

Part 2. Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to ensure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(6) For the purposes of this section, employment does not refer to or include services provided by an individual working under an independent contractor exemption certificate issued under 39-71-417.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985; amd. Sec. 13, Ch. 407, L. 1993; amd. Sec. 2, Ch. 201, L. 2011.

49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: En. Sec. 3, Ch. 540, L. 1983; amd. Sec. 1802, Ch. 56, L. 2009.

TITLE 87. FISH AND WILDLIFE
CHAPTER 1. ORGANIZATION AND OPERATION
Part 2. Department of Fish, Wildlife, and Parks

87-1-205. Grievance procedure. An employee of the department who is aggrieved by a serious matter of employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all administrative remedies within the department is entitled to a hearing before the board of personnel appeals provided for in 2-15-1705 and subject to the provisions of 2-18-1011 through 2-18-1013. Any order of the board is binding upon the department.

History: En. 26-109.1 by Sec. 18, Ch. 417, L. 1977; R.C.M. 1947, 26-109.1; amd. Sec. 3, Ch. 44, L. 1979; amd. Sec. 2830, Ch. 56, L. 2009.

TITLE 87. FISH AND WILDLIFE
CHAPTER 1. ORGANIZATION AND OPERATION
Part 4. Director of Fish, Wildlife, and Parks

87-1-403. Regulation of employees by director. (1) The director may suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for 1 year or more immediately preceding any suspension or discharge may demand and receive a hearing before the department on the charges filed. The action of the department resulting from such a hearing constitutes final administrative action for purposes of filing a grievance with the board of personnel appeals as provided in 87-1-205.

(2) The director shall rate all employees on the basis of merit and efficiency in accordance with rules adopted by the department to secure a proper rating of each person employed. The salaries of employees shall be fixed by the department, and travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, shall be allowed employees while upon official business away from designated headquarters.

History: En. Sec. 8, Ch. 193, L. 1921; re-en. Sec. 3657, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 4, Ch. 453, L. 1977; R.C.M. 1947, 26-108; amd. Sec. 4, Ch. 44, L. 1979.

Section 2 – Administrative Rules of Montana (ARM)

Extracted from ARM on April 6, 2018

2.21 – Department of Administration State Human Resources Division

List of Included Subchapters

[Subchapter 40](#)

Equal Employment Opportunity,
Nondiscrimination, and Harassment Prevention Policy

[Subchapter 65](#)

Disciplinary Policy

[Subchapter 66](#)















Employee Records Management Policy

[Subchapter 80](#)

Grievance Policy

Subchapter 40

Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy

| Rule No | Rule Title | Latest Version | Effective Date |
|---------------------------|--|---|----------------|
| 2.21.4001 | SHORT TITLE |  | 8/26/2011 |
| 2.21.4002 | POLICY AND OBJECTIVES |  | 10/15/2016 |
| 2.21.4003 | DEPARTMENT OF ADMINISTRATION ROLE | REP | 8/26/2011 |
| 2.21.4004 | DEPARTMENT OR AGENCY ROLE | REP | 8/26/2011 |
| 2.21.4005 | EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND NONDISCRIMINATION |  | 10/15/2016 |
| 2.21.4006 | PRE-EMPLOYMENT INQUIRIES | REP | 8/26/2011 |
| 2.21.4007 | PRE-EMPLOYMENT MEDICAL EXAMINATIONS | REP | 8/26/2011 |
| 2.21.4008 | RESPONSIBILITIES |  | 10/15/2016 |
| 2.21.4009 | COMPLIANCE WITH THE FEDERAL GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (GINA) |  | 8/26/2011 |
| | Rules 2.21.4010 and 2.21.4011 reserved | | |
| 2.21.4012 | SEXUAL HARASSMENT | REP | 8/26/2011 |
| 2.21.4013 | HARASSMENT |  | 8/26/2011 |
| 2.21.4014 | RETALIATION |  | 8/26/2011 |
| 2.21.4019 | INITIATING AN INTERNAL COMPLAINT |  | 8/26/2011 |
| 2.21.4020 | INVESTIGATING A COMPLAINT |  | 10/15/2016 |
| 2.21.4021 | POST-INVESTIGATION ACTIONS |  | 8/26/2011 |
| 2.21.4022 | CONFIDENTIALITY REQUIREMENTS |  | 2/1/2013 |
| 2.21.4027 | TRACKING AND REPORTING INTERNAL COMPLAINTS |  | 8/26/2011 |
| 2.21.4028 | INITIATING AN EXTERNAL COMPLAINT |  | 10/15/2016 |
| 2.21.4029 | RULE VIOLATIONS |  | 8/26/2011 |

2.21.4001 SHORT TITLE

(1) This subchapter may be cited as the Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2000 MAR p. 3515, Eff. 12/22/00; [AMD](#), 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4002 POLICY AND OBJECTIVES

(1) These rules establish the minimum requirements for implementing and maintaining an equal opportunity program that promotes compliance with:

(a) federal laws and regulations prohibiting illegal discrimination including the Genetic Information Nondiscrimination Act of 2008 (GINA);

(b) the Montana Human Rights Act, Title 49, MCA;

(c) the Governmental Code of Fair Practices, Title 49, chapter 3, MCA; and

(d) the Governor's Executive Order No. 04-2016, Executive Order Prohibiting Discrimination in State Employment and Contracts.

(2) These rules establish complaint procedures to promote prompt and equitable resolution of discrimination complaints.

(3) These rules cover all agencies in Montana's executive branch except:

(a) the Montana University System;

(b) the Montana State Fund;

(c) elected officials;

(d) personal appointed staff of elected officials; and

(e) any other position specifically excluded under [2-18-103](#) and [2-18-104](#), MCA.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2000 MAR p. 3515, Eff. 12/22/00; [AMD](#), 2011 MAR p. 1672, Eff. 8/26/11; [AMD](#), 2016 MAR p. 1838, Eff. 10/15/16.

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND NONDISCRIMINATION

(1) The executive branch is committed to equal opportunity, nondiscrimination, and harassment prevention in all aspects of employment and in programs, services, and activities offered to the public.

(2) Agency managers, as defined by the agency in policy or rule to promote consistency with internal policies and procedures, may not tolerate discrimination or harassment based on an individual's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, sexual orientation, gender identity or expression, political beliefs, genetic information, military service or veteran's status, culture, social origin or condition, or ancestry. Likewise, agency management may not tolerate discrimination or harassment because of a person's marriage to or association with individuals in one of the previously mentioned protected classes.

(3) Agency managers may use a bona fide occupational qualification (BFOQ) where the reasonable demands of a position require a distinction based on age, physical or mental disability, marital status, sex, religion, or national origin. A BFOQ is a legal exception to an otherwise discriminatory hiring practice. Exceptions are strictly construed, as provided in [49-2-303](#), MCA, and the burden rests with the agency to demonstrate the exemption should be granted. Federal and state laws prohibit BFOQs based on race or color.

(4) To promote a work and customer service environment free from discrimination, agency managers shall:

(a) base hiring decisions on individual competencies and qualifications;

(b) promote an inclusive work environment where individuals are afforded every opportunity to reach their fullest potential;

(c) recognize individual differences as a key element of organizational and team success;

(d) treat individuals with dignity and respect; and

(e) value the rights of all Montanans to benefit from equal access to employment and programs, services, and activities offered to the public.

(5) Agency managers who observe behaviors that may be viewed as discriminatory shall stop the behavior and notify their agency's EEO officer, Americans with Disabilities Act (ADA) coordinator, or human resources manager.

History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2000 MAR p. 3515, Eff. 12/22/00; [AMD](#), 2011 MAR p. 1672, Eff. 8/26/11; [AMD](#), 2016 MAR p. 1838, Eff. 10/15/16.

2.21.4008 RESPONSIBILITIES

(1) The Department of Administration shall:

(a) periodically review and update equal opportunity (EO) standards, guidelines, and administrative processes and procedures;

(b) assist agencies in maintaining an effective EO program;

(c) provide annual utilization analysis reports to agencies;

(d) create and maintain an annual report summarizing state government's efforts toward achieving diversity and inclusion;

(e) provide EEO analyses, reports, and technical assistance to agencies;

(f) recommend strategies to promote diversity and overcome potential barriers to employment;

(g) design and develop diversity and inclusion and equal opportunity training that includes minimum standards for new employee orientation and refresher training; and

(h) submit the biennial State and Local Government EEO-4 Report to the Equal Employment Opportunity Commission by the reporting deadline on odd-numbered years.

(2) Executive branch department heads shall:

(a) appoint an EO officer responsible for:

(i) managing the agency's EO program;

(ii) training employees on EO;

(iii) assisting employees and managers with resolving EO issues;

(iv) conducting internal investigations;

(v) updating the department's annual EEO action plan, unless the department has a federal requirement to develop an affirmative action plan that extends to the entire department;

(vi) developing strategies, goals, and objectives for evaluating the effectiveness of the agency's EEO action plan or affirmative action plan;

(vii) reporting the agency's progress toward minimizing underutilization of women and minorities to the department by March 31 of each year;

(viii) developing internal procedures for providing meaningful access (interpreters, translators, etc.) to programs, services, and activities for customers with limited English proficiency by March 31, 2017;

(ix) reporting to the department each year:

(A) the number of diversity and inclusion and EO and harassment prevention trainings provided; and

(B) the number of employees trained, by new employee and refresher training; and

(b) appoint an ADA coordinator responsible for:

(i) training employees on the ADA, disability awareness, and reasonable accommodations;

(ii) conducting self-evaluations to assess accessibility of programs, services, and activities; and

(iii) assisting with reasonable accommodation requests.

(3) Agency managers shall:

(a) retain electronic records for all jobs recording the sex, race, and ethnic group of employees and applicants as provided in [49-2-102](#), MCA, and the Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38295 (August 25, 1978);

(b) provide reasonable accommodations, upon request, for qualified individuals with disabilities and for applicants and employees based on their religious practices, unless doing so would create an undue hardship;

(c) provide reasonable accommodations, upon request, for limitations resulting from pregnancy-related disabilities and the interaction of pregnancy with an underlying impairment, unless doing so would create an undue hardship for the agency;

(d) ensure employees provide meaningful access to programs, services, and activities for customers with limited English proficiency;

(e) include provisions in all contracts and subcontracts for construction of public buildings, other public works, and goods and services, that prohibit discrimination or harassment based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, sexual orientation, gender identity or expression, political beliefs, genetic information, military service or veteran's status, culture, social origin or condition, or ancestry in hiring and accessing programs, services, and activities performed on the state's behalf;

(f) post the state's EO policy poster and complaint-resolution procedures, including contact information for the agency EO officer and ADA coordinator, in areas frequented by employees and the public;

- (g) provide a copy of these rules to all employees;
 - (h) have employees sign a statement acknowledging their understanding and acceptance of the standards set forth in these rules and file a copy in their personnel file;
 - (i) ensure all new employees receive diversity and inclusion and EO and harassment prevention training within 90 days of hire, beginning April 15, 2017, according to guidelines established by the department;
 - (j) ensure all employees receive diversity and inclusion and EO and harassment prevention refresher training every three years or more frequently as needed, beginning April 15, 2017, according to guidelines established by the department; and
 - (k) document all training in the employee's personnel file.
- History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11; [AMD](#), 2017 MAR p. 130, Eff. 10/15/16.

2.21.4009 COMPLIANCE WITH THE FEDERAL GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (GINA)

(1) To comply with GINA, which prohibits discrimination based on genetic information with respect to employment or state-sponsored group health plans, agency managers may not:

- (a) request, require, or purchase genetic information about employees or their family members; or
- (b) use genetic information to:
 - (i) discriminate against an individual in hiring, discharge, compensation, terms, conditions, or privileges of employment;
 - (ii) make decisions about admission to apprenticeship and training programs, including on-the-job training;
 - (iii) limit, segregate, or classify an individual;
 - (iv) fail or refuse to refer an individual for employment;
 - (v) deprive an individual of employment opportunities; or
 - (vi) acquire health insurance or set premiums under the group health plan.

(2) Requests for genetic information include, but are not limited to:

- (a) conducting Internet searches on individuals in a way that is likely to result in obtaining genetic information;
- (b) knowingly or purposefully listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and
- (c) requesting information about an individual's current health status in a way that is likely to result in obtaining genetic information.

(3) To avoid inadvertently receiving genetic information, agency representatives who request medical information as part of an employment-related medical exam or a medical certification in response to a request for sick leave, leave qualifying under the Family Medical Leave Act, or a reasonable accommodation request under the Americans with Disabilities Act, shall include the following statements verbatim in their written request for medical information:

(a) "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. To comply with this law, we ask you not to provide any genetic information when responding to this request for medical information."

(b) "Genetic information, as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

(c) "Genetic test means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes."

(4) Agency managers may not ask probing questions of an individual if they inadvertently learn of a health condition of an applicant, employee, or the health condition of a family member.

(a) Probing questions include, but are not limited to, asking the individual whether other family members have the condition or whether the individual has been tested for the condition. These questions are likely to result in the acquisition of genetic information.

(5) Agency representatives possessing genetic information about an employee shall maintain the information as confidential in compliance with ARM Title 2, chapter 21, subchapter 66, Employee Records Management Policy.

History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4013 HARASSMENT

(1) Harassment, including sexual harassment, consists of, but is not limited to, oral, written, or electronic communications (for example, voice mails, e-mails, text messages, or other social networking tools) in the form of repeated and unwelcomed jokes, slurs, comments, visual images, or innuendos based on a protected class. Even mutually agreeable behavior, or behavior accepted between two or more people, can be offensive to others; for this reason it is prohibited in the workplace.

(2) Sexual harassment is a form of discrimination that includes unwelcome verbal or physical conduct of a sexual nature when:

(a) submission to the conduct is implicitly or explicitly made a term or condition of employment;

(b) submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or

(c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(3) Agency managers may not tolerate any behavior that negatively focuses on a protected class. Although a behavior or pattern of behavior might not constitute illegal discrimination, it might still violate this rule.

(4) Agency managers who observe behaviors that could be viewed as discrimination or harassment shall stop the behavior and notify their agency's EEO officer, ADA coordinator, or human resources manager.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2000 MAR p. 3515, Eff. 12/22/00; [AMD](#), 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4014 RETALIATION

(1) Agency managers may not retaliate or allow, condone, or encourage others to retaliate against any customer, applicant, or current or former employee for opposing unlawful discriminatory practices, filing a discrimination complaint or participating in a discrimination proceeding, including testifying in court.

(2) Agency managers who become aware of retaliation shall inform the agency's human resource manager, human resource staff, EEO officer, or ADA coordinator. The human resource manager, human resource staff, EEO officer, or ADA coordinator shall advise management on the appropriate course of action.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2000 MAR p. 3515, Eff. 12/22/00; [AMD](#), 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4019 INITIATING AN INTERNAL COMPLAINT

(1) Agency managers shall encourage employees, applicants, clients, and customers who believe they have been discriminated against or harassed to contact their supervisor, another manager, or the agency's EEO officer, ADA coordinator, or human resources staff.

(2) Complaints may be oral or in writing; however, complainants are encouraged to use the Department of Administration's complaint form found at <http://hr.mt.gov/hrpp/policies.mcp.x>.

(3) For complaints not submitted on a complaint form, the agency representative receiving the complaint shall obtain and document the following information:

(a) name, address, and phone number(s) of the complainant(s);

(b) date(s), time(s), and location(s) of the alleged discriminatory behavior or conduct;

(c) name(s), if known, of the accused(s);

(d) description of the behavior or conduct that resulted in an alleged violation;

(e) whether the alleged discrimination was based on a protected class; and

(f) names of potential witnesses who may have heard or observed the alleged discriminatory conduct or behavior.

(4) Agency representatives who receive a complaint or become aware of allegations of discrimination or harassment shall promptly notify the human resource manager, EEO officer, or ADA coordinator, regardless of their perception of the validity of the complaint.

(5) The human resource manager, EEO officer or ADA coordinator, legal counsel, and appropriate manager shall meet to discuss the appropriate course of action. If the complaint is against any of these individuals, that individual is excluded from the meeting. The discussion must focus on measures to stop the alleged behavior, a review of the investigative process, and management's role in the process.

(6) If management determines an internal investigation would not be appropriate because of a potential conflict, they may request assistance from the State Human Resources Division or other outside source.

(7) The human resource manager or human resource staff, as appropriate, shall coordinate with the investigator and advise management throughout the course of the investigation.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4020 INVESTIGATING A COMPLAINT

(1) The EEO officer, ADA coordinator, or another representative chosen by management shall begin an investigation upon receiving a complaint.

(2) Before the investigation begins, the appropriate manager shall separately explain the following to the complainant and accused:

(a) the investigation process and anticipated timelines; and

(b) what retaliation is and that it is illegal.

(3) Agency managers shall provide:

(a) periodic updates to the complainant and the accused; and

(b) documentation of their initial meeting and all subsequent follow-up action to the investigator.

(4) The investigator shall:

(a) gather evidence to determine a "cause" or "no-cause" finding;

(b) coordinate with the agency's legal counsel before conducting interviews and throughout the investigation; and

(c) provide periodic updates to the agency's human resource manager.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11; [AMD](#), 2016 MAR p. 1838, Eff. 10/15/16.

2.21.4021 POST-INVESTIGATION ACTIONS

(1) After receiving the final report, the appropriate manager shall promptly inform the complainant and accused of the outcome of the investigation in writing.

(2) In the case of a cause finding, the appropriate agency manager shall:

(a) take appropriate disciplinary action, if necessary, according to the ARM Title 2, chapter 21, subchapter 65, Discipline Policy;

(b) advise the complainant corrective action to stop the behavior has been taken, but not disclose the details or nature of disciplinary action;

(c) reemphasize that retaliation is unacceptable behavior; and

(d) contact the complainant within 30 days to ensure the behavior has stopped and no retaliation has occurred.

(3) In the case of a no-cause finding, the appropriate agency manager shall contact the complainant within 30 days to ensure the complainant has not experienced retaliation.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4022 CONFIDENTIALITY REQUIREMENTS

(1) Agency managers shall make every attempt to protect the privacy of individuals involved in the complaint process; however, individual privacy cannot be guaranteed.

(2) Agency managers may not prohibit employees from discussing a complaint or ongoing investigation with coworkers unless management conducts an individualized assessment and demonstrates that one of the following factors exists:

(a) there are witnesses in need of protection;

(b) evidence is in danger of being destroyed;

(c) testimony is in danger of being fabricated; or

(d) there is a need to prevent a cover-up.

(3) Agency managers shall document their rationale for requiring that employees refrain from discussing a complaint or ongoing investigation.

(4) The human resource staff shall maintain the investigative report and supporting documents in a secure, confidential case file separate from the regular employee file.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11; [AMD](#), 2013 MAR p. 110, Eff. 2/1/13.

2.21.4027 TRACKING AND REPORTING INTERNAL COMPLAINTS

(1) Agency EEO officers shall track internal complaints using the Complaint Tracking Sheet located on the State Human Resources Division web site: <http://hr.mt.gov/hrpp/policies.mcp.x>. EEO officers shall provide quarterly summaries of internal complaints to the State Human Resources Division no later than the fifteenth day of each quarter.

(2) The report must include:

(a) the total number of complaints;

(b) whether the complainant and accused was an employee, customer, or client;

(c) the protected class or basis of the complaint;

(d) the reason for complaint (for example, employment-related, denied access to a program or service, or inappropriate comment); and

(e) the outcome of the complaint.

(3) The report is for tracking purposes only and may not include confidential information such as names of individuals involved.

(4) The State Human Resources Division shall collect and analyze the data to:

(a) assess program effectiveness;

(b) develop or modify existing policies, procedures, and guides; and

(c) promote compliance with applicable laws, regulations, and policies.

History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11.

2.21.4028 INITIATING AN EXTERNAL COMPLAINT

(1) In addition to the internal complaint process, complaints may be filed with the following agencies:

(a) Montana Human Rights Bureau, 33 S. Last Chance Gulch, Suite 2, P.O. Box 1728, Helena, MT 59624-1728, (406) 444-4356, (800) 542-0807, Montana Relay Service 711; or

(b) United States Equal Employment Opportunity Commission (EEOC) Seattle Field Office, 909 First Avenue, Suite 400, Seattle, WA 98104-1061, (800) 669-4000, TTY (800) 669-6820, ASL Video (844) 234-5122.

(2) Jurisdiction may vary based on the nature of the complaint. For example, neither the Human Rights Bureau nor the EEOC considers complaints based on culture, social origin or condition, ancestry, or military or veteran status.

(3) The Human Rights Bureau must receive the complaint within 180 days of when the alleged discriminatory practice occurred or was discovered unless the person has filed an internal complaint. A person who files an internal complaint under these rules has 180 days from the conclusion of the internal investigation to file a complaint with the Human Rights Bureau if management completes the investigation within 120 days of when the alleged discriminatory practice occurred or was discovered. If management does not complete the investigation within 120 days, the person must file a complaint with the Human Rights Bureau within 300 days of when the alleged discriminatory practice occurred or was discovered.

(4) The EEOC must receive the complaint within 300 calendar days from the date the discrimination took place if the Human Rights Bureau enforces a law prohibiting employment discrimination against the same protected class. Otherwise, the complaint must be filed with the EEOC in 180 days.

(5) Service members and veterans who believe they have been discriminated against in employment based on military service or veteran status may contact:

(a) the Employer Support of the Guard and Reserve at (800) 336-4590; or

(b) the Veterans' Employment and Training Service (VETS) at (866)-487-2365. Service members and veterans may submit a formal, online complaint with VETS at <http://webapps.dol.gov/elaws/vets/userra/1010.asp>. (History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11; [AMD](#), 2013 MAR p. 110, Eff. 2/1/13; [AMD](#), 2016 MAR p. 1838, Eff. 10/15/16.)

History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11; [AMD](#), 2013 MAR p. 110, Eff. 2/1/13; [AMD](#), 2016 MAR p. 1838, Eff. 10/15/16.







2.21.4029 RULE VIOLATIONS

(1) Employees who violate these rules are subject to discipline, up to and including discharge under ARM Title 2, chapter 21, subchapter 65, Discipline Policy. A rule violation includes managers who allow discrimination to occur or fail to take appropriate action to correct inappropriate behavior, including discrimination or harassment.

(2) Failure to conduct an investigation in a proper and timely manner, interference with an investigation, failure to cooperate with an investigator, or making a false statement to an investigator may result in disciplinary action, up to and including discharge.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2011 MAR p. 1672, Eff. 8/26/11.

Subchapter 65 Disciplinary Policy

| | | | |
|---------------------------|---|--|------------|
| 2.21.6501 | INTRODUCTION | REP | 6/29/1984 |
| 2.21.6502 | DEFINITIONS | REP | 6/29/1984 |
| 2.21.6503 | POLICY | REP | 6/29/1984 |
| 2.21.6504 | CLOSING | REP | 6/29/1984 |
| 2.21.6505 | SHORT TITLE |  | 10/27/2006 |
| 2.21.6506 | POLICY AND OBJECTIVES |  | 10/27/2006 |
| 2.21.6507 | DEFINITIONS |  | 10/27/2006 |
| 2.21.6508 | INFORMAL DISCIPLINARY ACTION |  | 10/27/2006 |
| 2.21.6509 | FORMAL DISCIPLINARY ACTION |  | 10/27/2006 |
| | Rules 2.21.6510 through 2.21.6514 reserved | | |
| 2.21.6515 | GRIEVANCE POLICY |  | 10/27/2006 |
| | Rules 2.21.6516 through 2.21.6521 reserved | | |
| 2.21.6522 | CLOSING | REP | 10/27/2006 |

2.21.6505 SHORT TITLE

(1) This subchapter may be cited as the discipline policy.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1984 MAR p. 958, Eff. 6/29/84; [AMD](#), 2006 MAR p. 2565, Eff. 10/27/06.

2.21.6506 POLICY AND OBJECTIVES

(1) It is the policy of the executive branch of Montana state government that:

(a) state employees who fail to perform their jobs in a satisfactory manner or whose behavior interferes with or disrupts agency operations be subject to disciplinary action, up to and including discharge;

(b) disciplinary action be administered for just cause, as defined in this policy;

(c) management inform employees of the just cause for formal disciplinary actions; and

(d) management offer employees the opportunity to respond to formal disciplinary actions.

(2) It is the objective of this policy to establish procedures for implementing informal and formal disciplinary actions.

(3) Management may implement disciplinary actions under this policy regardless of whether a performance evaluation has been completed.

(4) Agencies shall follow this policy unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1984 MAR p. 958, Eff. 6/29/84; [AMD](#), 2006 MAR p. 2565, Eff. 10/27/06.

2.21.6507 DEFINITIONS

As used in this subchapter, the following definitions apply:

(1) "Agency" has the same meaning as defined in [2-18-101](#) (1) , MCA.

(2) "Discharge" means termination of employment for just cause.

(3) "Disciplinary demotion" means a change in the duties of an employee's position or transfer to a lesser position which may result in a reduction in pay.

(4) "Due process" means an employee:

(a) is informed of the action being taken and the reason for the action; and

(b) has the opportunity to respond.

(5) "Employee" means an employee in a permanent position who has attained permanent status as defined in [2-18-101](#) , MCA. It does not include employees hired as temporary employees, short-term workers, student interns, and employees who have not attained permanent status as those terms are defined in [2-18-101](#) , MCA. It does not include officers and employees identified in [2-18-103](#) and [2-18-104](#) , MCA.

(6) "Formal disciplinary action" means, but is not limited to, a written warning, suspension without pay, disciplinary demotion, or discharge.

(7) "Informal disciplinary action" means corrective actions taken to improve unsatisfactory employee behavior, conduct, or performance. It may include, but is not limited to, coaching, counseling meetings, oral warnings, and training.

(8) "Just cause" means reasonable, job-related grounds for taking a disciplinary action based on failure to satisfactorily perform job duties, or disruption of agency operations. Just cause may include, but is not limited to: an actual violation of an established agency standard, procedure, legitimate order, policy, or labor agreement; failure to meet applicable professional standards; criminal misconduct; wrongful discrimination; deliberate misconduct; negligence; deliberately providing false information on an employment application; willful damage to public or private property; workplace violence or intimidation; harassment; unprofessional or inappropriate behavior; or a series of lesser violations.

(9) "Management" means those individuals beginning with an employee's immediate supervisor and other managers in a successive direct line of authority within an agency.

(10) "Progressive discipline" means a process of applying disciplinary actions which may progress from less serious actions to more serious actions.

(11) "Suspension without pay" means a management-ordered leave-without-pay for just cause.

(12) "Written warning" means a written disciplinary notice intended to notify an employee of unsatisfactory performance or conduct.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1984 MAR p. 958, Eff. 6/29/84; [AMD](#), 2006 MAR p. 2565, Eff. 10/27/06.

2.21.6508 INFORMAL DISCIPLINARY ACTION

(1) At its discretion, management may use informal discipline prior or in addition to formal discipline to address performance deficiencies or misconduct.

(2) Management should document all informal disciplinary actions.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1984 MAR p. 958, Eff. 6/29/84; [AMD](#), 2006 MAR p. 2565, Eff. 10/27/06.

2.21.6509 FORMAL DISCIPLINARY ACTION

(1) When formal disciplinary action is necessary, just cause, due process, and documentation, or other evidence of the facts are required.

(2) Management may determine the appropriateness of using progressive discipline on a case-by-case basis.

(3) In each formal disciplinary action, management shall give the employee a written notification that includes, but is not limited to:

(a) the just cause or reason for the disciplinary action;

(b) the disciplinary action to be taken, including the dates, times, and duration where applicable;

(c) the improvements or corrections expected, if applicable; and

(d) the consequences of the employee's failure to make the required improvement or correction, if applicable.

(4) Management shall offer the employee the opportunity to review the notice of formal disciplinary action and to acknowledge its receipt by signing and dating the notice. The employee's signature does not necessarily mean the employee agrees with the disciplinary action. If the employee refuses to sign the notice, management shall make note of that fact.

(5) Management shall offer the employee the opportunity to respond to the notice of formal disciplinary action either orally or in writing.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1984 MAR p. 958, Eff. 6/29/84; [AMD](#), 2006 MAR p. 2565, Eff. 10/27/06.











[2.21.6515](#) GRIEVANCE POLICY

(1) An eligible employee, as defined in the state of Montana's Grievance Policy, may file a grievance under that policy if the employee receives a formal disciplinary action that results in a suspension without pay, disciplinary demotion, or discharge.

(2) An employee may not file a grievance based on an informal disciplinary action or a formal disciplinary action that results in a written warning.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1984 MAR p. 958, Eff. 6/29/84; [AMD](#), 2006 MAR p. 2565, Eff. 10/27/06.

Subchapter 66 Employee Records Management Policy

| | | | |
|---------------------------|--|---|------------|
| 2.21.6601 | INTRODUCTION | REP | 12/18/1981 |
| 2.21.6602 | DEFINITIONS | REP | 12/18/1981 |
| 2.21.6603 | POLICY | REP | 12/18/1981 |
| 2.21.6604 | CLOSING | REP | 12/18/1981 |
| 2.21.6605 | SHORT TITLE |  | 5/11/2007 |
| 2.21.6606 | POLICY AND OBJECTIVES |  | 4/30/2010 |
| 2.21.6607 | OBJECTIVES | REP | 6/12/1992 |
| 2.21.6608 | DEFINITIONS |  | 1/13/2018 |
| 2.21.6609 | DOCUMENT REPORT | REP | 6/12/1992 |
| 2.21.6610 | ADOPTION OF DEPARTMENT POLICY | REP | 5/11/2007 |
| 2.21.6611 | ACCESS TO EMPLOYEE PERSONNEL RECORDS | TRANS | 4/30/2010 |
| 2.21.6612 | RECORDS THAT CONSTITUTE EMPLOYEE PERSONNEL RECORDS |  | 1/13/2018 |
| 2.21.6613 | RECORDS CONTAINING GENETIC INFORMATION |  | 1/13/2018 |
| 2.21.6614 | EMPLOYEE PERSONNEL RECORDS STORAGE |  | 4/30/2010 |
| 2.21.6615 | ACCESS TO EMPLOYEE PERSONNEL RECORDS |  | 8/26/2011 |
| 2.21.6616 | EMPLOYEE PERSONNEL RECORDS USE |  | 8/26/2011 |
| 2.21.6617 | EMPLOYEE PERSONNEL RECORDS RETENTION |  | 4/30/2010 |
| | Rules 2.21.6618 through 2.21.6621 reserved | | |
| 2.21.6622 | CLOSING |  | 4/30/2010 |

[2.21.6605](#) SHORT TITLE

(1) This subchapter may be cited as the Employee Records Management Policy.
History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1981 MAR p. 1776, Eff. 12/18/81; [AMD](#), 2007 MAR p. 612, Eff. 5/11/07.

2.21.6606 POLICY AND OBJECTIVES

(1) This policy:

(a) defines which records constitute employee records and establishes procedures for collecting and maintaining employee personnel records while protecting an employee's right of privacy under Article II, section 10 of Montana's constitution;

(b) ensures employee awareness of records held, provides employees access to their personnel records, and describes how employee personnel records may be corrected;

(c) provides minimum standards for employee records management and allows agencies to adopt supplemental employee records management procedures; and

(d) covers all positions in Montana's executive branch except elected officials, the personal staff of elected officials, those employed by the Montana University System and the Montana State Fund, and any other position specifically excluded under [2-18-103](#) and [2-18-104](#), MCA.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1981 MAR p. 1776, Eff. 12/18/81; [AMD](#), 1992 MAR p. 1232, Eff. 6/12/92; [AMD](#), 2007 MAR p. 612, Eff. 5/11/07; [AMD](#), 2010 MAR p. 1070, Eff. 4/30/10.

2.21.6608 DEFINITIONS

As used in this subchapter the following definitions apply:

(1) "Access" means viewing or using records.

(2) "Confidential information" has the meaning set forth in [2-6-1002\(1\)](#), MCA.

(3) "Employee personnel record" means information relating to an employee's employment with the state of Montana that is appropriate for preservation as an official record of employment policies, practices, and decisions. An employee personnel record may be a paper document or it may be information maintained in an information system such as the Statewide Accounting Budgeting and Human Resource System (SABHRS). Employee personnel records include the documents listed in [ARM 2.21.6612](#).

(4) "Genetic information" means information about applicants' or employees' genetic tests, the genetic tests of their family members, and the manifestation of a disease or disorder in their family members, including information obtained orally or inadvertently (refer to [ARM 2.21.4009](#)). Records containing genetic information are listed in [ARM 2.21.6613](#).

(5) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes.

(6) "Records" means a body of recorded information. This information may be manually or electronically recorded and maintained.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1981 MAR p. 1776, Eff. 12/18/81; [AMD](#), 1992 MAR p. 1232, Eff. 6/12/92; [AMD](#), 2007 MAR p. 612, Eff. 5/11/07; [AMD](#), 2010 MAR p. 1070, Eff. 4/30/10; [AMD](#), 2011 MAR p. 1677, Eff. 8/26/11; [AMD](#), 2018 MAR p. 92, Eff. 1/13/18.

2.21.6612 RECORDS THAT CONSTITUTE EMPLOYEE PERSONNEL RECORDS

(1) Employee personnel records, both electronic and paper, include:

(a) preemployment information (resumes, references, interview questions, etc.);

(b) compensation, job history, and timekeeping records;

(c) employee accident reports and worker's compensation claims;

(d) I-9 forms;

(e) W-4 forms;

(f) benefit plans and employee medical records (including disability accommodation requests and supporting documents, and any record that contains genetic information);

(g) performance appraisals;

(h) disciplinary action records;

(i) background check information, including criminal and credit checks, and employment verification;

(j) office policies/documents signed by employee; and

(k) awards and acknowledgements.

(2) Disciplinary action records resulting from an investigation are part of the employee personnel records and are confidential. Other documented information related to an investigation, while not a part of an employee record, will be treated as confidential information to protect the privacy of the individuals involved. If a request for the information is made, the agency shall review the information and balance the merits of public disclosure against an individual's right to privacy to determine whether the information or portions of the information may be released.

History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2010 MAR p. 1070, Eff. 4/30/10; [AMD](#), 2018 MAR p. 92, Eff. 1/13/18.

2.21.6613 RECORDS CONTAINING GENETIC INFORMATION

(1) The federal Genetic Information Nondiscrimination Act (GINA) provides that the following records contain genetic information:

- (a) an individual's genetic tests, including genetic tests done as part of a research study;
- (b) genetic tests of an individual's family members;
- (c) genetic tests of any fetus of an individual or family member who is a pregnant woman, and genetic tests of any embryo legally held by an individual or family member utilizing assisted reproductive technology;
- (d) an individual's family medical history; and
- (e) any request for, or receipt of, genetic services or participation in clinical research that includes genetic services (genetic testing, counseling, or education).

(2) Examples of frequently used employee personnel records that may contain genetic information include Family and Medical Leave Act (FMLA) request forms, reasonable accommodation requests, medical certifications, medically fit for duty forms, and records relating to worker's compensation claims and employee participation in wellness programs.

(3) Genetic records do not include:

- (a) information about the sex or age of an individual or family members;
- (b) information about the race or ethnicity of an individual or family member that is not obtained from a genetic test;
- (c) information about an employee's disease that is already manifested or diagnosed;
- (d) routine tests such as blood count, cholesterol, or liver-function tests; and
- (e) analysis of infectious agents such as bacteria, viruses, and fungi.

(4) GINA prohibits the collection of genetic information, except in specific instances. For exceptions to obtaining genetic information, refer to:

- (a) the Family and Medical Leave Policy
(<https://montana.policytech.com/docview/?docid=428&public=true&fileonly=true>);
- (b) the Sick Leave Policy
(<https://montana.policytech.com/docview/?docid=175&public=true&fileonly=true>);
- (c) the Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy (ARM Title 2, chapter 21, subchapter 40); and
- (d) the Reasonable Accommodations and Equal Access Policy (ARM Title 2, chapter 21, subchapter 41).

History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2010 MAR p. 1070, Eff. 4/30/10; [AMD](#), 2011 MAR p. 2020, Eff. 8/26/11; [AMD](#), 2018 MAR p. 92, Eff. 1/13/18.

2.21.6614 EMPLOYEE PERSONNEL RECORDS STORAGE

(1) Agencies shall store employee personnel records as follows:

- (a) I-9 forms for all employees may be stored together, but must be kept separate from other records in a secured area such as a locked cabinet or drawer;
- (b) employee background check information must also be maintained separate from other records in a secure location such as a locked cabinet or drawer;
- (c) an employee's medical and genetic information may be kept in the same folder, but these folders must be stored and secured in separate locked cabinets or drawers from other personnel records as required by the Americans with Disabilities Act (ADA) and GINA;
- (d) all other employee personnel records, such as performance appraisals and preemployment information, must be stored in the employee's personnel file. These files must be stored in a secure location, such as a locked cabinet or drawer separate from other records; and
- (e) electronic employee personnel records must be stored in secure electronic folders and must be separated in electronic folders as outlined in this rule.

History: [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 2010 MAR p. 1070, Eff. 4/30/10.

2.21.6615 ACCESS TO EMPLOYEE PERSONNEL RECORDS

(1) All employee personnel records are confidential and access is restricted to protect individual employee privacy, except the following employee information which is considered public and must be released upon request:

(a) an employee's name;

(b) position title;

(c) dates and duration of employment;

(d) salary; and

(e) claims for vacation, holiday, or sick leave pay, except that the reason for taking leave is confidential and may not be disclosed.

(2) Agencies may require that a request for information be in writing. Agencies may not require justification for a request.

(3) An employee has access to all of his or her employee personnel records. An employee may file a written response to information contained in the employee's personnel records. The employee's response must be filed within ten working days of the date on which the employee is made aware of the information by the agency. The written response becomes a permanent part of the employee's personnel record.

(4) As provided in the ADA and FMLA, access to medical information may not be disclosed except to:

(a) the employee about whom the information pertains;

(b) supervisors and managers when identifying restrictions on the employee's work or duties or identifying necessary accommodations;

(c) first aid and safety personnel, when appropriate, if the disability might require emergency treatment;

(d) government officials investigating compliance with the ADA or FMLA; and

(e) support an employee's compliance with the certification provisions of the FMLA.

(5) As provided in GINA, genetic information may not be disclosed except:

(a) to an occupational or other health researcher if the research is conducted in compliance with the federal regulations and protections provided for under the Protection of Human Subjects, 45 CFR, Part 46;

(b) in response to a court order, but only the genetic information expressly authorized by the court order may be disclosed and the employee must be informed before the disclosure;

(c) to government officials investigating compliance with GINA;

(d) to support an employee's compliance with the certification provisions of the FMLA; and

(e) to a federal, state, or local public health agency only regarding information about the manifestation of a contagious disease that presents an imminent hazard of death or life-threatening illness, and the employee must be notified before the disclosure.

(6) The Legislative Audit Division has access to employee personnel records under [5-13-309, MCA](#), for the purposes of auditing state agencies.

(7) The Human Rights Bureau, Department of Labor and Industry, has access to employee personnel records directly related to discrimination complaints.

(8) The professional staff of the State Human Resources Division has access to confidential records when gathering summary data on personnel programs or systems or when providing technical assistance to an agency.

(9) Certain governmental entities have authority under state or federal law to access an employee's personnel record.

(10) Other persons may access an employee's personnel record only if there is a job-related purpose, the employee has granted written permission, or if a valid court order grants access. An agency shall inform the employee when a valid court order has been received directing access to an employee's personnel record.

History: [2-18-102, MCA](#); [IMP, 2-18-102, MCA](#); [TRANS & AMD](#), from ARM [2.21.6611](#), 2010 MAR p. 1070, Eff. 4/30/10; [AMD](#), 2011 MAR p. 1677, Eff. 8/26/11.

2.21.6616 EMPLOYEE PERSONNEL RECORDS USE

(1) Nothing in this subchapter prohibits authorized users from relying on the content of employee personnel records or in agency procedures when responding to requests for employment information from employers to which employees have applied for employment.

(2) Agencies may set and charge fees for copies of employee personnel records.

History: [2-18-102, MCA](#); [IMP, 2-18-102, MCA](#); [NEW](#), 2010 MAR p. 1070, Eff. 4/30/10; [AMD](#), 2011 MAR p. 2020, Eff. 8/26/11.

2.21.6617 EMPLOYEE PERSONNEL RECORDS RETENTION

(1) The Montana Secretary of State's Records and Information Management Division maintains a records retention schedule for payroll and personnel records. Most employee personnel records must be kept in the employer's office for three years after an employee terminates employment. The records must then be transferred to the state records center or retained within the agency for seven additional years. Some personnel records have different retention requirements, which are listed in the schedule.

(2) The GS5 payroll and personnel records schedule may be accessed via the Secretary of State's web site.











History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 2010 MAR p. 1070, Eff. 4/30/10.

2.21.6622 CLOSING

(1) This subchapter shall be followed unless it conflicts with negotiated labor agreements or specific statutes, which shall govern to the extent applicable.

History: [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1981 MAR p. 1776, Eff. 12/18/81; [AMD](#), 2010 MAR p. 1070, Eff. 4/30/10.

Subchapter 80 Grievance Policy

| | | | |
|--|-----------------------|---|-----------|
| 2.21.8010 | SHORT TITLE |  | 12/9/1988 |
| 2.21.8011 | POLICY AND OBJECTIVES |  | 8/19/1997 |
| 2.21.8012 | DEFINITIONS |  | 8/19/1997 |
| 2.21.8013 | EMPLOYEE GRIEVANCE |  | 8/19/1997 |
| Rules 2.21.8014 through 2.21.8016 reserved | | | |
| 2.21.8017 | GRIEVANCE PROCEDURE |  | 8/4/1997 |
| 2.21.8018 | HEARING |  | 8/19/1997 |
| Rules 2.21.8019 and 2.21.8020 reserved | | | |
| 2.21.8021 | FAILURE TO ACT |  | 12/9/1988 |
| 2.21.8022 | WAIVERS |  | 12/9/1988 |
| 2.21.8023 | GRIEVANCE RESOLVED |  | 12/9/1988 |
| Rules 2.21.8024 through 2.21.8029 reserved | | | |
| 2.21.8030 | CLOSING |  | 12/9/1988 |

[2.21.8010](#) SHORT TITLE

(1) This subchapter may be cited as the grievance policy.

History: Sec. [2-18-102](#) MCA; [IMP, 2-18-102](#) MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88.

[2.21.8011](#) POLICY AND OBJECTIVES

(1) It is the policy of the state of Montana that employees who have attained permanent status may file a grievance as provided in these rules, unless the employee is covered by a grievance procedure provided under a collective bargaining agreement or a statutory grievance procedure.

(2) It is the objective of this policy to provide minimum standards for the procedure to be used to adjust grievances filed by eligible employees.

(3) The department of administration delegates the authority to each executive branch department to adopt an internal grievance procedure. An internal grievance procedure must be consistent with the provisions of this policy and at a minimum include all steps contained in [ARM 2.21.8017](#). Additional steps may be added, forms may be included, and timeframes may be modified at the department's discretion.

(4) An employee shall file a grievance under a procedure adopted by the department, if available. If the department has not adopted a procedure, the employee shall proceed under this policy.

(5) Incidents of sexual harassment must be reported using the procedure in the sexual harassment prevention policy, found at [ARM 2.21.1305](#) (also found at policy 3-0620, Montana operations manual, volume III) .

(6) Incidents that are alleged to be in violation of the Americans with Disabilities Act (ADA) of 1990 must be reported using an ADA complaint resolution procedure if such a procedure has been adopted by a department. Otherwise, the employee shall proceed under this policy.

(7) Nothing in this policy precludes an employee who is alleging unlawful discrimination from concurrently exercising any statutorily-protected right to timely file a complaint with a civil rights enforcement agency.

(8) A job classification appeal must be resolved through the procedure adopted by the board of personnel appeals at ARM [24.26.501](#) et seq., and may not be filed under any other grievance procedure.

History: Sec. [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88; [AMD](#), 1991 MAR p. 352, Eff. 3/29/91; [AMD](#), 1994 MAR p. 1421, Eff. 5/27/94; [AMD](#), 1997 MAR p. 1448, Eff. 8/19/97.

2.21.8012 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

(1) "Employee" means any state employee except:

(a) those excepted under [2-18-103](#) and [2-18-104](#), MCA, from the statewide classification system;

(b) when an employee is covered by a procedure provided in a collective bargaining agreement, or is covered by a statutory grievance procedure;

(c) when an employee has not completed a probationary period or a probationary period is extended and the employee has to attain permanent status;

(d) when an employee is hired as a temporary employee or short-term worker or an employee is temporarily hired into a permanent position for less than 12 months and is not eligible to attain permanent status; and

(e) when persons are contracted as independent contractors or perform their duties under the terms of a personal services contract.

(2) "Grievance" means a complaint or dispute initiated by an employee regarding the application or interpretation of written laws, rules, personnel policies or procedures which adversely affects the employee.

(3) "Grievant" means an employee who has filed a formal grievance.

(4) "Management" means those individuals, beginning with the employee's immediate supervisor, and including other managers in the direct line of authority above the supervisor, who can resolve a grievance.

(5) "Permanent employee" means a permanent employee as defined in [2-18-101](#), MCA. For purposes of this policy, the term permanent employee includes a seasonal employee.

(6) "Permanent status" means permanent status as defined in [2-18-101](#), MCA.

(7) "Short-term worker" means a short-term worker as defined in [2-18-101](#), MCA.

History: Sec. [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88; [AMD](#), 1997 MAR p. 1448, Eff. 8/19/97.

2.21.8013 EMPLOYEE GRIEVANCE

(1) An employee may file a grievance based on the application or interpretation of laws, written rules, personnel policies and procedures which adversely affects the employee, unless specifically prohibited from doing so by statute or rule.

(2) A grievant shall not use paid working time to prepare and pursue a grievance. A grievant may request to use other appropriate paid leave, accrued compensatory time or leave of absence without pay to prepare a grievance. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested. Time spent by the grievant attending a hearing is paid working time only during the grievant's regular work shift and shall not exceed 8 hours per day.

(3) An employee other than the grievant may, at the agency's discretion, be given working time off to participate in an investigation or hearing. This time may be paid working time, if the employee's participation is at the agency's request. Other employees may request to use appropriate paid leave, leave of absence without pay, or accrued compensatory time to attend a hearing. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested.

History: Sec. [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88; [AMD](#), 1997 MAR p. 1448, Eff. 8/19/97.

2.21.8017 GRIEVANCE PROCEDURE

(1) Step I is the informal resolution. Both the employee and supervisor are encouraged to resolve the grievance informally whenever possible.

(2) Step II is the formal grievance.

(a) A formal grievance shall be filed in writing within 15 working days from the occurrence of the grievable event. The formal grievance shall be filed with the grievant's immediate supervisor, or the next level above the immediate supervisor. A standard form for filing grievances may be required by an agency.

(b) A formal grievance shall state specifically the law, written rule, policy, and/or procedure violated; when the action occurred, and the remedy desired by the grievant. It shall be signed and dated by the grievant.

(c) Management shall respond in writing to a formal grievance within 10 working days from the date it is filed.

(d) The grievance is resolved at step II if the grievant accepts management's response, or if the grievant fails to advance the grievance to step III within 10 working days of the receipt of management's response.

(3) Step III is the review by a department head.

(a) If a grievant wishes to advance the grievance to step III, the grievant shall notify a management representative designated by the department head. The grievant shall notify the management representative in writing within 10 working days of receipt of management's response at step II.

(b) If the subject of the grievance is suspension without pay for more than 10 working days, disciplinary demotion, or discharge, the designated management representative shall order a hearing, as provided in ARM [2.21.8018](#). All other grievances shall advance to final review by the department head.

(c) The department head shall review the grievance and shall issue the final administrative decision on the grievance either:

(i) within 20 working days of the grievant's request for final review;

(ii) within 10 working days of receipt of the hearings summary as provided in ARM [2.21.8018](#); or

(iii) the department head shall notify the grievant and management concerning any additional actions ordered which will delay the decision.

(d) At the discretion of the department head, the final review may include review of the grievance form, review of management's response, and review of the record of any investigation or hearing, or the department head may authorize an additional investigation, may conduct a discussion with the grievant or may order a hearing.

(e) The department head's final decision shall be issued in writing. This is the final step of this grievance procedure.

History: Sec. [2-18-102](#), MCA; [IMP, 2-18-102](#), MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88; [AMD](#), 1990 MAR p. 377, Eff. 2/23/90; [AMD](#), 1991 MAR p. 352, Eff. 3/29/91; [AMD](#), 1997 MAR p. 268, Eff. 8/4/97.

2.21.8018 HEARING

(1) A hearing shall be conducted at step III, if the grievance is filed as the result of a suspension without pay for more than 10 working days, a disciplinary demotion, or a discharge.

(2) Within 10 working days of advancement of the grievance to step III, the designated management representative shall request either:

(a) a hearings examiner assigned by the office of the attorney general; or

(b) a list of three to five potential hearings examiners from the board of personnel appeals. An examiner shall be selected in one of the following manners:

(i) management and the grievant shall agree on one of the hearings examiners; or

(ii) each shall alternately strike names from the list and the remaining person shall serve as hearings examiner. The grievant shall strike the first name.

(3) The hearings examiner shall set the time and place for the hearing. The parties shall receive notice of the hearing either personally or by certified mail not less than 5 working days before the hearing.

(4) Both parties shall have:

(a) the right to introduce evidence;

(b) the right to cross examine;

(c) the right to be represented; and

(d) the right to a recommendation for resolution based on the recorded evidence and matters officially noticed.

(5) Within 30 working days of the selection of the hearings examiner, the hearings process shall be completed, and the hearings examiner shall submit a written summary of findings and shall make a non-binding recommendation for resolution to the department head.

(6) The agency shall pay all costs of:

- (a) a hearings examiner;
- (b) physical arrangements for a hearing; and
- (c) management's witnesses and evidence.

(7) The grievant shall pay fees and expenses of:

- (a) the grievant's representative; and
- (b) the grievant's witnesses and evidence, unless the witness also is a management witness.

(8) A recording shall be made of the hearing. Either party may request a transcript of a hearing. The party requesting the transcript shall bear the cost. If both parties request a transcript, they will share the cost.

(9) The department head shall issue the final administrative decision within 10 working days of receipt of the hearing summary.

History: Sec. [2-18-102](#), MCA; [IMP](#), [2-18-102](#), MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88; [AMD](#), 1990 MAR p. 377, Eff. 2/23/90; [AMD](#), 1991 MAR p. 352, Eff. 3/29/91; [AMD](#), 1997 MAR p. 1448, Eff. 8/19/97.

2.21.8021 FAILURE TO ACT

(1) If the employee fails to respond within the timeframes established for a step, the grievance is considered resolved in favor of the last response given by management. The employee may not refile the grievance.

(2) If management fails to respond within the timeframes established for a step, the grievant may proceed to the next appropriate step of the procedure.

History: Sec. [2-18-102](#) MCA; [IMP](#), [2-18-102](#) MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88.

2.21.8022 WAIVERS

(1) Any step of the procedure and timeframes in the procedure may be waived upon written agreement of both parties.

History: Sec. [2-18-102](#) MCA; [IMP](#), [2-18-102](#) MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88.

2.21.8023 GRIEVANCE RESOLVED

(1) A grievance is resolved when:

(a) the grievant requests in writing that the grievance be withdrawn or signs a waiver that a resolution has been achieved;

(b) the grievant leaves state employment, unless discharged;

(c) the grievant dies, unless the grievance involves pay or fringe benefits;

(d) the grievant fails to advance the grievance in the required timeframes;

(e) the final steps of the grievance procedures are completed.

History: Sec. [2-18-102](#) MCA; [IMP](#), [2-18-102](#) MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88.

2.21.8030 CLOSING

(1) This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

History: Sec. [2-18-102](#) MCA; [IMP](#), [2-18-102](#) MCA; [NEW](#), 1988 MAR p. 2559, Eff. 12/9/88.