

## CUT AND PASTE POST DECEMBER 2017

### Seasonal Employees and the Wrongful Discharge Act

In a decision filed November 7, 2017, the Montana Supreme Court upheld some key provisions of the Montana Wrongful Discharge from Employment Act (WDEA). This case (*Dundas v. Winter Sports, Inc.*) is particularly interesting because it involved the probationary status of a long-term seasonal employee.

The WDEA is found at MCA 39-2, part 9. It reads, in part, as follows:

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

- (a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;
  - (b) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or
  - (c) the employer violated the express provisions of its own written personnel policy.
- (2) (a) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

Winter Sports' personnel policy specifies that seasonal employees can be hired for up to 12 months, but their employment is terminated at the end of each seasonal appointment and, if they wish to return, they must go through a hiring process. The policy also states that "Probationary periods are the first six months of employment".

Dundas first started working for Winter Sports as a seasonal employee in 2003. This seasonal employment ended in 2015, when he was terminated as a probationary employee because of inappropriate behavior. Dundas sued for wrongful discharge, arguing, in part, that he had completed his first 6 months of employment years earlier and, therefore, should have been terminated for good cause. He also argued that he was terminated for a refusing to violate public policy. The District Court issued a summary judgement in Winter Sports' favor. Dundas appealed to the Supreme Court.

After reviewing the case, the Court found that "When Dundas was re-hired for the 2014-2015 winter season he was a new employee 'for all purposes,' and began a six-month probationary period and he was still on probation when WSI terminated his employment four months later."

**Professional Pointers** – First, if you hire seasonal employees, it's important that your personnel policies can pass the muster this case was given. You may even want to have clearer language about the probationary period for former employees. Second, Montana Code provides a different definition of seasonal employees for state and local government employers, so this case may or may not apply to these employers.

### Correction in 2018 Social Security Wage Base

The Social Security Administration (SSA) has [announced](#) a correction in the wage base that will be used in computing Social Security taxes for 2018. The corrected amount is **\$128,400**.

The SSA explains that this change was made after receiving corrected 2016 W-2 information from a national payroll service provider which affected the national average wage determination. The corrected amount of \$128,400 for 2018 is an increase of \$1,200 from the 2017 amount, but is \$300 less than the amount previously announced for 2018.

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## OSHA Extends Reporting Deadline

On November 22, 2017 the Occupational Safety and Health Administration (OSHA) [announced](#) that it is extending the deadline for reporting injuries and illnesses from December 1<sup>st</sup> to **December 15, 2017**.

At the same time, OSHA announced that it is reviewing other provisions in the final electronic reporting rule and intends to publish a notice of proposed rulemaking to reconsider, revise, or remove portions of that rule in 2018. Impacted employers are encouraged to review electronic reporting requirements and complete the online reporting process.

### Who must comply with the December 15, 2017 deadline?

- Most establishments with 250 or more employees that are currently required to keep OSHA injury and illness records.
- Employers with 20-249 employees from [certain industries](#) with historically high rates of occupational injuries (high-risk industries) and illnesses.

Some states are not required to comply with this reporting requirement. Montana is not among those exempted states.

OSHA's [ITA portal](#) provides information on how to complete the electronic submission process. Follow this link to answers to [frequently asked questions](#).

## Holiday Party Communications

Thanks to the ThinkHR Blog®, here is some sample language to be sent to employees prior to a holiday party (or any other event) which encourages responsible drinking and appropriate conduct. Modify it to meet your specific situation.

*To: All Employees*

*Subject: Conduct reminders for company event*

*We are looking forward to celebrating the season and our many accomplishments with all of you. It's important that everyone is safe and has a great time, so we wanted to provide a few reminders about our expectations for conduct at the event.*

- *Alcohol—Please remember to consume alcohol responsibly and not over indulge. Alcoholic beverages will not be served [insert time here, such as one hour] before the end of the party. Non-alcoholic beverages will continue to be served. Employees who are not of legal age will not be permitted to consume alcohol.*
- *Transportation—It is of utmost importance that all employees get home safely. We encourage employees to designate a sober driver—someone who will not drink alcohol during the party. If, for any reason, you feel you are unable to drive home, the company will reimburse the cost of a cab or ride service home with no questions asked. Simply submit your receipt to [department or person].*
- *Dress—Please ensure your dress meets the standards of business casual rules for the workplace.*
- *Conduct—At [company name] we do not tolerate harassing behavior of any type. At the party, company rules and policies about harassing behavior and proper conduct still apply. Language and behavior that would be appropriate for the workplace setting should be used.*

*Thank you for helping us make this a successful and fun event.*

**HAPPY HOLIDAYS FROM YOUR GVHRA BOARD!**

