

The Basic Nuts and Bolts of Managing Employees

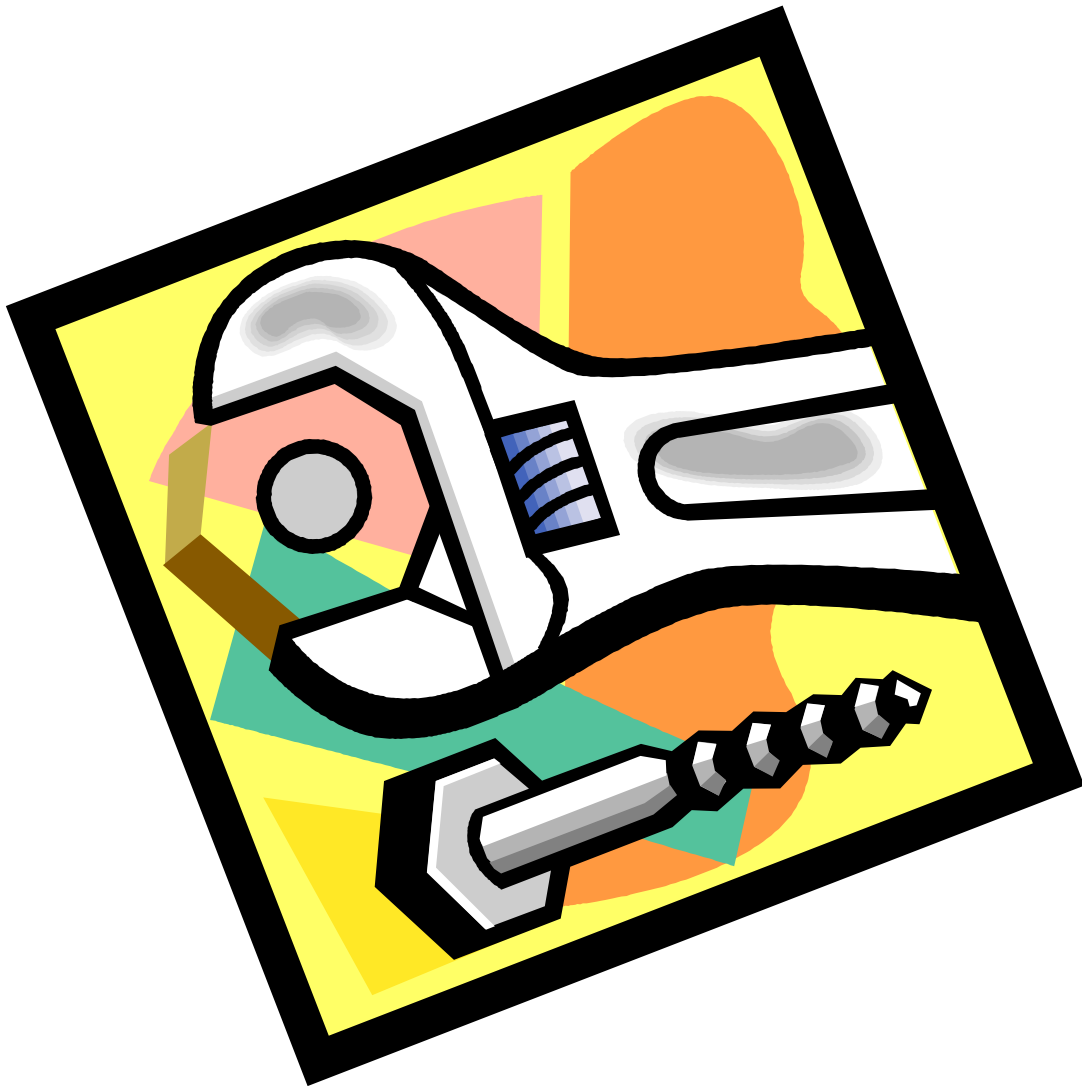


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This Manual is a product of Montana Department of Labor & Industry,
Job Service Bureau

Provided by the
Business Services Committee

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for compiling and editing this document.*

Getting Started

Basic Employer Requirements

Overview: The following is a list of basic employer requirements. There may be other requirements based on business classification.

1 – 4 Need to be done before an employee is hired

1. **Federal Identification Number - Social Security & Federal Income Tax Withholdings**
 - Required if you have employees
 - IRS Website: www.irs.gov
2. **Unemployment Insurance – Department of Labor**
 - Call (406) 444-3834 to receive a packet by mail
 - Complete and submit registration forms
 - Ask for letter stating employees are covered by Unemployment Insurance (posting requirement)
3. **State Income Tax Withholdings – Department of Revenue**
 - Call (406) 444-6900 to receive a registration form by mail or fax
 - Complete and submit registration forms
 - Can submit electronically at:
www.mt.gov/revenue/forbusinesses/electronicfiling/efileforbusiness.asp
4. **Workers Compensation Insurance – Carrier of your choice**
 - Must have coverage on employees – shop around for best deal
 - Have coverage before employee starts working
 - Ask for letter stating employees are covered by Workers Compensation Insurance (posting requirement)
5. **Required Employment Posters**
 - Contact your local Job Service – <http://wsd.dli.mt.gov/service/officelist.asp>
6. **W-4**
 - Have employee complete immediately
 - Used to determine number of deductions or exemptions they will claim
 - Will be used to determine amount of Federal and State Income tax withheld per paycheck
7. **I-9 Proof of Authorization to work in the U.S.**
 - Should be completed on the first day the employee starts work
 - Back of form has list of approved documents
 - Sign form verifying documents were checked
8. **Montana New Hire Reporting Program**
 - Must be submitted within 20 days of employee start date
 - New hire information can be called in, mailed, faxed or submitted on CD or diskette

The Hiring Process

GETTING STARTED...

Employers are faced with the most expensive part of doing business when it comes to employees. Hiring the “wrong” person for a job is very costly. It is important that you follow a process that will afford you the opportunity to select people who have the best chance of success in performing the job. Take the time necessary to find people with the right aptitudes as well as attitudes that reflect your company values.



Employers should spend some time prior to advertising for an employee reviewing the hiring sequence and figuring out their cost of turnover. Taking time upfront to prepare a written job description will save time and money as the hiring process continues.

THE HIRING SEQUENCE

A guide to help you through the hiring process

- ✓ Define the duties and what it takes to do them—
Review or develop your written job analysis and job description. Ask yourself and your employees “what skill and experience is needed to do the job?”
- ✓ Create a recruitment plan—
Include where you are going to advertise, how long the job will be open, how to apply—application and/or resume, time lines for recruitment
- ✓ Advertise your job opening—
Use any resource available such as your local Job Service, word of mouth, and Internet sites such as <http://jobs.mt.gov>
- ✓ Develop your screening criteria—
Include pre-screening process, interview questions, testing and evaluation criteria
- ✓ Screen applicants—
Using the same criteria for all applicants select the most qualified individuals and schedule interviews
- ✓ Conduct the interview—
Ask the same questions of all applicants
- ✓ Check references—
Remember to ask only for job related information
- ✓ Make the job offer to the successful candidate—
Remember to notify all applicants the position has been filled
- ✓ Welcome the new employee to your organization

JOB ANALYSIS

Knowing your needs before you advertise and hire a new employee can be of benefit for any employer. Conducting a job analysis and writing an accurate job description for all positions may seem like an unnecessary task. It will be time well spent in the long run. Involving current employees in the process will lead to better results.

Job Analysis:

- Is the process of describing in detail and of prioritizing the important tasks, which make up a job and the knowledge, skills and abilities required to perform those tasks.
- Helps to ensure that selection procedures are job-related and treat applicants fairly.
- Saves the employer time, money and energy. The more that is known about the job specific tasks, the better the chance of selecting the best-qualified applicant.
- Focus on four major questions during a job analysis:
 - What physical and mental tasks does the job accomplish?
 - How is the job done?
 - Why is the job done?
 - What qualifications are needed for this job?



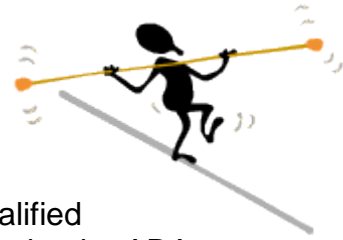
A job analysis thus provides a summary of a specific job's...

- duties and responsibilities,
- relationship to other jobs,
- knowledge and skills/competencies,
- working conditions of unusual nature.

A very helpful web site for employers to use when completing a job analysis is <http://online.onetcenter.org> This site is a comprehensive database of worker attributes and job characteristics.

ESSENTIAL FUNCTIONS

Why do I need to consider the essential functions of a job?



Title I of the Americans with Disabilities Act (ADA) protects qualified individuals with disabilities from employment discrimination. Under the ADA, a person has a disability if he has a physical or mental impairment that substantially limits a major life activity. The Act also protects individuals who have a record of a substantially limiting impairment, and people who are regarded as having a substantially limiting impairment. An individual with a disability must be qualified to perform the essential functions of a specific job with or without reasonable accommodation in order to be protected by the ADA.

The individual must:

- Satisfy the job requirements for educational background, employment experience, skills, licenses and any other qualification standards that are job related; and
- Be able to perform those tasks that are essential to the job, with or without reasonable accommodation.

The ADA does not interfere with the employer's right to hire the best-qualified applicant. The ADA simply prohibits you from discriminating against a qualified applicant because of a disability. Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. You should carefully examine each job to determine which functions or tasks are essential to performance.

Factors to consider in determining if a function is essential include:

- Whether the reason the position exists is to perform that function
- The number of other employees available to perform the function or among whom the performance of the function can be distributed
- The degree of expertise or skill required to perform the function

One question to ask yourself is "Can my business continue to operate if this task is not done or can someone else perform the task?"

Here are some examples given on the EEOC web site:

An employer is recruiting for a proofreading position. Part of the application process is a written test for proofreading. The employer does not have to offer this test in a different format (e.g., orally) or hire an applicant who has dyslexia because reading is an essential function of the job.

A deaf applicant applies for a file clerk position. The essential functions for this job are to file and retrieve written materials. While the job description states that the clerk must also answer the phone, in practice the clerk rarely does this because other employees have responsibility for this duty. The employer cannot reject an applicant for not being able to answer the phone since that is not an essential part of performing this job.

BASIC JOB ANALYSIS OUTLINE

Job Title: _____

Reports to: _____

FSLA Status: _____

Prepared/Approved Date: _____

Summary: Briefly explain the general purpose of the job as well as expected interactions and relationships with other employees, departments, customers and clients.

Essential Duties and Responsibilities: List major job duties and responsibilities. Include quality, quantity and safety factors.

Supervisory Responsibilities: If applicable.

Competencies: To perform the job successfully, an individual should demonstrate job specific competencies from the areas of intellectual, interpersonal, leadership, organizational and self-management.

Qualifications: To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Specify a skill level for each area.

Education and/or Experience

Language Skills

Mathematical Skills

Reasoning Abilities

Computer Skills: List specific system or software required to perform the essential duties of this job

Certificates, licenses, and registrations: Professional licensing, drivers, special endorsements if applicable.

Other Skills, Abilities and Qualifications: Equipment, machines and programs individual must be able to operate or have a specific level of proficiency.

Physical Demands: Demands representative of those that must be met to successfully perform the essential functions of the job. Consider the frequency or the percentage of time the person would be doing actions such as sitting, bending, standing, walking, climbing, driving, pushing, pulling and lifting.

Work Environment: Describe characteristics of the environment representative of those an employee would encounter while performing the essential duties of this job. The percentage of time spent indoors or outdoors along with other relevant details like exposure to temperature extremes, chemicals, dust, fumes and heights.

JOB DESCRIPTION

- A job description is a summary of the important facts about a particular job. It states in a clear, concise way, the information in a job analysis.
- Many employers choose to use the written job description because they find it provides them with the greatest utility of all job documentation methods.
- Depending on how detailed they are, job descriptions can be used directly or indirectly to:
 - Assign work & document work assignments
 - Help clarify missions
 - Establish performance requirements
 - Assign titles and/or pay levels to jobs
 - Recruit for vacancies
 - Explore reasonable accommodations
 - Train employees
 - Check for compliance with legal requirements related to equal opportunity, equal pay, overtime eligibility, etc
 - Make decisions on job restructuring



SETTING WAGE RATES

An accurate job description is the base needed to compare jobs. It makes clear the relative amounts of work required and qualifications needed. This will allow you to establish fairer wage rates and salaries. Some principles to consider include:

- Equal pay for equal work
- Fairness in application of these principles
- Higher pay for work requiring more knowledge, skill or physical exertion
- Reasonable pay, in comparison to pay for similar work in other organizations
- Total earnings reflect, in some way, the employee's contribution to the organization
- Over qualified employees are generally not paid more than a qualified employee in the same position

One general but fairly effective rule of thumb you can follow when determining rates is to pay the most important non-supervisory job as well as or somewhat better than the job receives elsewhere and do the same for the least important full-time job. Rates for all other jobs in-between can then be set in a reasonable way.

Labor market information regarding wage rates in Montana are on the Internet at <http://www.ourfactsyourfuture.org>

Sample Job Description

Great Company

Position: Receptionist/Secretary

Summary: Answers multi-line telephone, greets visitors to the building and performs miscellaneous clerical duties.

Essential Duties and Responsibilities:

- Greet and assist the public on a daily basis.
- Displays friendly and professional manners and personality.
- Answers telephone for 7-person office and act as backup for tenant business phones when necessary.
- Monitor visitor accesses to building, including sign-in and issuing passes when required.
- Receives, sorts, and routes mail and other communications.
- Maintains office equipment, including fax machine, copiers, phone system, and schedules repairs as necessary.
- Types general correspondence.
- Prepares labels or envelopes for mailing of monthly newsletter, meeting notices, agendas and minutes, requests for information, and miscellaneous correspondence.
- Performs all general clerical duties including copying, collating, letter folding, stuffing envelopes.
- Orders and maintains office supplies as needed.
- Maintains the reception area in a neat and orderly manner.
- Assists with meeting preparation, including making coffee, preparing meeting rooms and other items as requested.

Competencies:

- Demonstrates professional appearance and hygiene in accordance with established workplace culture.
- Excellent oral and written communication skills.
- Responsive to customer needs, including being tactful, respectful and considerate of others regardless of their status.
- Manages difficult customer situations in a professional manner.
- Exhibits sound and accurate judgment
- Demonstrates flexibility and the ability to quickly adapt to change in the work environment.
- Demonstrates accuracy and thoroughness and monitors work to ensure quality.
- Responds to management direction, follows instructions and completes work in a timely manner.
- Takes personal responsibility for own actions, keeping commitments and asking for and offering help when needed.

- Observes safety and security procedures and reports any potentially unsafe conditions.
- Is consistently at work and on time and ensures work responsibilities are covered when absent.

Qualifications:

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge and skills required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Education: High school diploma or equivalent required. Some college or technical school preferred.

Computer Skills: Experience in Windows 2007 using Microsoft Office applications; typing speed a minimum 65 wpm.

Physical Demands:

While performing the duties of this job, the employee is regularly required to sit; reach with hands and arms and talk or hear. The employee is frequently required to use hands to finger, handle, or feel; frequently lift and/or move up to 10 pounds, and occasionally lift and/or move up to 25 pounds. The employee is regularly required to stand and walk. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception and ability to adjust focus.

Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions of this job.

Work Environment:

The work environment is a professional office setting and the noise level is usually quiet.

I have reviewed this job description and am aware that I may request a copy at any time.

I understand that Great Company reserves the right to revise or change this job description as the need arises.

Employee's Signature

Date

Employee's Name (please print)

HIRING FOR TALENT

Doesn't Anyone Want To Work Anymore?

The workforce is changing. Employers are realizing in addition to having the skills to do a job, employees able to fit into the workplace and get along with co-workers. Research and Analysis Bureau survey found Montana value positive work habits and attitudes. They said these difficult skills and qualities to find when hiring new employees. Surveyed employers said it's harder to find workers with positive work habits and the ability to work with minimal supervision than those with basic writing, technology and math skills.



that in need to be workers. A employers highly are the most employees.

In the past, an organization's value was in hard goods—value that could be measured in inventory and equipment. However in today's knowledge-based economy it is the utilization of talents, knowledge, skills and abilities that gives the organization its value.

Talent is any recurring pattern of thought, feeling, or behavior. Most individuals establish about 13 innate talents or strengths by about age 13. Understanding that each person possesses these enduring patterns of thought, feeling and behavior is incredibly liberating as you then realize you aren't responsible for changing people's behavior. By finding out people's talents, you can match people to what they normally, naturally are good at and enjoy doing. You can develop a talent profile to assist you in putting the right people in the right jobs. This helps you to hire right and adjust your current workforce to make the most of it.

EMPLOYEE GENERATIONS AND VALUES

Traditionalists, Baby Boomers, Gen X-ers, Millennials, Emergent Workforce, Traditional Workforce, Values, Generational Myopia...what does it all mean to me?

In recent years many studies have been done to try to understand the changing workforce. Dealing with attitudes, values and motivations of individuals of different generations in the same work place is becoming more important as more and more workers are getting older and being replaced by younger workers.

Are those Gen X-ers all that different from the Baby Boomers (or older) who are hiring them? The answer, for the most part, is yes. Failure to recognize difference usually results in **GENERATIONAL MYOPIA**: the mistake we make when we apply the values & attitudes of our own generation to someone of a different generation.

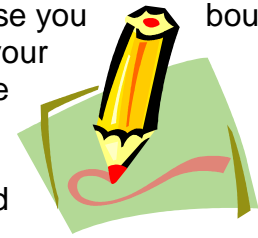
The Internet contains a wealth of resources for learning more about this critical issue in today's workplaces.

JOB APPLICATIONS

Is Your Application Legal?

What information do you want to capture about applicants with your company application? Skill level? Experience? Knowledge? To get what you want you have to learn to ask the right questions. Questions that are not job-related such as where a person was born, marital status, what kind of transportation the person uses, etc., give you absolutely no help in making the best hiring decision. If you ask these types of questions, you are setting yourself up for discrimination claims.

The key to appropriate employment inquiries is to ask only about those areas that will provide information about the person's ability to do the job, with reasonable accommodation. Do not assume that applications are legal because you bought them at a reputable store. You are responsible for the legality of your applications and keeping them updated as laws change. There are currently cases pending with the Montana Human Rights commission concerning discrimination and illegal applications. More and more applicants are asserting their rights...now is a good time to closely scrutinize your application.



You can require additional materials be submitted with your application as appropriate such as:

- Resumes, transcripts, licenses and certificates (or copies), and answers to supplemental questions.

Supplemental questions are inexpensive tools employers can use to screen large numbers of applicants quickly and consistently. Answers are screened against suggested responses. Applications without completed supplements can be eliminated. Recommendations for writing supplemental questions include the following:

- Limit to 3-5 questions for most jobs
- Limit responses to no more than 300 words for most questions
- Let applicants know if their written communication skills will be evaluated
- Avoid specific, in-house terminology or procedures in suggested responses

Before recruiting, develop questions and determine acceptable answers that will provide the kind of information you are seeking. Ask questions about specific job duties, knowledge, skills and abilities found in your job description. Questions about past experience rather than theoretical questions usually result in more valuable responses. Devise a rating scale, assigning an appropriate weight to each question relative to the importance of the duty being assessed.

Based on ratings, the applicants can be grouped, for example: best qualified; qualified; and did not meet minimum qualifications. Then, additional tools such as job related testing (typing, 10-key, written tests, agility, etc.), interviews and reference checks can screen the best qualified.

Problematic Job Application Inquiries

**Prepared by Business Services Committee and
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Department of Labor and Industry
Workforce Services Division**

Since the 1970s, Job Service offices have been required to reject "a job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin." *Section 49-3-202, MCA*. The attributes or categories listed by this statute are commonly known as "protected classes."

A job request submitted to the Job Service for posting may list specific "bona fide occupational qualifications." Naturally, an employer often will seek to hire a person with particular job-related skills and abilities. However, a problem arises for Job Service staff when these "bona fide occupational qualifications" infer intent to exclude a protected class member from the applicant pool.

The Job Service staff can help employers avoid claims of employment discrimination by reviewing job applications for questions that implicate protected class status. Some unacceptable job application inquiries may be appropriate questions for an employer to ask during an interview or after a conditional offer of employment. After hire, an employer will need to gather specific information for tax reporting, insurance, social security, immigration and affirmative action compliance. At all times, employers should be careful and ask only for information that is truly necessary.

The following table provides general guidance on keeping job application inquiries within the legal boundaries set for Workforce Services.

Inquiry regarding:	Acceptable Inquiry?
Age	<p>NO. Discrimination against applicants of any age is unlawful in Montana. See, § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM. The federal Age Discrimination in Employment Act protects persons aged 40 to 70, whereas Montana law protects against discrimination at all ages. Never ask age or require birth or baptismal certificates.</p> <p>After a conditional offer of employment, an employer may request proof that an applicant is of legal age to work. See, § 41-2-101, MCA, et seq. (child labor laws). § 39-2-306, MCA (bartenders must be 18 years old).</p>
At –Will Employment	<p>NO. Montana is NOT a state where an employee works only "at the will" of the employer. Any statement to the effect that "employment may be terminated at any time, with or without cause" misstates Montana law.</p>

	<p>After a probationary period of employment, the Wrongful Discharge from Employment Act (WDEA) allows termination only for "good cause" and only in conformance with the employer's written policies. An employee who is fired for refusing to violate public policy is also protected by the WDEA. § 39-2-901, MCA, <i>et seq.</i></p> <p>Moreover, it is unlawful for an employer to fire a worker in violation of the Montana Human Rights Act, § 49-2-101, MCA, <i>et seq.</i>, and the Governmental Code of Fair Practices, § 49-3-101, <i>et seq.</i> Termination of an employee is unlawful when federal employment laws are violated, including Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA). Job-loss protection for veterans who return to work is provided by the Uniformed Services Employment and Reemployment Rights Act (USERRA) and § 10-1-1007, MCA, which protects members of the state militia against discrimination.</p>
Birthplace	<p>NO. Discrimination on the basis of national origin is unlawful. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM. The Department strongly advises against asking an applicant's birthplace on a job application.</p>
Children	<p>NO. To avoid an inference of discrimination on the basis of marital status or gender, the Department strongly advises against an employer asking whether an applicant has children, who cares for them or whether applicant plans to have more children. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM. Local and State government employers may not discriminate against women who are breast-feeding an infant. § 50-19-501, MCA</p> <p>After hire, an employer may ask about the number and ages of children for insurance purposes.</p>
Citizenship	<p>NO. Discrimination on basis of national origin is unlawful. The Department strongly advises against asking about an applicant's citizenship status. § 49-3-202, MCA; Rule 24.9.1406(1), ARM. An employer may ask a more general question about whether applicant has legal status to work in the United States.</p> <p>After hire, an employer must complete and retain a federal I-9 Form for each employee, which requires the employer to examine proof of citizenship or a work permit. An employer who knowingly employs an illegal alien may be guilty of a misdemeanor. § 39-2-305, MCA.</p>
Conviction or Arrest	<p>YES and NO. An employer may ask about an applicant's prior criminal convictions, but the Department advises the employer to include a disclaimer that a conviction is not an automatic bar to employment. Montana law mandates that a convict's full state civil rights are restored upon the completion of state supervision. See, <i>Mont. Const. Art II, Sect. 28.</i></p> <p>Montana law does not explicitly prohibit pre-employment criminal background checks. Background checks are required for some licenses and certain public</p>

	<p>positions, such as public communications safety officers, peace officers, reserve officers, and persons operating youth care facilities. See, § 7-31-202, MCA, (<i>communication safety officers</i>), § 7-32-303, MCA (<i>peace officers</i>) § 7-32-213, MCA (<i>reserve officers</i>) and § 52-2-622, MCA (<i>youth care facilities</i>).</p> <p>Employers must not ask about arrests or whether applicant has ever been charged with a crime. <i>Rule 24.9.1406, ARM</i>. At times, innocent persons are arrested and criminally charged. A criminal record attaches only after a guilty plea or when a judge or jury hands down a conviction. Information on prior arrest or charging may prejudice an employer against an applicant who has no criminal record.</p>
Credit Information	<p>NO. While no Montana law prohibits an employer from requiring a credit report at the application stage, the Department strongly advises against this practice.</p> <p>After a conditional offer of employment, an employer may request a credit report from the applicant when a clear business necessity dictates a pre-employment credit check.</p>
Disability	<p>NO. Discrimination on the basis of physical or mental disability is unlawful in all employment. Never ask whether applicant or any member of the applicant's family has a disability or has had any of a list of diseases. Also, it is unlawful to ask if the applicant is pregnant. Avoid all health-related questions, including worker's compensation history or prior use of sick leave. §49-2-303 and §49-3-202 MCA; 24.9.1406(1), ARM.</p> <p>Affirmative Action: Local and State government employers must give preference in hiring to qualified disabled persons. See, § 39-30-101, MCA, <i>et seq.</i></p> <p>During an interview, an employer may discuss with an applicant the specifics of the essential job functions. Carefully framed questions about whether an applicant can perform a particular essential job function, with or without reasonable accommodations, is an acceptable question at an interview.</p>
Drug Testing	<p>MAYBE. An employer may require drug testing for some occupations. The law allows pre-employment drug testing for employees in "hazardous work environments" and for security, public safety and fiduciary positions. Testing must be accomplished in accordance with a "qualified testing program." §39-2-206(6) and 208, MCA.</p> <p>After a conditional offer of employment, an employer may require pre-employment drug testing at the employer's expense and in accordance with a qualified testing program for those positions allowed by statute.</p>
Education	<p>MAYBE. An employer may ask about an applicant's academic, vocational or professional education. To avoid an inference of age discrimination, never ask dates of attendance or dates of completion on an application. § 49-2-303 and §</p>

	<p><i>49-3-202 MCA; Rule 24.9.1406(1), ARM.</i></p> <p>When a high school diploma bears no direct relationship with successful job performance, the Department strongly advises against an employer requiring a high school diploma.</p>
Lie Detector Test	<p>NO. All pre-employment polygraph or lie detector tests are unlawful. Also, Montana law prohibits an employer from requiring polygraph or lie detector tests as a condition of continued employment. <i>§ 39-2-304, MCA.</i></p>
Marital Status	<p>NO. Discrimination on the basis of marital status is unlawful. Never ask whether an applicant is married, single or divorced. Do not ask the name or occupation of a spouse. <i>§49-2-303 and §49-3-202 MCA; 24.9.1406(1), ARM.</i></p> <p>After a conditional offer of employment, local and State government employers may ask whether a spouse or family member works for the same employer in order to comply with anti-nepotism laws. <i>§2-2-301, MCA, et seq.</i></p> <p>After hire, an employer may ask about spouse and family members for insurance purposes.</p>
Medical Condition	<p>NO. Medical information is protected by law as private information. Discrimination on the basis of disability is unlawful. Never ask about an applicant's medical condition or history, including prior diagnoses, addictions, injuries, or other medical information. <i>§ 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM.</i></p> <p>After a conditional offer of employment, an employer may require applicant to have a physical exam when consistent with business necessity and directly related to the job, but only at the employer's expense. <i>§ 39-2-301, MCA.</i></p>
Military	<p>NO. Discrimination on basis of an intent to join or membership in the Reserves or National Guard is unlawful. <i>§ 10-1-1005, MCA, and Uniformed Services Employment and Reemployment Rights Act (USERRA).</i> The Department strongly advises against questions about an applicant's general military experience or type of discharge, unless employer is applying a veteran's preference.</p> <p>Affirmative Action: Local and State government employers must provide preference for veterans in hiring. See, <i>§ 39-29-102, MCA, et seq.</i></p>
Name	<p>YES and NO. Discrimination on the basis of marital status or national origin is unlawful. While an employer may certainly ask an applicant's name, the Department strongly advises against asking applicant's original name, maiden name or whether a name has been changed by court order or otherwise. <i>§ 49-2-303 and §4 9-3-202 MCA; Rule 24.9.1406(1), ARM.</i> For the purpose of verifying prior employment, an employer may request information regarding an applicant's name change or nickname.</p>

<p>Organizations</p>	<p>MAYBE. Discrimination on the basis of religion, creed or political beliefs is unlawful. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM. Requesting information about applicant's membership in job-related professional organizations is acceptable. However, inquiry about non-work-related membership in clubs or organizations may violate applicant's privacy and infer discrimination.</p>
<p>Photograph</p>	<p>NO. Discrimination on the basis of age, race, national origin, disability or other protected class is unlawful. The Department strongly advises against requesting a photograph with an application. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM.</p> <p>After hire, an employer may require a photograph for identification purposes.</p>
<p>Physical Characteristics</p>	<p>NO. Discrimination on the basis of age, race, national origin, disability or other protected class is unlawful. The Department strongly advises against inquiries about height, weight, color of skin, hair or eyes, or other physical characteristics. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM.</p> <p>In a job description, an employer may explain how the job is performed and outline expectations for essential functions, such as manual labor, lifting or other job requirements.</p> <p>After a conditional offer of employment, an employer may discuss with the applicant whether reasonable accommodations are needed to perform essential functions of the job. An employer also may require applicant to have a physical exam when consistent with business necessity and directly related to the job, but only at the employer's expense. § 39-2-301, MCA.</p>
<p>Political Belief</p>	<p>NO. Discrimination on the basis of political belief or affiliation is unlawful in local or State government hiring. § 49-3-205, MCA. Job Service offices are barred from posting job requests that inquire about political belief or affiliation in any manner. § 49-3-202 MCA.</p>
<p>Pregnancy</p>	<p>NO. Asking if an applicant is pregnant or has any plans to become pregnant is unlawful. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM. Local and State government employers may not discriminate against women who are breast-feeding an infant. § 50-19-501, MCA</p>
<p>Protected Class Membership</p>	<p>NO. Discrimination on the basis of age, race, color, national origin, creed, religion, sex, physical disability, mental disability or marital status is unlawful. Job Service offices are prohibited by law from posting any job application inquiries that would indicate an applicant's membership in any of these "protected classes" or that asks about an applicant's political beliefs. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM.</p> <p>Affirmative Action: Local and State government employers and certain</p>

	<p>contractors are required to give hiring preference in certain circumstances to Indians, veterans and disabled persons. See, § 18-1-110, MCA, et seq. (<i>Indians on reservations</i>), § 39-29-102, et seq. (<i>veterans</i>), and § 39-30-101, MCA, et seq. (<i>disabled persons</i>).</p>
Reference Checks	<p>YES and NO. An employer may inquire about an applicant's prior work experience and qualifications. But, the Department strongly advises against an employer requesting a personal recommendation from clergy in order to avoid an inference of religious discrimination.</p> <p>An employer may provide a "truthful statement of the reason for discharge" of a prior employee. Blacklisting a discharged employee is unlawful. § 39-2-801, MCA, et seq.</p>
Religion	<p>NO. Discrimination on the basis of religion and creed is unlawful. Do not ask about an applicant's religious affiliation, church membership, pastor or observed holidays. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM. An employer may inform an applicant of the regular scheduled work week.</p> <p>The "ministerial exception" to unlawful religious discrimination may apply when the employer is a religious institution and seeks an applicant to perform religious duties and responsibilities. The Department advises that the ministerial exception be applied with great care.</p>
Sex	<p>NO. Discrimination on the basis of sex is unlawful. Never ask any question that expresses or implies a limitation or specification about sex. § 49-2-303 and § 49-3-202 MCA; Rule 24.9.1406(1), ARM.</p> <p>To imply that favorable employment consideration will be given in exchange for an applicant's sexual favors is always illegal.</p>
Smoking or Alcohol Use	<p>NO. An employee's use of legal substances away from the work premises is protected by law. § 39-2-313, MCA. Consequently, the Department advises against an employer inquiring about an applicant's tobacco or alcohol use, unless the question is justified by an explicit business necessity.</p>
Social Security Number	<p>MAYBE. To protect privacy rights and avoid the possibility of identity theft, the Department strongly advises against an employer asking for applicant's SSN on a job application. While no statute prohibits the collection of SSNs, the Montana Supreme Court has noted that employers have a duty to protect both SSNs and driver's license numbers from disclosure. <i>Jefferson County, Montana v. Montana Standard</i>, 318 Mont. 173, 79 P.3d 805 (2003).</p> <p>Local and State government employers must take special measures to protect SSNs from disclosure. § 2-6-501, MCA, et seq. Federal, State and local government agencies may not withhold any right, benefit, or privilege to an individual because the person refuses to disclose his or her SSN. <i>Privacy Act 5 U.S.C. § 552a, Sec. 7(a) (1)</i>.</p>

	<p>After hire, employer may request the SSN for tax purposes and new-hire reporting, but must protect SSN from disclosure.</p>
Testing Skills and Knowledge	<p>MAYBE. Applicant testing is acceptable when tests have been validated for the position. When no direct or indirect relationship exists between a particular test and the position, the Department strongly advises against unnecessary testing, which might serve to exclude qualified applicants.</p>
Waiver of Rights	<p>NO. As a condition of applying for a job, some employers have asked applicants to waive their right to be free of unreasonable searches in the workplace or the right to seek redress if a prior employer illegally disparages the applicant when giving a reference. These waivers would not withstand legal challenge.</p> <p>Any waiver request presented as a condition of applying for a job serves primarily to intimidate or coerce an applicant. The Department strongly advises against any pre-employment waiver of an applicant's statutory rights.</p> <p>When providing a reference, a prior employer may offer a "truthful statement of the reason for discharge" of a prior employee. Blacklisting a discharged employee is unlawful. § 39-2-801, MCA, et seq.</p> <p>After hire, employer may provide an employee with a copy of Employee Handbook or Employee Manual that describes the employment rules and policies of the workplace.</p>

Reminder: this information on problematic job application inquiries does not constitute legal advice and does not purport to take into consideration local ordinances or tribal laws, which may affect employment discrimination claims. Employment law is constantly changing, as federal, state and local laws are amended and as courts refine interpretations of the law. Because the specific facts of a case dictate how the law may be applied, the above general statements will not address all circumstances.

MONTANA'S DISCRIMINATION LAWS

Montana Human Rights Act & Governmental Code of Fair Practices

Unlawful to discriminate in:

- Credit
- Education
- Employment
- Financing
- Housing
- Insurance
- Public accommodations
- State and local governmental services and employment

Because of:

- Age
- Marital status
- National origin
- Physical or mental disability
- Race/color
- Religion/creed
- Sex (including pregnancy, maternity and sexual harassment)
- Familial status (housing only)
- Political beliefs or ideas (public employees)



APPLICATION FORMS

An application form provides you with the first opportunity to set forth the employment relationship. Review your application forms and ask yourself the following questions:

- Will the answer to this question, if used in making a selection, have the effect of screening out a significant number of minorities, members of one sex or any other protected group members?
- Is the information really needed to judge an applicant's qualifications for the **job in question**?
- Do I want to consider an electronic application? If so, will it be used for positions that don't require computer knowledge and inadvertently screen out qualified workers?

CHECKLIST FOR REVIEWING RESUMES OR APPLICATION FORMS

- ✓ Review the job description(s) for the position(s) you are attempting to fill. Note minimum requirements needed and refer to them often as you review resumes/applications.
- ✓ Ignore the applicant's name, address or personal information to limit subconscious biases.
- ✓ Attempt to ignore superficial issues such as style, and/or typographical errors in favor of content, unless such issues are directly related to the position for which they are applying. Over scrutinizing form may unintentionally rule out members of protected classes.
- ✓ Check work experience for relation to the position for which they are applying, length of time in each position, promotions or awards received, reason for leaving each position.
- ✓ Note gaps in employment, but do not assume they were caused by negative reasons.
- ✓ Check educational background for qualifications necessary for successful job performance.
- ✓ Note special skills (i.e. computer software, office equipment).
- ✓ Note on a separate piece of paper any pertinent questions that arise when reviewing the resume/application and ask those during a telephone screen/interview.
- ✓ Divide resumes into 3 groups – one for those that closely match job requirements and for which a telephone screen is appropriate, one for those who meet some requirements and may be considered secondarily and one for those who do not meet the requirements at all.
- ✓ If necessary, screen the top group again to further narrow down the candidates. On average, about 10 resumes per open position should be sufficient.
- ✓ During telephone screening briefly describe the position, location, hours and salary range (if appropriate) and ask if the candidate is still interested in being considered. If so, ask for brief clarification on any important questions raised during your initial review.

TESTING

It is common for employers to ask applicants to undergo other procedures, such as testing, as part of their selection process. Employees affect an organization's performance and profitability. Hiring or promoting people who are unsuitable costs time, money, and potential new business. Carefully developed and administered employment tests can provide organizations with a way to decide systematically and accurately which people have the ability to perform well on the job, learn from training programs, will maintain longevity, and won't engage in counterproductive behaviors. Tests can also benefit individuals who are better matched to positions for which they are suited and in which they will wish to remain.



Before you begin testing:

1. Be certain that tests are job-related and an accurate predictor of performance in the job.
2. Only use tests that are valid and do not discriminate against any group of applicants.
3. Administer the same tests under the same conditions to all applicants for the same position.
4. Accommodate people with disabilities by modifying the test or testing conditions or eliminating the testing requirement.
5. Do not rely solely on tests for making decisions about candidates; use them as one component of your overall selection procedure.

SOME REASONS TO USE TESTING

- Testing leads to savings in the decision-making process. Employment tests can be a cost effective way to pare down the applicant pool. Tests can make the decision process more efficient because less time is spent with individuals whose characteristics, skills, and abilities do not match what is needed. However, some tests do require more time upfront with individuals to determine who is and who isn't qualified. In these cases, tests can still result in savings from not training and compensating individuals whose productivity would be low or who would not remain on the job.
- The costs of making a poor decision are high. For certain employment actions, a poor decision can be very costly in terms of training costs, errors made by a poor performer, costs of replacement, etc. For these types of decisions, investing in testing may be seen as a particularly worthwhile endeavor if testing reduces the number of poor decisions.

- The job requires attributes that are hard to develop or change. Tests are often used for assessing characteristics that cannot be developed through training, but are acquired over long periods of time or even a lifetime.
- Hard-to-get information can be obtained more easily and efficiently. One important advantage of using employment tests is that they can often provide information about an individual that is not easily obtained using other methods, or that would be much more costly to obtain by other means.
- Individuals are treated consistently. Using standardized tools in employment decision-making ensures that the same information is gathered on each individual and used in a similar way in decisions. Employers often turn to testing because of the unfairness of less standardized processes, in which individuals are not all treated in a similar way and similar information is not gathered on all individuals. Subjective biases can easily creep into decisions if the process for making decisions is not standardized.
- There are a lot of applicants. Sometimes the sheer number of individuals to consider for an employment decision leads an employer to choose testing as the most efficient and fair means of making a decision in a timely manner.
- Through local Job Service offices and at no cost to the employer, Montana employers have access to over 800 assessment tests. To learn more about this valuable employer resource, go to www.proveit.com or contact your local [Job Service office](#).

SOME REASONS NOT TO TEST

- Costs.
- Fear of legal action. Sometimes concerns are raised about the legality of using tests in hiring. As with any other method of making employment decisions, tests can be scrutinized if there is a belief that discrimination in employment decisions has occurred. Before using a test, it is important to anticipate whether or not adverse impact might occur and to consider ways that minimize any exclusionary effects while preserving the ability to make valid inferences based on test scores.
- Practical constraints. Tests may not be the best choice if not many individuals are being considered in a particular employment decision, if the resources to properly administer the test are not available, or if the timing and logistics of the decision-making process preclude the use of an appropriate test.
- The current decision-making process would not be improved upon by the addition of a test.

Interviewing



Interviewing

If you don't know exactly what you are looking for, you'll probably never find it. At the very heart of the ability to do an effective job interview is excellent knowledge of the job duties, the skills, the experience and the aptitude that are necessary to perform the job well. The total cost of a poor hiring decision is more than lost time and money...other byproducts include low efficiency, poor morale, high absenteeism, and frequent turnover. This section will cover the following subjects:

- **PREPARING FOR THE INTERVIEW**
- **CONDUCTING THE INTERVIEW**
- **EVALUATION & FOLLOW UP**
- **INTERVIEWING AND HIRING PEOPLE WITH DISABILITIES**

There are a number of types of interviews you can use to determine if the individual is a good fit in your organization. The following are suggested types:

- **Performance Interview**--This type of interview has an individual perform a specific task related to the job they are applying for.
- **Behavioral Interview** --The behavioral job interview is based on the idea that past performance is the best indicator of future behavior, and uses questions that probe specific past behaviors.
- **Structured Interview**--This type of interview is very straightforward. The interviewer uses a set of standard questions that are asked of all candidates.
- **Unstructured Interview** --This type of interview is where questions are asked about the applicants' interests, educational background, previous work experience or other subjects.
- **Telephone Interview**--This type of interview is used to eliminate candidates based on essential criteria such as employment objective, education, or required skills.
- **Technical Interview**--This type of interview uses technical questions, which are designed to measure applicants' analytic or problem-solving skills.

PREPARING FOR THE INTERVIEW

Review your job description and extract 6-10 major tasks of the job. From these major tasks identify the most important qualifications for the position and then determine how you will measure those qualifications through the interviewing process.

As appropriate, consider questions that elicit the following: motivation, related job experience, team player, ability to learn, technical skills, attitude, availability, flexibility, ability to communicate, and cooperation.

Once you have decided on 10-15 general and specific job-related questions you plan to use in the interview and have developed standards for rating of responses, you need to transfer these questions to an interview form. This assures that all candidates are asked the same questions and provides you a means of rating candidates and taking notes.

Before interviewing, identify any problems you have had with the position and develop screening tools to address those concerns. If certain aspects of the job cause people to leave, mention them during the interview, as it's better the person refuse the job than to start and quit.

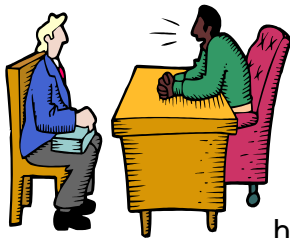
Set your minimum limits, and then consider them carefully. For example: Is high school education mandatory for satisfactory completion of duties? Will you consider similar job experience or training instead? Be sure your minimum standards are based on true need...not bias...otherwise you may lose the opportunity for a qualified, stable employee.

CONDUCTING THE INTERVIEW

The interviewer's job is to maintain subtle control of the interview while:

1. Eliciting the behavior that will help make a hiring decision.
2. Carefully observing that behavior.
3. Interpreting how the behavior relates to the requirements of the job.

Assessing the applicant's ability to do the job is the most important objective of the interview. However, the successful interview should also give the applicant information about the job and working conditions in the company. It should also create goodwill in the applicant toward the job and the company, even if the applicant is not hired.



Interviewing is hard work! Watch out for “**halo effects.**” This happens when you allow a prominent characteristic to overshadow other evidence in an interview. To avoid this, pay close attention to everything the applicant says, and then make careful, independent ratings of the applicant's response to each question.

Don't dwell on the negative. Placing greater emphasis on negative information than on positive information defeats the purpose of the interview and again can result in a snap decision or judgment.

It is your responsibility and in your own best interest to keep the applicant from volunteering information which has no bearing on the selection process. If an applicant volunteer's information about a spouse, kids, religion, etc., **STOP** the flow of information, courteously explain your reason for interrupting, and assure the applicant that your company does not base its hiring practices on that particular subject area. If this person does not get the job, he or she can file a complaint saying that you learned during the interview, for example, that she was divorced, with children, and you refused to hire her for that reason. If discriminatory information is inadvertently revealed during the interview, do not tell others or enter this information anywhere on your application or

evaluation forms. If you are interviewing an individual with a disability, see the subsection on this topic before proceeding.

Avoid leading questions such as, “You left school to go to work?” It is easy for the applicant to answer, “Yes,” even though the real reason might have been expulsion.

Consider having more than one person interview your applicants. People often tend to hire people like themselves because they feel comfortable with them. In reality, businesses thrive more on diversity because different skills, ideas and points of view strengthen an organization. Another option is a “group or panel interview” in which several people interview each applicant at the same time, taking turns asking questions. Be attentive and try not to show feelings to responses given, other than to acknowledge. Try the mirror technique where you restate the last part of the answer as though it was a question (example: “and then they told you, you were fired?”). Mirroring is especially useful because it asks a question without revealing the interviewer’s bias regarding the answer. Look interested as though you would like to hear more. If that does not work, simply request more information by saying something such as, “Tell me more about” or “What happened then?” When you are unclear what the applicant is saying, try rephrasing what you think you heard to make sure communications are clear.

TEST YOURSELF

Once again, when you are asking questions during the interview, be very careful that you are not asking suspect or discriminatory questions that can be used by the applicant to file a complaint, if you decide not to hire them. Following is a short test of your knowledge of what may be a suspect question.

SELECT THE SUSPECT INTERVIEW QUESTIONS

(See end of Interviewing Section for answers)

- 1. What are your strengths with respect to making decisions?**
- 2. You have an unusual name. What nationality are you?**
- 3. Would you be willing to work for a person who is younger than you?**
- 4. Are you physically able to do this job?**
- 5. Describe how you would handle a complaint from an upset customer?**
- 6. Describe your public speaking experience?**
- 7. Are you supplementing your household income?**
- 8. What do you know about our company?**

Applicant Evaluation Form

Applicant Name: _____ **Position:** _____
Interviewer: _____ **Date:** _____

Rating Scale

1= Unsatisfactory 2= Below Average 3= Average 4= Above Average 5= Excellent

Required Education – Does the applicant have the required education or training for the position?

1 2 3 4 5

Comments:

Related Experience – Has the applicant acquired similar skills or qualifications through past work experience?

1 2 3 4 5

Comments:

Technical Experience – Does the applicant have the technical skills necessary for the position?

1 2 3 4 5

Comments:

Communication – Did the applicant display appropriate communication skills?

1 2 3 4 5

Comments:

Initiative/Motivation – Did the applicant's answers demonstrate a high degree of initiative?

1 2 3 4 5

Comments:

Teamwork/Interpersonal skills – Did the applicant demonstrate good interpersonal skills and teamwork?

1 2 3 4 5

Comments:

Applicant Evaluation Form (Page 2)

Applicant Name: _____ **Position:** _____

Interviewer: _____ **Date:** _____

Knowledge of company – Did the candidate display significant knowledge and interest in the company and position?

1 2 3 4 5

Comments:

Customer Service – Did the applicant display a high level of customer service skills?

1 2 3 4 5

Comments:

Attitude/Enthusiasm – Did the applicant display enthusiasm and an overall positive attitude?

1 2 3 4 5

Comments:

Overall qualifications for position – Recommended for hire to position?

_____ **Yes** _____ **No**

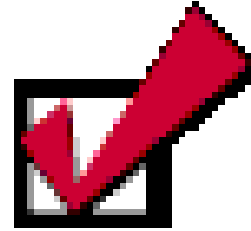
Comments:

EVALUATION AND FOLLOW-UP

Once you have completed the interviews of all applicants, you will need to review results to determine which applicants meet your minimum qualifications and are the best fit for your organization.

This sub-section will cover the following topics:

- ❑ Reference Checking
- ❑ Criminal Background Investigations
- ❑ Making an offer
- ❑ Non-selection letters



REFERENCE CHECKING—FREQUENTLY ASKED QUESTIONS

Why should I spend my time checking job references?

The best predictor of success on the job is past performance.

Aren't most employers reluctant to give references?

They shouldn't be as long as they provide relevant, factual information. Giving and getting job references is a legitimate business activity in which both parties have an interest and/or liability. Even verifying the dates of employment and the job duties gives you some credible information. Asking appropriate, non-threatening questions with gentle persistence can also go far in obtaining more information. Should a previous employer fail to warn you about critical, safety-sensitive situations, that employer may have liability if you hire a person who repeats a similar activity at your business. Document that you asked questions even if the employer won't answer.

Some applicants just look suspicious. Is it okay to check references on just those individuals?

Be consistent and fair in the treatment of all applicants to avoid discrimination claims. If you check references on any applicants, check references on all applicants.

Is it okay to check references without telling an applicant that you are?

Some applicants may not even apply if you let them know through job announcements or advertising that you will be checking references. You should get permission from applicants before contacting previous or current employers by asking for a written release on your job application.

Should I ask for personal references?

Asking for personal references may be suspect for discrimination as applicants often list religious contacts. Besides, savvy applicants only list personal references that will give positive responses and personal references will probably not have relevant job performance information.

When other employers call me for references, I'm not sure with whom I'm talking or what to say.

Good point! You can ask the person calling what the questions will be and tell the person you will pull the personnel file and call back. This gives you time to prepare responses and allows you to verify who is calling through a callback procedure.

Which questions should I answer?

Answer only those questions that are objective and relevant. You have no obligation to answer improper questions. Don't volunteer information. Ask why the person needs certain information if you don't know. Answer questions evenly and unemotionally. Ask for more specifics if you don't understand a question.

TIPS ON CHECKING REFERENCES

- Prepare reference questions ahead of time so you can consistently ask the same question about all applicants.
- Call or write to each reference given.
- Suggest that the person gather information and call you back if he/she seems unprepared.
- Document all information that you receive.
- Also document unsuccessful tries at gathering information to protect you from negligent hiring claims.
- If you can't get the requested information from references, ask the job applicant for more information or to clear the way for you with the references he or she gave.
- Ask factual and objective questions – not opinions.
- Don't make a job offer until you've completed your reference checking.

QUESTIONS TO ASK WHEN CHECKING REFERENCES

- **Employment History:** Ask about positions held, dates of employment, promotions, job duties, performance, attendance records, and termination or separation reasons.
- **Performance:** Avoid subjective appraisal information – base on written evaluations. How well did the employee perform? Overall, was performance satisfactory? Unsatisfactory? Does your file show your company's overall evaluation of the employee?
- **Conduct:** Did the employee have an acceptable attendance record? Does your file show any documented disciplinary problems? Follow up and probe any responses – What was the nature of the problem? What was the resolution? Was it corrected?
- **Termination or separation:** Why did the employee leave? Is the employee eligible for rehire? (More objective than "would you rehire?") If not, why not? Does the file show the reason not eligible? Is there a termination fact sheet or an exit interview?
- **Closing:** Is there anything else we should know about this applicant?



TIPS ON PROVIDING REFERENCES

- Have all departing employees sign a reference release that releases you, and all your agents, from all liability in connection with disclosure of employment-related information to prospective employers.
- Have a policy specifying who in your business can give references, as you may be liable for references given out by other employees.
- Ask the person calling what the questions will be, and tell the person you will pull the personnel file and call back. This allows time to prepare how you will answer questions and gives you an opportunity to verify who the caller is.
- Communicate facts supported by documentation, not opinions. You can cite specific examples that are documented.
- Avoid subjective and broad statements.
- Be concerned with what happened while the person was employed by you – not what the person did before you hired.
- Be sure you have facts – not suspicions – before providing negative or sensitive information.
- Give information in good faith – true (factual, objective) and without malice. Document in the file who contacted you, the questions asked and how you answered them.

CRIMINAL BACKGROUND INVESTIGATIONS

Be sure to inform applicants if you will be conducting a background investigation and get expert assistance. Advertising background checks in your job announcement may prevent questionable applicants from even applying. Make sure these investigations are carefully planned, justified and executed. If someone was only arrested and not convicted, the law does not view this as adequate grounds for denying employment.

Even a conviction is not always grounds for denying employment. It could be challenged based on how long ago it happened, how serious the infraction was or how relevant it is to the job for which the person is applying. You could also be challenged if you subject only certain applicants to background checks.

To conduct a criminal background check you may call the Department of Justice, Criminal Records Division at (406) 444-3625.

I hereby authorize any person, educational institution, or company I have listed as a reference on my employment application to disclose in good faith any information they may have regarding my qualifications and fitness for employment.

Signature: _____

Date: _____

Montana CONWEB

<https://app.mt.gov/conweb>

This website enables searches for the records of convicted felons in the state of Montana. This website is maintained by the Montana Department of Corrections.

Montana Sexual and Violent Offender Registry

<https://www.doj.mt.gov/ssvor/search.asp>

The Montana Sexual and Violent Offender Registration Unit collects information about registered sexual and violent offenders from the registering agency, which may be a court, a state or local correctional facility or a probation or parole agency, or directly from offenders.

National Sex Offender Public Registry <https://www.nsopw.gov/Core/Conditions.aspx>

This Web site is provided as a public service by the U.S. Department of Justice. Using this Web site, interested members of the public have access to and may perform a national search or search participating state Web site public information regarding the presence or location of offenders, who, in most cases, have been convicted of sexually-violent offenses against adults and children and certain sexual contact and other crimes against victims who are minors.

Driving Records

<http://doj.mt.gov/driving/drivingrecords.asp>

Cost: \$4.00 by mail with a self addressed stamped envelope or a valid credit card to pay the \$7.25 fee for each record requested online. (Alternately, if you would like the record sent via fax, enclose an additional \$3 for each record and do not send a self-addressed envelope.)

Background Checks

<http://doj.mt.gov/enforcement/criminaljustice/backgroundchecks.asp>

\$11.50 per request

Fair Credit Reporting Act

FCRA is a relatively complex law. To assist employers, the FTC publishes a guide titled “Using Consumer Reports: What Employers Need to Know.” The guide is available online at:

<http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know>

*Requires written consent of applicant and (pre and post) notice of adverse action.

For additional information, employers may contact the FTC at:

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
202-326-2222
www.ftc.gov

Applicant Release of Information

Today's Date: _____

Print Full Name: _____

The following information is required by law enforcement agencies and other entities for positive identification purposes when checking records. It is confidential and will not be used for any other purposes.

Print any other last names you have used: _____

Home Address: _____

City: _____ State: _____ Zip: _____

Social Security Number: _____ Date of Birth: _____

Drivers License Number: _____ State of Issue: _____

Name on Drivers License: _____ Sex: Male ___ Female ___

In connection with my application for employment with (employer name), I hereby authorize a thorough background check by (employer name) including: (1) investigation of my work history, including employment verification and professional reference checks; (2) education verification; (3) criminal record or history check and (4) credit check.

I hereby authorize without reservation any law enforcement agency, school, employer or credit bureau contacted by (employer name) to furnish the information described in Section 1 without restriction.

Signature: _____

State Laws

In addition to FCRA, employers must comply with the Montana statute regulating the use of consumer reports ([31-3-101 et seq. MCA](#) and [40-5-261 MCA](#) {Child Support}) if they hire a third party to conduct a background check. More information about Montana's law is presented below:

Childcare providers – ARM 37.95.161 DAY CARE FACILITIES

Private investigators and security guards – [MCA 37-60-303 \(6\)](#) LICENSE OR REGISTRATION QUALIFICATIONS

**Teachers and school employees – ARM 10.57.201A CRIMINAL HISTORY
BACKGROUND CHECK**

**Insurance producers, adjustors, consultants, administrators – MCA 33-17-201
LICENSE REQUIRED OF INSURANCE PRODUCER-FORMS-BACKGROUND
EXAMINATIONS**

MAKING AN OFFER

Once you have made a decision to hire an individual, you need to contact that individual as soon as possible; otherwise you may lose them to another company. Be prepared to discuss salary, benefits, and other reasons someone may want to work for your company (i.e. in-house daycare, bonus programs, staff recognition, advancement opportunities, etc). Prior to making the offer, you need to determine the salary range being paid for the particular occupation in your area, and be willing to negotiate the starting salary.

The job offer should be made in person if possible; however, it can be made over the phone and followed up with a letter.

NOTICE OF NON-SELECTION

Letters should be sent, or a personal telephone call made, to all applicants. A positive experience is important for your job applicants because, in the future, they may be your customer or part of your next applicant pool. In addition to recognizing the applicant's interest in your job opening the letter should confirm the position requirements, justify your hiring decision and acknowledge the applicant's interest.

Non-selection letters should:

- Begin and end on a positive note.
- Refer to the specific job for which the applicant was considered.
- Be professional and sincere.
- State briefly why the applicant was not selected.
- Be signed by the appropriate person.
- Be mailed to the applicant's home address.

When writing a non-selection letter to external candidates, one need not refer to the candidate hired or his or her qualifications. It is important, however, to let the applicant know that s/he has been considered for your position, but another more qualified candidate has been selected. Put yourself in the applicant's place. A simple letter of acknowledgement provides closure to what could be a very stressful search and respects the applicant's feelings.



INTERVIEWING AND HIRING PEOPLE WITH DISABILITIES

People with disabilities are the nation's largest minority, and the only one that any person can join at any time. If you do not currently have a disability, you have about a 20% chance of becoming disabled at some point during your work life. People with disabilities cross all racial, gender, educational, socioeconomic, and organizational lines. Companies that include people with disabilities in their diversity programs increase their competitive advantage. People with disabilities add to the variety of viewpoints needed to be successful and bring effective solutions to today's business challenges. The American economy is made stronger when all segments of the population are included in the workforce and in the customer base.



Hiring the right person for the right job starts with conducting an effective job interview. As in any interview, you are interviewing a person with skills and abilities to determine if that individual is the best fit for your job opening. The following guidelines ensure that persons with disabilities are afforded a fair and equitable opportunity to present their job qualifications.

Reminders for Interviewing Individuals with Disabilities

1. Your company's application and interviewing procedures should comply with the Americans with Disabilities Act (ADA). The ADA prohibits disability-related questions or medical exams before a job offer is made.
2. Make sure your company's employment offices and your interviewing location(s) are accessible to applicants with mobility, visual, hearing or cognitive disabilities.
3. Be willing to make appropriate and reasonable accommodations to enable a job applicant with a disability to present him or herself in the best possible light. When setting up the interview explain what the hiring process involves and ask the individual if he or she will need reasonable accommodations for any part of the interview process.
4. Do not let a rehabilitation counselor, social worker or other third party take an active part in or sit in on an interview unless the applicant requests it.
5. Make sure that all questions asked during the interview are job-related. Speak to the essential job functions regarding the position for which the applicant is applying, as well as why, how, where, when and by whom each task or operation is performed. Do not ask whether or not the individual needs an accommodation to perform these functions, because such information is likely to reveal whether or not the individual has a disability. This is an ADA requirement to ensure that an applicant with a disability is not excluded before a job offer is made.

6. Relax and make the applicant feel relaxed. Don't be afraid of making mistakes. At the same time, remember that candidates are expected to assume an equal share of the responsibility for making your interaction with them successful.
7. Do not speculate or try to imagine how you would perform a specific job if you had the applicant's disability. If the applicant has a known disability (either because it is obvious or was revealed by the applicant) the employer may ask an applicant to describe how he or she would perform a certain job function if it is an essential part of the job. In addition, the employer may ask the individual if he or she needs reasonable accommodations and if so what type of accommodation.
8. Concentrate on the applicant's technical and professional knowledge, skills, abilities, experiences and interests, not on the disability.
9. Disability related questions and medical examinations are prohibited under ADA at the pre-employment offer stage. After a real job offer is made, the offer may be conditioned on the results of disability related questions and/or medical examinations, but only if the examination or inquiry is required for all entering employees in similar jobs and only if all medical information is kept confidential. Disability related questions and medical examinations at the post-offer stage do not have to be related to the job. However, if the offer is withdrawn, the employer must show that the individual could not perform the essential function of the position or would pose a direct threat.
10. If testing is part of the interview process, make sure the test does not reveal information about physical or mental impairments. Make sure it is not a medical examination. Other tests, which demonstrate the applicant's ability to perform actual or simulated job tasks, are permitted under the ADA. Inform the applicant before the interview that a test will be part of the interview process. The applicant can then request an accommodation such as a different format for written tests.
11. If you are not prepared to make a commitment to hire her or him immediately, the usual reasons given to applicants who are not hired at the close of the interview apply: "Thank you for coming in, we will notify you in a few days of our decision."
12. An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and scope of its operation.

ANSWERS

Select the Suspect Interview Questions Test

Questions **2 & 7** are suspect because...

Both are in violation of Title VII of the Civil Rights Act of 1964 which protects individuals against employment discrimination on the basis of national origin as well as race, color, religion and sex. Any question that asks a candidate to reveal information about his or her national origin, citizenship, age, marital status, disabilities, arrest record, military discharges, or personal information is a violation of the act.

Question **3** is suspect because...

The question is in violation of the The Age Discrimination in Employment Act of 1967 (ADEA). The federal law protects individuals who are 40 years of age or older from employment discrimination based on age. In the State of Montana the act applies to individuals of any age, so long as they are in compliance with Child Labor Regulations, and to all employers. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment -- including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

Question **4** is suspect because...

Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment.

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

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Resources
For
Managing Your Employees

Resources for Managing Your Employees



They're On The Payroll - Now What?

There are many things you can do as an employer to help your employees succeed in their jobs. The first place to start is with new employee orientation. The orientation process is a place where you as the employer can review the responsibilities of the employee, and also answer any questions they may have about their new job. This is also a great time to review the company benefits, take care of any necessary paperwork and even assign a co-worker to help mentor the new employee on their first day. These steps will get your employee off to a great start.

NEW EMPLOYEE ORIENTATION

When you first hire someone it is good to have a checklist of all the details of the job, benefits and responsibilities of the employee. Having a checklist, and reviewing that checklist with the employee can make a difference.



REQUIRED FORMS

Every employer must complete some basic forms when they hire employees. They are the W-4, I-9 and New Hire Report form. Of these forms, the New Hire Report form is the only one that is not kept by employers.

The forms can be obtained at your local Job Service or on-line at:

- W-4 www.irs.gov
- I-9 www.uscis.gov
- New Hire Report www.dphhs.mt.gov/csed/relatedtopics/employerinformation.shtml

SAMPLE NEW EMPLOYEE ORIENTATION CHECKLIST

Employee name: _____

Date of hire: _____

Topics to discuss:

- _____ Salary
- _____ Employee benefits: (individualized to the business - benefits available might include vacation, sick leave, paid time off, paid holidays, health and life insurance, profit sharing plan, retirement plans. Include specifics regarding eligibility, effective dates, etc.)
- _____ Work schedule
- _____ Time sheets
- _____ Pay schedule
- _____ Workplace safety
- _____ Procedures for getting office supplies and other purchases
- _____ Telephone, fax
- _____ Computer usage
- _____ Parking
- _____ Breaks, restrooms
- _____ Procedure and who to call when not able to work

Documents for employee:

- _____ Employee Welcome Letter
- _____ Employee Handbook
- _____ Safety Practices
- _____ Emergency Procedures
- _____ Keys

Forms to read, sign and return:

- _____ Employee Acknowledgement Form
- _____ Employment Eligibility Verification (Form I-9)
- _____ Employee Withholding Allowance Certificate (Form W-4)
- _____ New Hire Report Form (to be completed by employer)
- _____ Individual Employee Training Documentation (workplace safety)
- _____ Employee Data Sheet (emergency contact information)

Orientation information completed:

Employee: _____

Date: _____

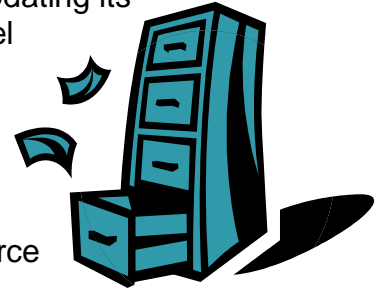
Supervisor: _____

Date: _____

MAINTENANCE OF PERSONNEL FILES & RECORDS

One important issue that employers face today is the use and maintenance of personnel files. What should be kept in a personnel file? What items should be filed separately? Who should have access to these files?

Although employers have an undeniable right and need to oversee and regulate their business, their right to inquire and obtain information about their employees is limited to the right to privacy. There is no federal or state requirement that an employer maintain personnel files as such. However, various federal and state laws mandate that certain records must be kept. Therefore, when an employer is drafting or updating its policy or procedures regarding those records to maintain in personnel files and how long those records should be kept, it is necessary to review various applicable laws.



POLICIES ON PERSONNEL FILES

Adopting a written policy will allow supervisors and the human resource department to be consistent with replies when employees request access to their files. Consider including the following items in your policy:

- Ensure that your policy complies with applicable laws.
- Define personnel files, both as the term is used within your organization, and according to applicable law.
- State where, when, how often, and under what circumstances workers can review or copy their files. To maintain the integrity of records, access should be permitted under some type of supervision.
- Provide an opportunity for employees to rebut or challenge information.
- Specify who is authorized to inspect personnel files.
- Review records. Periodically, you should audit employment records and remove or correct irrelevant, outdated, misleading or inaccurate information.

WHAT TO KEEP IN A PERSONNEL FILE

Records Related to Employment, such as:

- Employment applications and resumes
- College Transcripts (as applicable)
- Job Descriptions
- Records relating to hiring, promotion, demotion, transfer, layoff, rate of pay, other forms of compensation, and educational and training records
- Records relating to other employment practices
- Letters of recognition
- Disciplinary notices or documents
- Performance evaluations
- Test documents used by employer to make employment decisions
- Exit interviews
- Termination records

WHAT TO MAINTAIN IN SEPARATE FILES

Medical records-The American with Disabilities Act requires employer to keep medical records separate. Many states have privacy laws to protect employees. All medical records including physical examinations, medical leave, worker' compensation claims, and drug and alcohol testing.

Equal/Employment Opportunity-In order to minimize claims of discrimination, it is important to keep source documents that identify an individual's race and sex in a separate file. Additionally, if internal/external charges are investigated, it is recommended that these files also be maintained separately.

Immigration (I-9) Forms-It is recommended that these forms be maintained chronologically by year. Keeping this information in a separate file reduces the opportunity for auditors to pursue and investigate unrelated information.

Invitation to Self-Identify Disability or Veterans Status-This information is required to be maintained by federal contractors. Laws prohibit employment decisions on the basis of certain protected class, however, managers have the right to access employees' file for a number of operational issues. Unless there is a need to know for accommodation purposes these files should be maintained separately to reduce a potential source of bias.

Safety Training Records-OSHA may audit company training records; keeping this information separate will protect the employer from an auditor pursuing and investigating other information in the personnel file.

TYPE OF FILE	WHO MAY HAVE ACCESS
Personnel	Employee (Past or present) Supervisors with a need to know Human Resources
Medical/Confidential	Human Resources Supervisors as needed for reasonable accommodations Government/legal agencies conducting investigation relevant to medical issues
Payroll	Payroll staff Human Resources Auditing/investigating agencies
I-9	Human Resources Auditing/investigating agencies

	RECORD RETENTION REQUIREMENTS	
Laws	Records/Reports	Retention Requirements
<p>Age Discrimination in Employment Act (ADEA)</p> <p>*Applies to employers with at least 20 employees</p>	<p>Payroll or other records, including those for temporary positions showing employees, names, address, dates of birth, occupations, rates of pay and weekly wage</p> <p>Applications, personnel records relating to promotions, demotions, transfer, selection for training, layoff, recall, or discharge; job advertisement and posting; copies of employee benefit plans, seniority system and merit system</p> <p>IN MONTANA ALL EMPLOYERS, NO AGE LIMIT, MINIMUM OR MAXIMUM</p>	<p>Three years for payroll or other records showing basic employee information</p> <p>Two years for applications and other personnel records</p> <p>Where a charge or lawsuit is filed, all relevant records must be kept until “final disposition” of the charges or lawsuit</p>
<p>Americans with Disabilities Act (ADA)</p> <p>*Applies to employers with at least 15 employees</p>	<p>Applications and other personnel records (e.g. promotions, transfers, demotions, layoffs, terminations) requests for reasonable accommodation.</p> <p>IN THE STATE OF MONTANA, APPLIES TO ALL EMPLOYERS WITH AT LEAST 1 EMPLOYEE</p>	<p>Two years from making the record or taking the personnel action</p> <p>Where a charge or lawsuit is filed, all relevant records must be kept until “final disposition”</p>
<p>Civil Rights Act of 1964, Title VII</p> <p>*Applies to employers with at least 15 employees</p>	<p>Applications and other personnel records (e.g. promotions, transfers, demotions, layoffs, terminations), including records for temporary or seasonal positions.</p> <p>Requires the filing of an annual EEO-1 Report</p> <p>IN THE STATE OF MONTANA, APPLIES TO ALL EMPLOYERS WITH AT LEAST 1 EMPLOYEE</p>	<p>One year from making the record or taking a personnel action</p> <p>Where a charge or lawsuit is filed, all relevant records must be kept until “final disposition” A copy of the current EEO-1 Report must be retained</p>
<p>Consolidation Omnibus Budget Reconciliation Act (COBRA)</p>	<p>Provide written notice to employees and their dependents of their option to continue group health plan coverage following “qualifying events”, such as the employee’s termination, layoff or reduction in working hours, entitlement to Medicare, and the death or divorce of the employee (that would cause dependents to lose coverage under the employers’ plan</p>	
<p>Davis Bacon Act</p> <p>Service Contract Act</p> <p>Walsh-Healy Public Contracts Act</p> <p>Applies to Federal Contractors</p>	<p>Records containing the following information for each employee:</p> <p>Basic employee data to include name, address, social security number, gender, date of birth, occupation and job classification</p> <p>Walsh-Healy requires the retention of current work permits for minors</p> <p>Compensation records to include:</p> <ul style="list-style-type: none"> ▪ Amounts & dates of actual payment ▪ Period of service covered ▪ Daily and weekly hours ▪ Straight time and overtime hours/pay ▪ Fringe benefits paid 	<p>Three years from the end of the contract</p> <p>Walsh-Healy requires the retention of data with respect to job-related injuries and illnesses, specifically logs with dates and summaries and details of accidents</p>

	<ul style="list-style-type: none"> ▪ Deductions and additions 	
Laws	Records/Reports	Retention Requirements
Employee Retirement Income Security Act (ERISA)	Maintain, disclose to participants and beneficiaries, and Report to the Department of Labor, IRS, and the Pension Benefit Guaranty Corporation (PBGC) certain reports, documents, information and materials. Except for specific exemptions, ERISA’s reporting and disclosure requirements apply to all pension and welfare plans, including: <ul style="list-style-type: none"> ▪ Summary plan description (updated with changes and modifications) ▪ Annual reports ▪ Notice or reportable events (such as plan amendments that may decrease benefits, a substantial decrease in the number of plan participants, etc.) ▪ Plan Termination 	Employers must maintain ERISA-related records for a minimum of six years
Employee Polygraph Protection Act	Polygraph test and the reason for administering	Three years
Equal Pay Act	Payroll records including time cards, wage rates, additions to and deductions from wages paid, and records explaining sexually based wage differentials	Three years
Executive Order 11246 Applies to Federal Contractors	Requires the preparation of an Affirmative Action Plan (AAP) for Minorities and Women Applications and other personnel records that support employment decisions (e.g. hires, promotions, terminations) are considered “support data” and must be maintained for the AAP	AAPs must be updated annually: and documentation of good faith efforts must be retained for two years . Personnel or employment records must be retained for two years . If there are less than 50 employees or contract is less than \$150,000, the retention period is one year
Fair Labor Standards Act (FLSA)	Payroll or other records containing the following information for each employee: Employee’s name; home address; date of birth (if under 19 years of age); gender; time of day/day of week for beginning of workweek; regular hourly rate of pay or other basis of payment (Hourly, daily, weekly, piece rate, commission on sales, etc); daily hours worked; total hours for each work week; total daily or weekly straight-time earnings (exclusive of overtime premiums); total additions to and deductions from wages for each pay period; total wages per pay period; date of each payment of wage; period covered by the payment. For executive, administrative, and professional employees, or those employed in outside sales, employers must maintain records which reflect the basis on which wages are paid in sufficient detail to permit calculations of the employee’s total remuneration, perquisites including fringe benefits.	For at least three years

Laws	Records/Reports	Retention Requirements
Family & Medical Leave Act (FMLA)	<p>Records containing basic employee data as required by FSLA and dates of leave taken by eligible employees. Leave must be designated as FMLA leave For intermittent leave taken, the hours of leave Copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave</p> <p>Records of premium payments of employee benefits</p> <p>Records of any dispute regarding the designation of leave</p>	Three Years
<p>Federal Insurance Contribution Act</p> <p>Federal Unemployment Tax Act</p> <p>Federal Income Tax Withholding</p>	<p>Records containing basic employment data.</p> <p>Compensation records to include:</p> <ul style="list-style-type: none"> ▪ Amounts & dates of actual payment ▪ Period of service covered ▪ Straight time and overtime hours/pay ▪ Annuity and pension payments ▪ Fringe benefits paid. Tips ▪ Deductions and additions <p>Tax records to include:</p> <ul style="list-style-type: none"> ▪ Amount of wages subject to withholding ▪ Agreements with employee to withhold additional tax ▪ Actual taxes withheld and dates withheld ▪ Reason for any difference between total tax payments and actual tax payments ▪ Withholding forms (W-4, W4-E) 	Four years from the date tax is due or tax is paid
Immigration Reform & Control Act (IRCA)	INS Form I-9 (Employee Eligibility Verification Form) signed by each newly-hired employee and the employer.	Three years after date of hire or one year after date of termination, whichever is later.
Occupational Safety & Health Act (OSHA)	<p>A log of occupational injuries and illnesses</p> <p>A supplementary record of injuries and illnesses</p> <p>Post a completed annual summary of injuries and illnesses</p> <p>Maintain medical records and records of exposure to toxic substances for each employee</p>	<p>Five Years</p> <p>Employee's job tenure plus thirty years</p>
<p>Rehabilitation Act of 1973</p> <p>Applies to Federal Contractors</p>	Personnel employment records (e.g.; requests for reasonable accommodations, results of physical exams, job advertisements and postings, applications, resumes, tests, test results, interview notes and records regarding hiring, assignment, promotion, demotion, transfer, layoff, terminations, rates of pay or terms of compensation and selection for training apprenticeship)	<p>Two Years</p> <p>(Note: If a contractor has fewer than 150 employees or a contract of less than \$150,000 the retention period is only one year.) Where a charge of lawsuit is filed, all relevant records must be kept until "final disposition.</p>

	Data on complaints of disability discrimination and action taken. Requires an Affirmative Action Plan for individuals with disabilities	AAPs must be updated annually ; no requirement to retain expired plans
Laws	Records/Reports	Retention Requirements
Uniform Guidelines on Employee Selection Procedures	<p>For employers with 100 or more employees, records showing the impact of the selection process for each job, maintained by sex for each racial or ethnic group that constitutes at least 2% of the labor force in the relevant labor area or 2% of the applicable workforce.</p> <p>For employer with less than 100 employees, records showing for each year the number of persons, promoted, terminated, applicants hired for each job by sex and where appropriate by race and national origin.</p> <p>Records including applications, tests, and other types of selection procedures used as a basis for employment decisions, such as hiring, promotion, transfer, demotion, training and termination.</p> <p>Adverse impact analysis of selection process must be conducted annually</p>	<p>Where adverse impact is found in the selection process, records must be maintained for two years after the adverse impact is eliminated.</p> <p>For federal contractors, during a compliance review from the Department of Labor's Office of Federal Contract Compliance Programs, data for the prior year's analysis must be available, and for the current year if a contractor is six months into its AAP plan year. (See also Executive Order 11246)</p>
Vietnam Era Veterans, Readjustment Assistance Act. Applies to Federal Contractors	<p>Personnel/employment records (see Rehabilitation Act of 1973 above)</p> <p>Affirmative Action Plan for covered veterans.</p> <p>Requires the filing of the annual VETS-100 report.</p> <p>Job openings for positions must be listed with the state employment service</p>	<p>Two years (Note: If a contractor has fewer than 150 employees or a contract of less than \$150,000 the retention period is only one year)</p> <p>AAPs must be updated annually; no current requirements to retain expired plans.</p> <p>A copy of the current VETS-100 report must be retained.</p>

UNWRITTEN RULES OF THE WORKPLACE

New employees may not understand the unwritten rules of your workplace. Many people base their belief systems on behavior that is appropriate in their home, but not in the workplace. These social beliefs can lead to conflict. Some examples are:

Social Rules

- Enjoy life. Life should be fun.
- You should be appreciated for who you are.
- Family comes first.
- Personal appearance should be a personal decision – I have a right to express myself.

Professional Rules

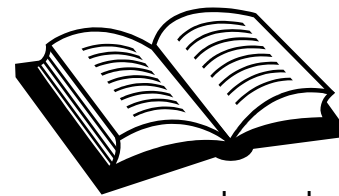
- Work is work; we are not here to have fun.
- You are paid for showing up on time and doing your job. Don't expect a pat on the back for doing the minimum.
- Work should come first, don't let your home and family issues get in the way.
- Dress for the job.

Most successful employees are able to separate work identities from home identities and understand that there are professional expectations in their business. For them, the difference between acceptable and unacceptable behavior is “common sense.” However, many new employees (especially those new to the workforce) do need help and advice in understanding the unwritten rules of your workplace.

EMPLOYEE HANDBOOKS

Should I or Shouldn't I?

Employers often wonder whether they should have an employee handbook or not. Putting together a useful handbook can be a lot of work. However, keep in mind that there are a number of resources and tools available to ease the burden. These include computer software programs, staff at local Job Service and consultants for hire to help you with this task.



One major area of concern is legal issues. Will you be able to keep your handbook up to date? Will you and your supervisory staff consistently follow your own policies? Consistency in following your own policies is very important concerning discrimination and wrongful discharge laws. If you don't follow your own written policies, you are probably better off not having an employee handbook. However, keep in mind that even without a handbook, your employees can still file wrongful discharge and/or human rights complaints if they perceive they are being treated unfairly and inconsistently.

A well-written handbook can create a positive image for your business and can be useful as a consistent tool for informing employees about your philosophies, expectations, policies and procedures. Many times not communicating this information leads to confusion and hard feelings among your employees.

If you decide to write an employee handbook, seek legal advice before finalizing your handbook. You don't want a document that will tie your hands or weaken a court case because of wording. Also be careful of the tone your words create. Reading a handbook can instill a sense of pride, trust and fairness or it can instill a sense of suspicion, and threats. Employees who feel they are treated fairly are more likely to be motivated and loyal. A threatening tone can "undo" any good you are trying to achieve.

ACKNOWLEDGEMENTS & DISCLAIMERS

Consider having a conspicuous disclaimer that states your employee handbook is not intended as a contract nor does it encompass all company policies and procedures and stating that you reserve the right to make changes. Make sure employees easily understand the language used in your disclaimer and that it is prominently displayed in your handbook.

It's also important to get a signed, dated acknowledgement of receipt of handbook from each employee for your personnel files. This statement should say that they have received, read and understand the information in the employee handbook.

MOTIVATING EMPLOYEES

Respect, Recognition and Reward

The success of your business can almost always be traced back to motivated employees. From productivity and profitability to recruiting and retention, hardworking and happy employees help your business. Unfortunately, motivating people is far from an exact science. There's no secret formula, no set calculation, no work sheet to fill out. In fact, motivation can be as individual as the employees who work for you. One employee may be motivated only by money. Another may appreciate personal recognition for a job well done. Still another may work harder if she has equity in the business.



But you can boil down employee motivation to one basic ideal – find out what your employees want and find a way to give it to them or to enable them to earn it. A good way to do this.....ASK.

Life Balance

It's important to understand what motivation is and what it is not. Traditional expectations of loyalty and a lifetime job have changed due to factors such as merging, downsizing, rightsizing, globalizing and outsourcing. In addition, today's workforce as a whole is more educated, savvy and likely to ask what's in it for me rather than show blind loyalty. Today, employees want a balance between their work life and personal life...they also want meaning and purpose!

Good benefits, vacation and salary plans often attract and retain employees, but they are not employee motivators unless they provide workers a stake in the future success of the organization based on their performance.

Although it's important to have competitive salaries and benefits, your real payback will come from inspired and motivated employees. Examples of plans that can motivate include stock purchases, ownership plans, profit sharing, commission, and cash bonus plans.

Do not confuse employee morale boosters with employee motivators. Activities such as drawings for free parking places, free pizza on Fridays, or use of the company car on weekends are employee morale boosters and can raise the morale of employees so they feel good about the company they work for. However, they are not employee motivators because they are not directly tied to an increase in performance.

An employee with good morale is not necessarily a motivated employee. For example, an employee who socializes with others 1-2 hours a day may have good morale, but will also probably have the worst production levels of any employee in the department. Employees are motivated when they can directly affect their own pay or lifestyle.

Motivation Fundamentals

- **Select the Right People for the Job** - Take the time to find people with the right aptitudes as well as attitudes that reflect your values. Start with an accurate job description and make sure you use the probationary period to assess their "fit" with your organization.
- **Recognize and Value your Employees** - Once you have hired the right people, take steps to keep them. Warmly welcome them, spend time with them, and then show appreciation towards them as long as they work for you. The longer they are with you the more valuable and irreplaceable they become.
- **Train** - Employees don't automatically know what is expected of them. Teach them what they need to know to do the job right. Develop trust by providing the training necessary to succeed in their jobs. Minimal performance frequently results from employees not knowing that anything more is expected of them. Continue to offer employees training opportunities to develop new skills
- **Communicate** - Listen and respond to employee needs. Share business goals and seek input from employees to connect them to where they fit into the organization's goals.
- **Develop a Sense of Ownership and Empowerment** – Empower your employees by providing them the resources, information and authority to make decisions. Provide clear expectations.

- **Require Accountability** - Responsibility brings out the best in people. Hold employees to a high, but realistic standard. Be honest and coach them if necessary. Provide honest feedback on how they are doing.
- **Enrich Employees' Jobs** - If you want motivated employees, give them motivating work. Everyone should have at least part of his or her job be interesting and challenging. Find out what tasks your employees enjoy most and use this information in future work assignments.

MOTIVATIONAL ZAPPERS

Tolerating poor performance (Takes advantage of high performing employees)
 Withholding critical information for employees to perform their work
 Promoting internal competition between employees
 Underutilizing the talents and capabilities of staff
 Treating employees unfairly or inconsistently
 Criticism instead of constructive feedback
 Unproductive meetings
 Unclear expectations
 Unnecessary rules
 Company politics
 Inflexibility



Ideas for Rewards (other than money)

Flexible hours
 Health screening programs
 Health club membership
 Daily planners/organizers
 Additional time off
 Free calling card minutes
 Dinner at a nice restaurant
 Skill development opportunities
 Lattes/espressos
 Fruit basket
 Tickets-theatre, sports, concerts, movie

Internet connections
 Preventative medical benefits
 Employee assistance plans
 Weekend getaways
 Trips, additional vacation time
 Free car wash
 Free housecleaning
 Gift certificates
 Child care certificate
 Lunch with the boss

WHAT GETS EMPLOYERS IN TROUBLE MOST OFTEN???

- Don't pay overtime when you should.
- Fight all UI claims to the last drop of blood.
- Never document anything (Single most important thing.)
- Fire employees first—get legal advice only if you get sued.
- Fail to appropriately react to a claim of harassment—especially sexual harassment.
- Surprise employees with a reduction in force or extensive policy changes.
- Don't communicate regularly about pay or quality of work.
- Be inconsistent.
- Have poorly written personnel policies and don't follow them.



Workplace Safety

Workplace Safety



If you're a business owner in a relatively "safe" industry, with only a handful of employees you're probably more occupied with profit and loss than worrying about workplace safety. But did you know that repetitive stress injuries developed by people working on computers all day result in the longest absences from work of any frequent type of workplace injury. And have you thought about what kinds of mishaps an employee can have while driving your company vehicle and talking on a cell phone? The opportunities for workplace accidents and injuries are more varied than ever before. And if you want to keep your employees safe, absenteeism at a manageable level and worker's compensation costs down, you need to concern yourself with all of them.

LEGAL COMPLIANCE

The Occupational Safety and Health Act requires employers to provide a workplace that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to employees. What many Montana business owners don't know is that even if they employ only one person they need to comply with the Montana Safety Culture Act. The Montana Safety Culture Act was enacted by the 1993 Montana state legislature and encourages both workers and employers to create and implement a workplace safety philosophy. The intent of the act is to raise workplace safety to a preeminent position in the minds of all Montana workers and employers. The expected result of promoting safety is to reduce the number of workplace injuries and illnesses and control the cost of worker's compensation insurance. Two other important benefits are improved employee recruiting and retention due to having a good reputation for safety.

MAINTAINING AWARENESS



Maintaining interest and awareness in workplace safety seems to be the difficult piece. First, there needs to be a commitment from management that the health and safety of employees is a core value of the company and it needs to be reflected in the corporate culture. Management at all levels needs to maintain a visible role in the implementation of a safety plan and follow all safety provisions. If employees don't see the commitment from management, they're not going to take safety issues seriously. Second, partner with your employees in your commitment by sharing the effects of promoting safety in your workplace—keeping injuries to a minimum and keeping the cost of worker's compensation down. When an employee can't work because of an injury, nobody benefits. If there's a savings in worker's compensation costs, the savings can go into workplace activities that benefit everyone.

RECOGNITION

The use of meaningful recognition, awards and monetary incentives for working safely may induce good performance, increase employee morale and serve as a continuing reminder of the safety message. There are many things employers can do that don't cost a lot of money, but are meaningful nonetheless. Gift cards, special parking places, and plaques are just a few of the items that can be used. Safety presentations, demonstrations, panel discussions, and videos at meetings can also be an effective method for maintaining awareness. Many businesses play safety bingo on an ongoing basis and provide monetary prizes for winners. The game keeps going until someone wins or there is an injury and then it starts all over again.

There is no one best way to keep safety awareness high, but it's essential that any programs be creative, diverse and sincere. It's also important that employees actively participate in the planning of any safety incentive programs and that they also take responsibility for maintaining a safe workplace. It takes the hard work and dedication of everyone in the organization to maintain an effective safety and health plan.



MONTANA SAFETY CULTURE ACT

Every employer shall establish, implement and maintain an educational based training program that shall, at a minimum:

- 1. Provide each new employee with a general safety orientation containing information common to all employees and appropriate to the business operations, before they begin their regular job duties.**
- 2. Provide job or task-specific safety training appropriate for employees before they perform that job or task without direct supervision.**
- 3. Offer continuing regular refresher safety training.**
 - The training should be held as is appropriate, but at least annually.
- 4. Provide a system for the employer and their employees to develop an awareness and appreciation of safety through tools such as newsletters, periodic safety meetings, posters, and safety incentive programs.**
- 5. Provide periodic self-inspection for hazard assessment when the safety program is implemented, new worksites are established, and thereafter as is appropriate to the business operations, but at least annually, which:**
 - Identifies hazards and unsafe work practices or conditions
 - Identifies corrective actions needed; and
 - Documents corrective action taken
- 6. Include documentation of performance of activities listed in (1) through (5) above. The employer must keep this documentation for three years.**

Additional Requirements of Employers With More Than Five Employees

Employers with more than five employees must meet all the requirements listed above as well as the additional requirements listed below. In making the determination of employment levels, the employer shall count all regular, temporary, leased and seasonal workers under the employer's direction and control. The following requirements apply when there are more than five employees, and continue in effect until the number of employees is less than six for three consecutive months.

- 1. Policies and procedures that assign specific safety responsibilities and safety performance accountability.**
- 2. Procedures for reporting, investigating, and taking corrective action on all work-related incidents, accidents, injuries, illnesses and known unsafe work conditions or practices.**
- 3. Shall have a safety committee in place that complies with the requirements as listed below.**
 - Be composed of employee and employer representatives and hold regularly scheduled meetings, at least once every four months.
 - Include in its employee membership volunteers or members elected by their peers.
 - Include safety committee activities that assist the employer in fact finding.

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Performance Management

Performance Management



An organization's greatest asset is its people. The success of an organization depends upon the contributions of its employees.

Employees must know what is expected of them and how they are measuring up to those expectations in order to make effective contributions. They need to know what they can do to improve performance in their present jobs and to prepare themselves for more responsibility.

The most common reason employees give for wanting to stay with an organization is career growth, learning and development. These facts emphasize the need for ongoing feedback to your employees to enhance their professional development and retain them at your place of business.

PERFORMANCE APPRAISAL PROGRAM

A sound performance appraisal program is an indispensable part of any effective employee relations program. Performance appraisals provide a direct connection between an employee's performance and the achievement of the company's mission. They are the means by which everyone in an organization understands and is held accountable for meeting truly important objectives. Without an effective program you face the risk of not only losing your best employees, but falling victim to legal action undertaken by discharged or disgruntled employees.

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There are many methods for conducting performance appraisals, but the success of an appraisal is dependent upon both employees and managers having a clear understanding of what an appraisal is supposed to do. To have an effective performance appraisal program, it's valuable for all managers and supervisors to be well trained in how to appraise an employee and how to handle the appraisal interview. When an appraisal system is used to help develop the employee as a resource, it usually works, but when an understanding of its limitations is not clear or when it's used as a whip, it fails. When managers understand the purpose of the appraisal, it can lead to higher employee retention, motivation, and satisfaction.

Performance appraisals should always be conducted within the time period you tell employees you will do so. Failure to do this indicates that you do not value them as a priority and may also have an adverse legal impact should a person file a wrongful discharge suit later on.

GOOD COMMUNICATION

The basis for effective performance appraisals is good communication. This begins with a good job description for each employee. From most job descriptions you can extract the major responsibilities and further break these down into important objectives for success. Limit these objectives to concrete, measurable areas of performance. If you're going to make any subjective judgments on an employee's performance, make sure to list concrete examples of how you expect the employee to show improvement in these areas. If you can't provide examples, it's wise to not make these judgments. Emphasize behavior, not attitude. Attitude is too abstract a concept for many employees. Behavior, really the result of attitude, is something concrete that can be understood. Employees must believe that their supervisor has an accurate understanding of what they do on the job and the quality of work that is done, for these judgments to have meaning.

A negative performance appraisal should never come as a surprise to an employee. The formal performance appraisal should be a time to review, reflect and set new goals in accordance with an ongoing performance management routine. It's critical that appraising employee performance be looked at as an ongoing process and not a once a year event. Having an effective performance management routine is the key to a fair and productive appraisal program.

PERFORMANCE MANAGEMENT ROUTINE

The most effective performance management routines consist of regular, frequent interaction with employees where the employee can talk about specific details of their work, what their successes are, what they've learned, what they hope to accomplish in the next few months and how the manager can help. This kind of performance management puts the responsibility on the employee to keep track of their performance and not merely be a passive recipient of an annual judgment of their work. Frequent meetings also make it easier for an employee to address areas of poor performance since they will be introduced little by little, rather than dumped on the employee once a year.

Resource: [First Break All the Rules](#), by Marcus Buckingham and Curt Coffman

When talking with employees about their performance, consider such areas as:

- Quality of work—neatness, accuracy, organization and attention to detail.
- Quantity of work—numbers and quantity standards set for the job and ability to meet deadlines.
- Work habits—time management, dependability, attendance, punctuality, safe working habits and initiative.

ADDRESSING POOR PERFORMANCE

When addressing poor performance with an employee, consider the reasons for the problems.

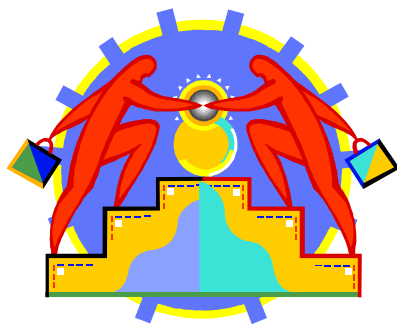
The following is a list of the more common reasons:

- Is additional training needed?
- Is the employee overworked?
- Is there a personality conflict with a co-worker?
- Has new equipment been installed or a new procedure implemented that the employee is not comfortable with?
- Has a personnel change affected the employee or the department in general?
- Is the employee having family problems?
- Is the employee having a health problem, including drug and alcohol abuse?
- Has the employee misrepresented his or her background?
- Has the employee failed to keep current with developments in the field?
- Does the employee need help in reorganizing his or her workload?
- Is the employee aware of how his or her work is being evaluated?
- Are there physical barriers in the way of the employee's success, i.e., poor lighting, substandard equipment, excess noise, overcrowding.

PEER REVIEWS

Involvement of all staff in performance appraisals is another option to use when evaluating employees. These types of evaluations gather feedback from all levels—superiors, peers and subordinates—and can provide information to identify training needs, teamwork strengths and weaknesses, and other areas of concern that may have gone unnoticed. It can also instill a sense of responsibility in employees to cooperate with each other no matter what their status is in the organization. Employees should be asked only to rate individuals with whom they have frequent and significant contact, and they should be anonymous—especially when rating superiors.

WHAT'S BEST FOR YOUR COMPANY



There are many types of performance evaluation forms or methods that can be used. An employer should choose the one that best suits their needs, their environment and the performance issues most common to their organization. There are advantages and disadvantages to each method, the key is knowing what will work best for you, your employees and your business.

Effective performance evaluations can empower your employees to effectively contribute to the success of your organization, and they can help you stay out of legal trouble.

TRAINING AND DEVELOPMENT

The most profitable companies with the greatest investor value are those that devote significant financial resources to training, according to American Society for Training and Development research. Training is an investment in your most valuable resource, your employees.

Who should you train? Workers – those new to the workforce and those who have been in the workforce for years – benefit from training and need to continually upgrade their skills. Studies have shown that employees who receive regular training from their organization are more productive and develop a strong sense of loyalty, morale and tend to stay with an organization. The true value of training lies with the follow-through from management in order to gauge whether the training has been successful.

There are many places you can get help providing the training your company's employees need. Check out local colleges, adult education programs and your local Workforce Center for resources and information. Many of these organizations will conduct needs assessments for you and direct you to ways to provide the optimum training for your organization and industry.

Some things to think about include: Are you making any major changes to your business process? Will these changes impact your employees? What information or training would help your employees to be successful on the job? How do you get your employees to “buy in” to any changes? What would be the best way to get the information and training to your employees? How is employee performance – is it up to your standards? Are you and your staff utilizing the current technology available?

Differentiate yourself from your competition; train your employees to be the best!



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Counseling/Corrective
Action

Counseling/Corrective Action



Corrective action is a process of applying and documenting corrective actions taken to address performance and/or behavioral problems with an employee. It is a means of minimizing your exposure to litigation and should be designed to correct a problem in a positive, helpful manner whenever possible.

It's important that you have a thoroughly documented business-related reason when you terminate an individual's employment for cause (unless during an initial probationary period). Your documentation should demonstrate "good cause" that would convince a judge or juror.

There is no substitute for hiring the right person in the first place. However, unsatisfactory performance can occur at any time to any employer and for many reasons. You have already invested a great deal of time and money in your employees. Assisting them to correct/change the problem costs far less than recruiting and training new employees.

KEY ELEMENTS OF CORRECTIVE ACTION/COUNSELING

- Consult any bargaining agreements for language on discipline or discharge before developing a discipline policy and before taking corrective action.
- Make sure all employees receive a copy of your company's rules and policies.
- Clearly communicate job duties and expectations to all employees.
- Regular performance evaluations can help maintain and update these communications.
- Apply counseling or corrective action as soon as the performance problem or behavior occurs.
- Apply policies consistently and fairly. (Most grievances and litigation result when individuals feel they have been treated unfairly.)
- Practice good faith efforts. Investigate thoroughly before making judgments. Due process includes informing the employee what the action is and why it is being taken as well as making sure the employee has the opportunity to respond to the questioned behavior or problem.
- Consider Employee Assistance Programs if available.
- Document all counseling/corrective actions—both informal and formal.
- Prepare for counseling/corrective interviews in advance.
- Conduct meetings in private.
- Conduct formal corrective actions with another supervisory or management person—preferably the person responsible for HR.
- State whether the action is formal or informal and give the employee a notice of grievance rights (if applicable).

INFORMAL CORRECTIVE ACTIONS

You may repeat informal corrective actions as often as you choose as long as you follow all provisions of your personnel policies and you apply them consistently. You need to consider the seriousness of the offense and the time frame in which the repetitions occur.

- **Corrective Counseling**—Constructive actions taken to improve unsatisfactory employee behavior or performance in a positive, non-threatening manner prior to or during the administration of formal corrective action. These actions may include, but are not limited to: coaching, counseling and training.
- **Oral Warning**—Given as a first step or when corrective counseling has not succeeded in correcting the problem.

FORMAL CORRECTIVE ACTIONS

Formal corrective actions become necessary when informal actions have been unsuccessful. It is at this stage that specific expectations and outlining the consequences of failure to improve become even more crucial. More direct supervision or monitoring, as well as coaching or training, may be necessary. In some cases, such as theft, fraud or assault, appropriate corrective action may be immediate termination of employment. Consult your policies and consider the following: the type of offense, the relevant policy or rule, the circumstances, the employee, and past treatment of similar problems.

SUSPENSION WITH PAY, although not a corrective action, is generally used when an investigation needs to be completed prior to taking any corrective action on an issue. Example: To investigate a sexual harassment claim.

SUSPENSION WITHOUT PAY is generally utilized when severe infractions of policies occur and/or when previous corrective action has not been successful. It's often a last chance for employees to review their desire to conform to requirements. It is not generally an effective tool when dealing with a lack of skills. Suspensions are generally issued in writing during a corrective action interview. If a suspension is issued orally due to a severe infraction, it should be stated very specifically that the employee is being suspended without pay and is to leave immediately. Such action must be followed-up in writing immediately.

DEMOTION is a formal corrective action where the employee is removed from his/her current position and placed in a position with reduced responsibilities and pay. It is usually used as a means of correcting work performance problems—not behavioral problems. When using demotion as a corrective action, speak with an attorney to ensure it won't be viewed as a constructive discharge.

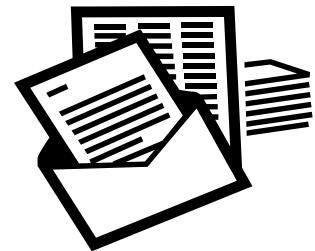
DISCHARGE is the final step of terminating an individual's employment. Supervisors should be given the authority to suspend employees for short periods of time but not to terminate on the spot. This is due to the potential penalties associated with a wrongful discharge claim if an impartial investigation and required procedures are not followed.

Consider whether all other options have been explored and/or taken.

1. Consult your human resources department or legal counsel to ensure that you have followed all necessary steps and that the wording in your discharge letter is appropriate.
2. Review the Corrective Action Checklist.
3. Have the final paycheck ready as Montana Wage and Hour Laws require that "if an employee is discharged for cause, the employer must pay the employee immediately," unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or up to 15 days from the date of separation, whichever occurs first.

A LETTER OF DISCHARGE should contain the following:

1. A clear statement of discharge
2. The reason (just cause) for the action
3. The documentation of just cause
4. A notice of grievance or other due process rights
5. An attached copy of the grievance policy (if applicable)



COUNSELING/CORRECTIVE ACTION DOCUMENTATION

At all stages of the process it is critical to clearly identify:

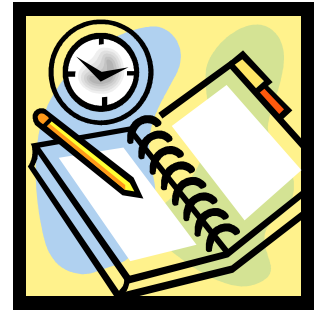
The reason for the action (what the problem is and why it's a problem, specific dates, times, previous discipline attempts, etc.)

- A statement of the corrective action being taken and why
- Specific improvement or correction required (specify a time frame and follow-up)
- A statement of the consequences of failure to improve work performance or correct behavior
- Notice of grievance rights (if any)
- A signature of the employee acknowledging that he/she had the opportunity to review and comment on the action (not necessarily that he/she agrees with the action being taken) and that he/she has received a written copy of the corrective action being taken

DOCUMENTATION TIPS

- **Always be specific and factual.**

Record specific details such as times, dates, names, places, description of the problem, a brief synopsis of both parties' discussion as well as the agreed upon solution, and a date and time for a planned follow-up. General statements (such as frequently late for work, bad attitude or poor customer service, etc) are difficult to substantiate if challenged.



- **Describe in a narrative form the employee's offense and why it is an offense. Include the names of any witnesses, when and where the offense occurred, and any other critical details.**

If conclusions are used, they should be supported by a specific factual foundation. Example: Don't say John was intoxicated but rather record—John returned from lunch at 1:30 p.m. (which was 30 minutes late) on August 21, 2004. His speech was slurred and he staggered when he walked. He fell into the file cabinets twice. I was able to smell a strong odor of alcohol on his breath.

- **Describe the corrective action that was taken or will be taken as a result of the offense.**

- **If the employee has any appeal rights, specify the procedure to exercise those rights.**

- **Clearly specify the future action to occur if the offensive behavior does not cease.**

- **Sign the form and give the employee an opportunity to sign the document. Note if the employee refuses but was given the opportunity.**

CORRECTIVE ACTION CHECKLIST



The personnel file should clearly support and justify the proposed corrective action without resorting to outside sources for additional information. The file should be sufficient in itself. Ideally, a stranger reading the record will conclude that the employee deserves whatever action is being proposed.

Before imposing corrective action such as termination, suspension without pay or demotion, ask yourself the following questions:

- Has all critical information been reduced to writing and placed in the personnel file?
- Is the nature of the employee's misconduct or lack of performance clearly described in a specific, factual manner?
- Was the employee clearly informed of required standards of behavior and performance?
- Does the record progress from mild, early warnings to more serious, comprehensive documents?
- Was the employee given adequate assistance and direction by management?
- Has the employee had reasonable time and a fair opportunity to improve
- Is the lack of performance or misconduct sufficiently persistent and serious to warrant the proposed corrective action?
- Have all the statutory and procedural requirements been met, such as promptly filing necessary documents?
- Has the employee been given fair warning of the consequences of continued performance problems or misbehavior?
- If you can answer yes to all of the above questions based on documents contained in the personnel file, you will have a well-documented corrective action.

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Legal Considerations



Legal Considerations

There are a number of laws that employers need to keep in mind when hiring and retaining employees. Some of the laws are unique to Montana and they include the Montana Wrongful Discharge From Employment Act, the Montana Human Rights Act, the Montana Wage Payment Act and the Montana Workforce Drug and Alcohol Testing Act. Currently the Montana Department of Labor enforces the Wage Payment Act, and the Human Rights Act. The Montana Wrongful Discharge Act and the Montana Workforce Drug and Alcohol Act are not enforced by any state agencies. These acts are civil matters for which you can be sued.

The Montana Wrongful Discharge From Employment Act

Montana's wrongful discharge statute provides the following: (1) an employee can be discharged only for good cause after completing the employer's probationary period; however, during an employee's probationary period, employment may be terminated for any reason considered sufficient by the terminating party; (2) employers that have written personnel policies must follow those policies in making a discharge; (3) an employee who wins a wrongful discharge suit may collect lost wages and fringe benefits for a period of up to four years from the date of discharge; and (4) arbitration is encouraged to save the expense of lawsuits, and an employer may benefit if it offers arbitration to a discharged employee. By enacting the statute, Montana has eliminated employment-at-will as to discharges, since an employee can no longer be terminated merely at the will of the employer. Wrongful discharge will exist in three types of situations:

- (1) if the discharge is in retaliation for refusing to violate public policy or reporting a violation by the employer;
- (2) if the discharge is not for good cause and the employee has completed the probationary period; or
- (3) if the discharge involved an employer's violation of its own written personnel policies.

The good cause requirement for discharges means that employers must be prepared to document all terminations. Good cause is defined as 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 state of Montana has also instituted a presumptive probationary period of six months, which states that 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. 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. You can read the exact language of this law at: <http://data.opi.mt.gov/bills/mca/39/2/39-2-904.htm>

Montana Human Rights Act

The Montana Human Rights Act says that employers may not base their hiring decisions on the race, creed, religion, color, national origin, age, physical or mental disability, marital status or sex of the job applicants, unless the reasonable demands of the position require an age, physical or mental disability, marital status or sex distinction.

The Montana Human Rights Bureau enforces this act. The text of this law is available at: http://data.opi.mt.gov/bills/mca_toc/49.htm

Montana Wage Payment Act

The Wage and Hour Bureau of the Montana Department of Labor enforces the Montana Wage Payment Act. The act:

- Defines Wages
- Establishes when wages are due and payable.
- Limits withholdings of wages to room, board and other incidentals furnished by the employer as part of the employment agreement.
- Provides a penalty for failure to pay wages when due and payable in an amount up to 110 percent on wages not paid as specified above.
- Voids any contract between an employer and employee that does not comply with the wage and hour laws.
- Assigns the responsibility of administering wage and hour laws to the Commissioner and gives investigative powers to his representatives.
- Provides for a mediation process to resolve cases prior to an administrative hearing.
- Provides for an administrative hearing in those cases that are not resolved informally.

You can read more about this law at:

<http://erd.dli.mt.gov/laborstandard/wagehrlawspayact.asp>

Drug Testing

Montana statute does not mandate drug and alcohol testing. Montana law does require all employers using drug and alcohol testing to adopt procedures developed by the DOT (49 Code of Federal Regulations, part 40). Montana law also restricts testing to ensure only employees involved in certain hazardous; security, safety, or fiduciary positions are subject to testing.

You can read more about this law at: <http://wsd.dli.mt.gov/service/drugman.asp>

Federal laws that may impact your business include:

▪ **Age Discrimination in Employment Act (ADEA)**

Under Federal Law the act applies to employers with at least 20 employees and workers over the age of 40. *In Montana, the Human Rights Act applies to all employers with at least one employee and workers old enough to work per Child Labor Laws.*

▪ **Americans With Disabilities Act (ADA)**

Under Federal Law the act applies to employers with at least 15 employees. *In Montana, the Human Rights Act applies to all employers with at least one employee.*

▪ **Civil Rights Act of 1964, Title VII**

Under Federal Law the act applies to employers with at least 15 employees. *In Montana, the Human Rights Act applies to all employers with at least one employee.*

Contact Phone Numbers

For Questions Regarding...	Contact	Address	Phone
Discrimination	Department of Labor and Industry Human Rights Bureau	P.O. Box 1728 Helena, MT 59624-6518	1-800-542-0807
Starting a Business	Secretary of State	Room 260, Capitol P.O. Box 202801 Helena, MT 59620-2801	406-444-2034 Fax: 406-444-3976 E-mail: sos@mt.gov
State Business Income Taxes	Department of Revenue	P.O. Box 8021 Helena, MT 59604	406-444-6900
Unemployment Insurance	Department of Labor and Industry Unemployment Insurance Division	P.O. Box 8020 Helena MT 59624-8020	406- 444-3783
Wages	Department of Labor and Industry Wage and Hour Bureau	PO Box 6518 Helena, MT 59604-6518	406-444-5600
Workers Compensation Insurance	Department of Labor and Industry Workers' Compensation Claims Bureau	1805 Prospect Avenue P.O. Box 8011 Helena, MT 59624-8011	406- 444-6543
Work Opportunity Tax Credit (WOTC)	Department of Labor and Industry WOTC Coordinator	Workforce Services Division P.O. Box 1728 Helena, MT 59624-1728	406-444-9046 Email: crobbins@mt.gov

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Sample Forms

[Employment Application](#)

[Employee Discipline Notice](#)

[Performance Appraisal](#)

Employee Handbook

[Sample Policies](#)