

## CUT AND PASTE POST OCTOBER, 2018

### Fast Facts

- 2019 Minimum Wage Increase - Don't forget! The Montana Department of Labor and Industry announced that the state's minimum wage will increase to \$8.50 per hour on January 1, 2019 for businesses with gross annual sales over \$110,000. See the [announcement](#).
- Medicare Part D Notices are Due by October 15 - Employers that offer a health plan that covers outpatient prescription drugs must distribute the plan's Medicare Part D notice before October 15. The notice explains whether the plan's drug benefits are creditable or noncreditable coverage. It is only required for Medicare-eligible participants, but many employers choose to distribute the notice to all participants regardless of age or Medicare status.
- Temporary Worker Protections - The Occupational Safety and Health Administration (OSHA) recently released bulletins regarding the health and safety of temporary agency workers. In the past, when it comes to safety, the lines of responsibility between temporary staffing firms and host employers have been unclear. OSHA says it is committed to protecting temporary workers from workplace injury and illness by clarifying each party's roles. Follow this [link](#) to the OSHA temporary workers webpage.



### Montana Supreme Court Decisions

#### Jurisdiction and Multistate Operations

Eddie Deleon, Jason Kingery, and Steve Beck were all employed by Burlington Northern Railway Company (BNSF) and were each living outside of Montana. They each filed suit against BNSF in Montana's Thirteenth Judicial District Court, for injuries allegedly sustained while working for BNSF in states other than Montana. BNSF moved to dismiss the Plaintiffs' claims, citing lack of personal jurisdiction. The District Court granted BNSF's motions and each Plaintiff appealed.

The Supreme Court found that registering to do business in Montana and conducting in-state business activities does not equal consent to general personal jurisdiction in Montana. The Court also found that "BNSF's contacts to Montana are not significant enough to render it at home for purposes of general personal jurisdiction, Plaintiffs' claims do not arise from BNSF's activity in Montana for purposes of specific personal jurisdiction, and BNSF did not consent to personal jurisdiction in Montana." The court upheld the District Court's orders granting BNSF's motions to dismiss Plaintiffs' claims and

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found that the District Court did not error by denying Plaintiffs jurisdictional discovery.

The case is *Deleon, Kingery and Beck vs. Burlington Northern, DA 17-0627*. The Court's decision in this matter is consistent with a 2016 decision, *Tyrell v. BNSF Ry. Co.*, 2016 MT 126, and is a good reminder for multistate organizations to make sure employees are using the proper venue when filing disputes.

### Records Retention and Litigation

There's an interesting case on the Court's website that confirms the importance of securing email (and other) records as soon as an employer becomes aware of a potential suit. The case is *MSU-Bozeman vs. the Montana First Judicial Court, OP 18-0311*.

This case is definitely worth a read...go to <https://searchcourts.mt.gov/> and select the "Recent Decisions – Past 30 days" tab. (Read this case quickly .... It will disappear from this site in 30 days and with the 'new and improved' Supreme Court website, prior cases are harder to locate!)

## **Medical and Pregnancy Leave Dos and Don'ts**

The EEOC has filed a class action disability and pregnancy discrimination lawsuit in federal court in New York against a group of senior care and nursing home facilities. The lawsuit provides a good roadmap on what to do and what not to do to be compliant with EEOC, ADA, and FMLA rules. [Read more on Employment Labor Insider.](#)

## **U.S. DOL Conducting Listening Sessions on "White Collar Rule"**

On October 17, 2018 the Wage and Hour Division of the U.S. Department of Labor (DOL) will hold a public listening session in Washington, DC, to gather views on the Part 541 white collar exemption regulations, often known as the "White Collar Rule". Issued under the Fair Labor Standards Act, these regulations implement exemptions from minimum wage and overtime-pay requirements for executive, administrative, professional, and certain other employees. The DOL plans to update the Rule, and is interested in hearing the views and ideas of participants on possible revisions to the regulations.

During these sessions, the DOL is seeking public input on questions such as:

- What is the appropriate salary level (or range of salary levels) for bona fide executive, administrative, or professional employees?
- What costs and benefits might employees and employers experience as a result of an increased salary level?
- What is the best methodology to determine an updated salary level?
- Should the salary level(s) and total compensation figure for highly compensated employees be updated more frequently and, if so, how frequently?



This listening session cannot be attended the web ☹️, but rest assured that your GVHRA Board is keeping an eye on this, and will let you know when anything new comes up.