# LIVINGSTON EMPLOYER BREEZE

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## MONTANA MINIMUM WAGE PASSES

By Jerri Miller

By now, everyone probably knows that voters passed a Minimum Wage law in November. This new law takes effect January 1, 2007, and will affect most employers in the state. We are quite sure that the poster peddlers will be out in full force wanting you to pay for new ones. Job Service will send out new posters as soon as they become available. Please don't pay for them.

One very important issue in this law is the provision pertaining to businesses whose annual gross sales are $110,000 or less per year and do not engage in Interstate Commerce. The minimum wage will remain $4.00/hour. Remember that Interstate Commerce means any business transaction that uses credit cards, out of state checks, brings goods or provides services across state lines or accepts long distance phone calls or faxes.

Also, at this time, there is no indication that the minimum wage rate for farm workers of $635.00/month has changed.

There is sure to be a Minimum Wage bill before Congress fairly early next year. From all indications, it will stand a pretty good chance of passing. If that happens, we will print and issue new 5 in 1 posters as soon as possible.

If you have any questions, please call us at 222-0520.

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## VIOLENCE IN THE WORKPLACE

**By Dr. Robert Kincaid**

In the September issue of the Breeze, we provided you with the statistics and definitions of workplace violence. Since that issue, there have been 3 more horrific school shootings and 2 more workplace murders nationwide. The FBI website (www.fbi.gov) has recently been updated and has statistics for Livingston from 2005. Here they are:

| | | | |
|---|---|---|---|
| **Population** | **7,129** | **Violent crime** | **25** |
| **Murder and non-negligent manslaughter** | **0** | **Forcible rape** | **2** |
| **Robbery** | **0** | **Burglary** | **35** |
| **Aggravated Assault** | **23** | **Property Crime** | **196** |
| **Motor Vehicle Theft** | **20** | **Larceny-theft** | **141** |
| | | **Arson** | **0** |

**If you or your employees fall into any of these situations, then you need to come to the Violence in the Workplace Seminar**.

**Victim Characteristics**

- Employees who work in homes or in the community.
- Workers who handle money or prescription drugs.
- Workers in correctional institutions or institutions for the mentally ill or developmentally disabled who are not trained in violence avoidance or self-defense.
- Employees who provide care, advice or information, such as health care workers, employment service workers, mental health workers, emergency room and admission workers and social service workers.
- Workers who handle complaints, such as social service, child welfare and unemployment workers.
- Workers who have the authority to act against the public, inspect premises and enforce laws, such as inspectors, child welfare workers, law enforcement/corrections officers and security guards.

**Homicide Risk Factors**

- Exchange of money with the public
- Working alone or in small numbers
- Working late at night or early morning hours
- Working in high crime areas
- Guarding valuable property or possessions
- Working in community settings

**Statistics**

- Fifty-six percent of workplace homicides occur in retail trade and service industries.
- The bombing of the Oklahoma City Federal building caused only 12% of the job related homicides in 1995.
- According to a survey by the National Safe Workplace Institute, 94% of surveyed corporate security and safety directors rank domestic violence as a high risk problem.
- 30% of the victims were confronted with armed offenders, one-third carried handguns.
- Almost two-thirds of the nonfatal assaults occurred in service industries (nursing homes, hospitals, residential care and social services).
- Retail trade such as grocery stores, eating and drinking places accounted for one-fifth of these assaults.
- Both men and women who work in government have greater numbers and higher rates of assault than the private sector employees.

**Types of Workplace Violence**

1. Violence committed by clients or patients.
2. Violence associated with robbery or other crimes.

3. Violence among co-workers or managers.
4. Domestic violence that spills over into the workplace.

**Levels of workplace violence**

1. Harassment: Unwelcome words, actions or physical contact that is offensive and/or intimidating.
2. Threat: An expression of an intent to cause harm.
3. Physical Attack: Aggression intended to cause bodily harm with or without the use of a weapon.
4. Sabotage: The damaging of property or procedure so as to obstruct productivity or normal functioning.

- Each week, an average of twenty people are murdered and 18,000 are assaulted while working in the United States.
- Each year, almost one million people become victims of violent crimes while at work or on duty.
- Homicide is the second leading cause of job related deaths. 15% of the fatalities at work were homicides.
- The primary motive behind these homicides was robbery (80%), followed by disputes among co-workers and with customers (14%), then domestic disputes (6%).

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## FIGHTING UNEMPLOYMENT CLAIMS

By Jerri Miller

A recent article in the Montana Employment Law Letter provides some excellent tips for employers the next time you oppose an unemployment claim.

The rules for fighting unemployment claims in Montana are a little different than in most states. The single best piece of advice we can ever give you is to respond to each and every piece of paper that comes to you from Helena.

### *The process*

When you fire an employee, he or she is eligible to apply for unemployment benefits. A representative of the Montana Department of Labor and Industry (MDLI) will examine the claim and determine whether the employee is entitled to benefits. You'll then be notified of that finding. If you intend to contest it, you must apply for reconsideration within 10 days after notice was mailed to you.

If you receive a redetermination and still would like to appeal, you're entitled to a hearing. Unemployment hearings can be conducted in person or, if the parties agree, by telephone or video conference.

### *The hearing*

You must prepare for the hearing because you will have the burden of proving that the employee isn't entitled to benefits. You must prove your case by "substantial evidence," which must be firsthand from people who have actual knowledge of the events they are describing. That means you must have available at the hearing people who actually saw or heard the events they are describing. The hearing officer won't consider evidence unless it meets that standard.

You also will have the opportunity before the hearing to submit any documents you want the hearing officer to consider, which might include warnings given to the employee or performance reviews. If you submit those as evidence, it's a good idea to have the person who wrote the document present at the hearing. Even if you have a telephone hearing, your witnesses will be sworn in by the hearing officer, taking an oath that their testimony will be true. During the hearing, you'll be entitled to cross examine your former employee and his/her witnesses. She/he can do the same with your witnesses. If you aren't comfortable doing that, you can have your attorney participate.

The proceedings will be tape recorded by the MDLI. If you would like a copy of the tape or a transcription of the hearing, you may obtain one from the department at your own expense. You should request any copies as soon as possible to make sure they are still in the department's files.

After the hearing, the hearing officer will issue a written decision that will either affirm, modify, or reverse the original determination or redetermination. That decision will be final unless one of the parties appeals. You'll have 10 days after notification was mailed to make an appeal to the BOLA (Board of Labor Appeals).

### *Tips*

The hearing officer's decision can't be used in any other lawsuit. So if the employee files a wrongful discharge suit, he can't use a favorable decision from the unemployment hearing to bolster his case. Sworn testimony, however, probably can be used, so if you think the employee might file a wrongful discharge or discrimination suit, it might be a good idea to involve your lawyer in the unemployment claim.

The most important thing to remember if you should go to hearing is be prepared. Second, be sure to have everyone available who has firsthand evidence. If you remember those two things, you'll have a good chance of succeeding.

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## HAPPY THANKSGIVING!

By Elizabeth Anderson

At least once during each year there is a time for us to think about all that we have to be thankful for. When you sit down to think of all that you can be thankful for, do any of your thoughts steer towards your employees? If you want to have a successful and profitable business then they should.

If you were to do a survey in your business today regarding employee satisfaction with the company, what would the response be? Would your employee recommend your company to a friend or family member for employment; would they recommend your company for any type of service? It has been said that employee satisfaction equals, and is a necessity for, customer service satisfaction.

While a positive employee's attitude and customer treatment may not be enough to fully overcome problems with the product or internal systems, it can reduce the damage that product/system problems cause to customer satisfaction.

*What are you doing to keep your employees happy?*

I've written numerous articles regarding keeping the employees happy and having fun in the workplace. Remember the FISH! Series, and having fun in the workplace? How about having little "perks" for your employees? Do you

have an employee of the month "club" where you could recognize an outstanding employee and maybe reward them with a coffee punch card or a preferred parking spot? How about buying/bringing treats one day a month to reward employees? One day a month could be set aside to celebrate birthdays and employment anniversaries and have co-workers bring treats on a volunteer basis.

Not only should you be thankful for your good employees, you should also show them that you are thankful. The feeling they will get from "a job well done" from you will most likely transfer over to your customers in increased customer service. Give it a try. What do you have to lose, except for a good employee?

| | | |
|---|---|---|
| Employee of the month | Survey | Coffee card |
| Thank you | Treats | Celebrate |
| Have fun | Be kind | Play fish |
| Pumpkin pie | Employee perks | Turkey |
| Good job | Well done | Cranberries |
| Happy Thanksgiving | | |

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## WHAT'S ON TAP FOR THE LEGISLATURE?

By Jerri Miller

January is fast approaching, which means the Legislature goes back into session for the next 3-1/2 months. Many of the bills that will be up for consideration are currently being drafted, and some of the employment related ones are listed below. More to come at a later date!

- LC100 by Greg Lind would revise the privacy in communication law to allow either party to a conversation to record upon notice by either party
- LC 636 would mandate background checks for certain persons supervising adolescents.

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## TIPS, SERVICE CHARGES, SHORTAGES, BREAKAGES and other problems

By Jerri Miller

Around this time of the year, we get many questions and complaints from employees dealing with the above issues. Although we don't ever blow the whistle on anybody, as an employer, you should realize that sooner or later, these things come back to haunt you, and it usually comes right out of your pocket. So, let's see if we can clear up some of these questions before they become problems.

***TIPS*—**There was a recent article in the Livingston Enterprise about tips, what's legal and what's not legal. Here are the main points:

- Tips belong to the server/provider. Management has no control over them. Staff is NOT required to tip cooks, bussers or hosts.
- Employees may choose to establish a tip pool, but all staff must agree to it, and still, Management has no say as to how a pool is established and run.
- Service charges or gratuities which are added to a ticket or bill (such as a catering contract), belong to the servers and not to Management.
- A "tip jar" placed in front of the cash register for anyone who wants to leave a general gratuity can be split up between all line staff.
- Management may require a server to disclose the amount received in tips each shift for purposes of reporting taxable income. However, it is the responsibility of the employee to declare tip income when they file their taxes.
- The employees themselves may make an agreement to share x-number of $$ or a percentage of tips to the cooks/bussers, but the employer has NO input on this practice. If every employee agrees, then any NEW employee hired would have to abide by that agreement.
- ***SHORTAGES, BREAKAGES, LOSSES*—**Always a big question. Employers **MAY NOT** withhold from employees wages for shortages, breakages or losses. Even if an employee signs an agreement with the employer allowing this practice, it is illegal and will not be upheld in

a complaint action. The employee can file a wage claim with the Department of Labor and Industry and the employer would be required to pay the employee and could even be fined up to 110% of the amount due to the employee. Don't take the chance, it's not worth it. The only withholdings from wages that are legal are for mandated taxes, draws or advances from wages and certain charges such as meals or employee purchases which are agreed upon between both parties. If you have a question about this practice, please give us a call

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**CURRENT STATISTICS, OCTOBER, 2006**

| | U.S. | Montana |
|---|---|---|
| Unemployment Rate | 4.4% | 3.6% |

| AREA | Labor Force | Emp | Un-emp | % |
|---|---|---|---|---|
| Gallatin | 49,628 | 48,557 | 1,071 | 2.2% |
| Park | 9.583 | 9,333 | 250 | 2.6% |
| Meagher | 873 | 838 | 35 | 4.0% |
| Sweet Grass** | 2,874 | 2,829 | 45 | 1.6% |

**Sweet Grass continues to have the lowest unemployment rate in the state! Congratulations, again!

From our office to yours, we wish you a Safe and Merry Holiday Season.

Al Maurillo

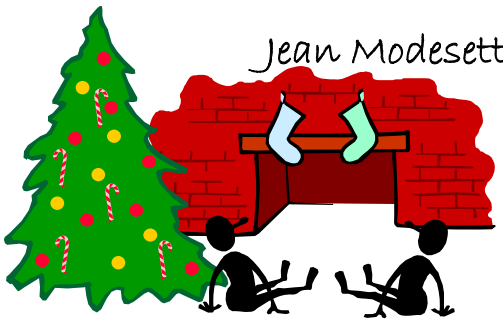
Gail Habener

Bob Kincaid

Jerri Miller

Elizabeth Anderson

Jean Modesette



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