



# Montana Department of LABOR & INDUSTRY

## Nondiscrimination Legal Information Resource Guide: For Employers and Employees

**Disclaimer:** *This document contains legal information and references to select employment laws and rules. Additional laws and rules unlisted in this document may be applicable. Legal information is not the same as legal advice, the application of law to specific circumstances. If you need legal advice, please seek counsel from a private attorney. The Montana Department of Labor & Industry is unable to provide legal advice.*

### **Age**

Discrimination against applicants or employees of any age is unlawful in Montana. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202, and Admin. R. Mont. 24.9.1406(1).* The federal *Age Discrimination in Employment Act* prohibits discrimination against persons age 40 or older.

### **Birthplace & Citizenship**

Discrimination against applicants or employees based on national origin is unlawful under both state and federal law. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202, Admin. R. Mont. 24.9.1406 and Title VII of the Civil Rights Act of 1964.*

### **Children & Caretaker Status**

Questions about children, childcare arrangements or whether an applicant plans to have children raise an inference of discrimination on the basis of marital status and/or sex. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202 and Admin. R. Mont. 24.9.1406.* The federal *Title VII of the Civil Rights Act of 1964* also prohibits sex discrimination.

### **Conviction & Arrest Records**

An employer may ask applicants and employees about criminal convictions. However, an employer's use of criminal history information in a way that excludes people of a particular race or national origin could violate *Title VII of the Civil Rights Act of 1964*. Employers can find additional information at [www.eeoc.gov](http://www.eeoc.gov).

Montana law provides that inquiries "regarding criminal arrests" may raise a suspicion that the employer intends to use the information to unlawfully discriminate. *Admin. R. Mont. 24.9.1406.*

### **Disability & Health**

Discrimination on the basis of physical or mental disability is unlawful. Employers are prohibited from asking whether an applicant or any member of the applicant's family has a disability. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202, Admin. R. Mont. 24.9.1406, Admin. R. Mont. 24.9.607, and the Americans with Disabilities Act.*

**Affirmative Action:** Local and State government employers must give preference in hiring to qualified disabled persons. *Mont. Code Ann. § 39-30-101, et seq.*



## Drug & Alcohol Addiction

Both state and federal law define “disability” to include drug and alcohol addiction. Employers are prohibited from inquiring about an applicant’s addiction history. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202, Admin. R. Mont. 24.9.1406 and 24.9.607, and the Americans with Disabilities Act.*

**After a conditional offer of employment**, an employer may require drug testing pursuant to the Workforce Drug and Alcohol Testing Act. *Mont. Code Ann. § 39-2-205, et seq.*

## LGBT (lesbian, gay, bisexual & transgender)

Discrimination on the basis of sex (which includes sexual orientation and gender identity) is prohibited. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202, and Title VII of the Civil Rights Act of 1964.* State and federal nondiscrimination laws do not list “sexual orientation” or “gender identity” as protected classes. However, the EEOC has stated that *Title VII’s* prohibition of sex discrimination means that employers may not “rely upon sex-based considerations” or take gender into account when making employment decisions. Employers can find additional information at [www.eeoc.gov](http://www.eeoc.gov).

## Lie Detector Test

Pre-employment polygraph or lie detector tests are unlawful. Montana law prohibits an employer from requiring polygraph or lie detector tests as a condition of employment. *Mont. Code Ann. § 39-2-304.*

## Marital Status

Discrimination on the basis of marital status, including inquiries about the identity or occupation of a spouse, is unlawful under Montana law. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202 and Admin. R. Mont. 24.9.1406.*

## Military Service

Montana law prohibits employers from denying employment because of an applicant’s membership, application for membership, or potential application for membership in the state organized militia. *Mont. Code Ann. § 10-1-1005.* Likewise, federal law provides that an employer may not deny initial employment to an applicant based upon his or her “membership, application for membership, performance of service or obligation for service in the uniformed services.” *Uniformed Services Employment and Reemployment Rights Act (USERRA).*

**Affirmative Action:** Local and State government employers must provide preference for veterans in hiring. *Mont. Code Ann. § 39-29-102, et seq.*

## Native American (Indian)

Discrimination on the basis of race is unlawful under both state and federal law. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202, and Title VII of the Civil Rights Act of 1964.*

However, the following exception articulated in *Mont. Code Ann. § 49-2-303(6)* allows for a hiring preference on or near an Indian reservation:

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



## Organization Membership

It is lawful to inquire regarding membership in organizations the names of which do not indicate race, color, national origin, religion, creed, physical or mental disability, age, sex or marital status. Additionally, government employers should not inquire regarding membership in organizations the names of which indicate political beliefs. *Admin. R. Mont. 24.9.1406.*

## Political Belief

Discrimination on the basis of political belief or affiliation is unlawful in local or State government hiring. *Mont. Code Ann. § 49-3-205.* Job Service offices are prohibited from posting any job request that inquires about political belief or affiliation in any manner. *Mont. Code Ann. § 49-3-202 MCA.*

## Pregnancy & Nursing Mothers

Discrimination on the basis of pregnancy or plans to become pregnant is unlawful. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 4 9-3-202, Admin. R. Mont. 24.9.1406* and Title VII of the Civil Rights Act of 1964. Employers can find additional information at [www.dol.gov/whd/nursingmothers/](http://www.dol.gov/whd/nursingmothers/).

## Religion & Creed

Discrimination on the basis of religion and creed is unlawful under Montana law. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 49-3-202, and Admin. R. Mont. 24.9.1406.* The federal *Title VII of the Civil Rights Act of 1964* also prohibits discrimination on the basis of religion.

## Sex

Discrimination on the basis of sex is unlawful under both state and federal law. *Mont. Code Ann. § 49-2-303, Mont. Code Ann. § 4 9-3-202, Admin. R. Mont. 24.9.1406* and Title VII of the Civil Rights Act of 1964.

## Smoking & Alcohol Use

Use of lawful products during nonworking hours is protected under Montana law. *Mont. Code Ann. § 39-2-313.*