

CUT AND PASTE POST NOVEMBER, 2018

Deadlock in DC?

In November, the Democratic Party took over the majority of House Seats; the Republican Party increased its majority in the Senate by 2 seats. What does this mean for federal labor and employment law? According to a recent HRBlog©, probably not much, and here's why:

1. The Senate confirms Presidential nominations for high-level federal agency appointments and for federal court judgeships, so the trend toward conservative justices will likely continue.
2. The Democratic-controlled House will probably introduce and pass more pro-employee legislation, which the Republican-controlled Senate will vote down or leave parked in a committee someplace to die. If the Senate approves employer-friendly legislation, it will likely be subject to the same fate in the House. With this split in Congress, it's unlikely any pro-employer or pro-employee legislation will make it to the President's desk for his signature (or veto).

Professional Pointer: Even though there's deadlock in Congress, HR professionals still need to watch:

- **Federal agencies** such as the National Labor Relations Board and the Department of Labor who, for the past year, have been advancing the President's agenda through non-legislative means (e.g., regulation or deregulation). The only way to reverse this non-legislative change is for Congress to pass new laws. But, see #2 above.
- **The U.S. Supreme Court** - The addition of a conservative judge to the Court may re-write/overturn what HR professionals have long believed is settled HR law.

U.S. Supreme Court Decision Does Not Affect Montana's Public Employers

In [*Mount Lemmon Fire District v. Guido*](#), the U.S. Supreme Court ruled that public employers, regardless of size, are subject to the Age Discrimination in Employment Act (ADEA). In this case, laid-off firefighters brought an ADEA claim against the Fire District, which argued it was not subject to ADEA coverage because it had fewer than 20 employees. The Ninth Circuit Court of Appeals held otherwise, finding the ADEA protects all public employees regardless of employer size. On a unanimous vote, the U. S. Supreme Court upheld the 9th Circuit ruling.

Professional Pointer: Even though this is an interesting case to read because it shows the importance of paying attention to sentence construction and grammar in laws, Montana Human Rights law prohibits discrimination against people of any age, and applies to all employers. Because of this, this decision should not have any impact on any public employer in Montana.



**HAPPY
"CHRISTMOOSE"!**

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Montana Supreme Court Cases of Interest


- 2018 MT 271 – *Alexander v. Montana Development Center* - Last month's *Cut N Paste Post* mentioned a case that involved the timing of a request for accommodation under the Americans with Disabilities Act. This case evaluates the effectiveness of the interactive process.
- In 2018 MT 285N - *Schultz v. JTL Group/aka Knife River*- The Court evaluated the elements of Good Cause, including insubordination, under Montana's Wrongful Discharge from Employment Act. This is a non-citable case, but it's also a good reminder of the need to conduct a proper employee termination.

 Find these cases by selecting 'Recent Decisions, Past 30 Days' at <https://searchcourts.mt.gov/>

2019 IRS Benefit Adjustments

In November, the Internal Revenue Service (IRS) announced 2019 cost-of-living adjustments for a variety of benefits. Here are the new limits:

Item	Maximum Contribution
401(k), 403(b), 457 Plans and the Federal Thrift Savings Plan	<ul style="list-style-type: none">• Elective contribution: \$19,000• Catch Up contribution: \$6,000
Individual Retirement Arrangements	<ul style="list-style-type: none">• Annual Contribution: \$6,000• Catch up contribution (age 50+): \$1,000
Simplified Employee Pension (SEP) IRA and Individual/Solo 401(k)	<ul style="list-style-type: none">• Minimum Compensation to participate in SEP: \$600.• Elective Deferrals: \$56,000 based on annual compensation limit of \$280,000
Savings Incentive Match Plan for Employees (SIMPLE) IRA	<ul style="list-style-type: none">• Contribution limit: \$13,000• Catch up limit: \$3,000
Defined Benefit Plans	<ul style="list-style-type: none">• Basic Limitation on annual benefits: \$225,000
Designation of Highly Compensated Employees (HCE)	<ul style="list-style-type: none">• Threshold for HCE: \$125,000• Threshold for Officers who are 'key employees' in a top heavy plan: \$180,000
Health Flexible Spending Account	<ul style="list-style-type: none">• Employee contribution limit: \$2,700 per plan year

 See [IRS Notice 2018-83](#) for more information on the 2019 retirement-related cost-of-living adjustments.

Montana Legislative Preview

The next Montana Legislative session begins January 7, 2019. As of 11/29/18, there were 1,750 bill draft requests on the legislative website. Only a few have been introduced and fewer have drafts available for review. In terms of HR-related issues, here are two with current drafts:

- **LC0006** would require that paid firefighters hired on or after January 1, 2020 be tobacco free. This bill is likely related to past (and probably) future 'presumptive illness' bills. Generally speaking, these bills would presume that a firefighter diagnosed with a lung disease, including cancer, got ill because of his/her job exposures. These employees would then qualify for workers' compensation benefits.

There appears to be a potential conflict between current law and this bill because, currently, this bill does not amend or make an exception to MCA 39-2-313, which prohibits employers from taking any adverse employment actions based on an employee's off the job tobacco use.

- **LC0560** would apply to those employers who require employees to be immunized, but offer accommodations from vaccinations for medical, religious, or other reasons. Under this bill, this employer would be required to make "alternative accommodations available to any employee at the employee's request".

 Search for Bills at [http://laws.leg.mt.gov/legprd/LAW0200W\\$.Startup?P_SESS=20191](http://laws.leg.mt.gov/legprd/LAW0200W$.Startup?P_SESS=20191)