



## CUT AND PASTE POST JANUARY, 2021

### Montana Legislative Session Begins

The 67<sup>th</sup> Regular Montana Legislative Session commenced on January 4<sup>th</sup>. As of 1/3/21, there are a total of 169 bills that have been introduced, and an additional 3,106 bills that have been requested.

The last 3 pages of this *Cut N Paste* list the introduced and un-introduced bills that may affect Human Resource folks. In addition, there are numerous bill requests that the title says would “Generally revise...”

- Unemployment laws
- Labor or Labor/Employment laws
- Human Rights
- Workers’ Compensation laws
- Privacy laws
- Health and safety laws.

You can also expect to see several bills resulting from the passage of the marijuana initiatives. As usual, GVHRA will be monitoring this legislative activity, so keep an eye on the website for the latest updates.

### EFMLEA and EPSLA Sunset .... Sort of

On December 31<sup>st</sup> at midnight, the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA) expired. These Acts, which were included in the Families First Corona Virus Response Act (FFCRA) have been providing employees with paid and job-protected leaves of absence for qualifying COVID-19-related reasons since April 1<sup>st</sup>.

However, despite the sunset, the Consolidated Appropriations Act of 2021 (H.R. 133) allows covered employers to *voluntarily* provide such leave through March 31, 2021, and to take tax credits for providing these leaves. So, although these leaves are no longer required, covered employers may voluntarily continue to provide leave under the EPSLA and/or the EFMLEA through March 31, 2021, and take the applicable tax credits.

Keep in mind that, despite the extension to request tax credits, H.R. 133 did not increase the amount of leave available to employees and did not change the eligibility requirements for the leave. Employers requesting the tax credit must maintain documentation that proves the employee(s) for whom a tax credit is claimed:

- had leave benefits available to them;
- were eligible for the leave benefits at the time(s) they were given; and
- received leave that was provided in accordance EPSLA and EFMLEA.

<i>Inside</i>
<ul style="list-style-type: none"> <li>• Montana Legislative Session Begins</li> <li>• EFMLEA and EPSLA Sunset... Sort of.</li> <li>• Nationwide Injunction issued against Executive Order 13950</li> <li>• EEOC Issues Guidance on COVID-19 Vaccinations</li> <li>• Breach of Contract vs. Tort Before the Montana Supreme Court</li> </ul>

## Nationwide Injunction Issued against Executive Order 13950

The December, 2020 *Cut N Paste Post* included an article about Executive Order 13950 (EO-13950), which prohibited federal agencies, the military, government contractors and sub-contractors, or any recipient of federal aid from conducting workplace training containing racially “divisive” or “anti-American” concepts.

EO-13950 was challenged in [Santa Cruz Lesbian and Gay Community Center d/b/a The Diversity Center of Santa Cruz v. Trump](#). On December 22, 2020, the United States District Court for the Northern District of California issued a nationwide preliminary injunction against EO-13950 finding that, among other things, the plaintiffs would likely be able to prove the Order violated their freedom of speech and was therefore unconstitutional. The District Court injunction allows private federal contractors and federal grant recipients to conduct workplace training programs and related activities without facing penalties for “stereotyping” or “scapegoating” under EO-13950.

While the injunction doesn’t apply to the uniformed services or federal employers, it is likely president-elect Biden will rescind EO-13950 after becoming president. We will keep you updated.

## EEOC Issues Guidance on COVID-19 Vaccinations

Vaccines against COVID-19 are now becoming widely available. That lends itself to questions like ... “*Can I require my employees to be vaccinated?*” and “*Is a vaccination considered a medical exam under the Americans with Disabilities Act?*”

On December 16, 2020, the Equal Employment Opportunity Commission (EEOC) updated its [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) webpage to address issues related to COVID vaccines and workplace laws.

In this updated guidance, the EEOC explains how vaccine programs may be affected by the Genetic Information Nondiscrimination Act (GINA), the Rehabilitation Act, and Title VII of the Civil Rights Act of 1964. The guidance also provides a reminder about best practices for making workplace accommodations, how to evaluate a “direct threat”, and what needs considered before removing an employee from the workplace if s/he refuses to be vaccinated.

**Professional Pointer:** If you are considering offering the COVID vaccine, or requiring your employees to take this vaccine, read this guidance very carefully. In addition, it’s important have 'a plan' for employees who are reticent about being vaccinated. For example, it may be necessary to establish a policy that says employees who do not take the vaccine may return to work, but must continue to follow all social distancing rules. Your organization’s policy is going to be organizational- and job-specific, and will take into account a variety of factors such as the organizational structure, availability of remote work, amount of customer or employee contact, and the products or services provided.

## Breach of Contract vs. Tort before the Montana Supreme Court

In [M. Plakorus v. University of Montana](#), the University released some information regarding a (soon to be former) contracted employee. The employee sued the University, in part, claiming breach of contract violations (with a 2 year statute of limitations), and in part claiming tort violations (with a 3 year statute). The District Court dismissed the entire case, finding that the 2 year statute of limitations for breach of contract applied. The Supreme Court sliced and diced this case and found that at least part of the allegations involved defamation and intentional interference, which would be tort claims, and sent the case back for further proceedings. This interesting case has a great explanation about the difference between a breach of contract and a tort claim, in the employment arena.

# HR-RELATED BILLS BEFORE THE MONTANA LEGISLATURE

## Introduced Bills as of 1/3/21

Bill Type - Number	LC Number	Primary Sponsor	Status	Status Date	Short Title
SB 56	LC0393	Jason W Ellsworth (R) SD 43	(S) Introduced	12/17/2020	Make MDT, FWP employee grievance procedures same as for other state employees

## Unintroduced Bills as of 1/3/21

Bill Draft No. (LC No.)	Request Date	Requestor	Status	Status Date	Short Title
LC0005	12/16/2019	John Esp (R) SD 30	(C) Draft Ready for Delivery	01/03/2021	Revise privacy in communication exception laws
LC0089	07/23/2020	Steve Fitzpatrick (R) SD 10	(C) Draft Request Received	07/23/2020	Revise laws pertaining to constitutional rights
LC0162	08/07/2020	JP Pomnichowski (D) SD 33	(C) Draft On Hold	10/09/2020	Generally revise independent contractor laws
LC0215	08/11/2020	JP Pomnichowski (D) SD 33	(C) Draft Request Received	08/11/2020	Generally revise workers' compensation funding laws
LC0216	08/11/2020	JP Pomnichowski (D) SD 33	(C) Draft On Hold	12/03/2020	Generally revise laws related to workplace discrimination
LC0223	08/12/2020	JP Pomnichowski (D) SD 33	(C) Draft On Hold	12/07/2020	Generally revise workplace safety laws
LC0226	08/12/2020	JP Pomnichowski (D) SD 33	(C) Draft Request Received	08/12/2020	Generally revise presumptive disease laws.
LC0435	09/16/2020	For Department of Agriculture by Economic	(C) Draft in Assembly	12/09/2020	Revise Ag department rules for worker protection standards
LC0438	09/16/2020	For Department of Commerce by Economic	(C) Draft in Assembly	12/03/2020	Provide statutory appropriation for workforce training grant program
LC0481	09/23/2020	Mark Blasdel (R) SD 4	(C) Draft in Edit	01/02/2021	Revise laws relating to false statements to employers and workers' compensation
LC0570	10/15/2020	Economic Affairs Interim Committee	(C) Executive Director Review	12/10/2020	Allowing paycheck transparency
LC0645	10/23/2020	Llew Jones (R) HD 18	(C) Draft Request Received	10/23/2020	Revise labor probationary period from 6 months to a year
LC0649	10/23/2020	Katie Zolnikov (R) HD 45	(C) Draft Request Received	10/23/2020	Revise laws regarding certain students and allowable work hours
LC0690	10/26/2020	Llew Jones (R) HD 18	(C) Draft Request Received	10/26/2020	Generally revise laws related to remote workplaces and workforces
LC0698	10/28/2020	Janet Ellis (D) SD 41	(C) Draft Ready for Delivery	01/03/2021	Establish family medical leave insurance
LC0738	11/02/2020	Kenneth L Holmlund (R) HD 38	(C) Draft to Requester for Review	12/31/2020	Generally revise prevailing wage laws
LC0808	11/05/2020	Keith Regier (R) SD 3	(C) Draft in Final Drafter Review	12/30/2020	Revise laws related to collection of union dues
LC0815	11/05/2020	Keith Regier (R) SD 3	(C) Draft Request Received	11/05/2020	Implement right to work
LC0818	11/05/2020	Keith Regier (R) SD 3	(C) Executive Director Review	12/30/2020	Exempting tips from definition of wages related to unemployment insurance
LC0925	11/10/2020	Bill Mercer (R) HD 46	(C) Draft On Hold	12/14/2020	Generally revising privacy of settlements and public right to know laws

<b>Bill Draft No. (LC No.)</b>	<b>Request Date</b>	<b>Requestor</b>	<b>Status</b>	<b>Status Date</b>	<b>Short Title</b>
LC0946	11/10/2020	Amy Regier (R) HD 6	(C) Draft Ready for Delivery	01/03/2021	Revise union membership laws
LC0950	11/10/2020	Amy Regier (R) HD 6	(C) Draft Request Received	11/10/2020	Implement right-to-work
LC0961	11/10/2020	Ellie Boldman (D) SD 45	(C) Draft Request Received	11/10/2020	Revise discrimination and disability rights
LC1028	11/11/2020	Fred Anderson (R) HD 20	(C) Draft in Edit	01/02/2021	Revise workers' compensation laws relating to student interns
LC1068	11/12/2020	Keith Regier (R) SD 3	(C) Draft On Hold	11/30/2020	Revise minimum wage definition laws
LC1099	11/17/2020	Jim Keane (D) HD 73	(C) Draft Ready for Delivery	01/03/2021	Revise apprenticeship rules
LC1189	11/19/2020	Steve Hinebauch (R) SD 18	(C) Draft Request Received	11/19/2020	Revise laws related to prevailing wages
LC1210	11/19/2020	Joshua Kassmier (R) HD 27	(C) Draft Request Received	11/19/2020	Establish workforce housing tax credits
LC1241	11/21/2020	Mary Caferro (D) HD 81	(C) Draft to Requester for Review	01/02/2021	Generally revise prevailing wage laws
LC1242	11/21/2020	Mary Caferro (D) HD 81	(C) Draft Request Received	11/21/2020	Generally revise contract laws
LC1243	11/21/2020	Mary Caferro (D) HD 81	(C) Draft Request Received	11/21/2020	Private sector hiring preference protection for spouses of military members
LC1283	11/24/2020	Bryce Bennett (D) SD 50	(C) Draft On Hold	12/08/2020	Generally revise data privacy laws (3 LC's requested)
LC1337	11/27/2020	Mary Caferro (D) HD 81	(C) Draft Request Received	11/27/2020	Revise the HELP Link program
LC1345	11/27/2020	Andrea Olsen (D) HD 100	(C) Draft Request Received	11/27/2020	Restore right for worker to choose treating physician in workers' compensation
LC1350	11/27/2020	Andrea Olsen (D) HD 100	(C) Draft Request Received	11/27/2020	Establish presumption in workers' compensation for COVID-19
LC1370	11/27/2020	Andrea Olsen (D) HD 100	(C) Draft Request Received	11/27/2020	Authorize access to medical records by certain persons
LC1376	11/27/2020	Andrea Olsen (D) HD 100	(C) Draft Request Received	11/27/2020	Generally revise laws regarding privacy and medical information
LC1402	11/27/2020	Andrea Olsen (D) HD 100	(C) Draft Request Received	11/27/2020	Protect wages from garnishment after debt defaults
LC1421	11/27/2020	Andrea Olsen (D) HD 100	(C) Draft Request Received	11/27/2020	Generally revise laws to protect privacy on the internet
LC1454	12/01/2020	Mary Ann Dunwell (D) HD 84	(C) Draft Request Received	12/01/2020	Provide living wage for essential workers.
LC1494	12/01/2020	Ed Stafman (D) HD 62	(C) Draft Request Received	12/01/2020	Provide for protection of healthcare workers' freedom of speech
LC1533	12/01/2020	Moffie Funk (D) HD 82	(C) Draft Request Received	12/01/2020	Revise access to military discharge records
LC1543	12/01/2020	Kelly Kortum (D) HD 65	(C) Draft Request Received	12/01/2020	Generally revise minimum wage laws
LC1607	12/02/2020	Mark Noland (R) HD 10	(C) Draft Request Received	12/02/2020	Revise workers' compensation claim penalty laws
LC1616	12/02/2020	Bill Mercer (R) HD 46	(C) Draft Request Received	12/02/2020	Generally revise laws related to union fees
LC1821	12/10/2020	Willis Curdy (D) HD 98	(C) Draft On Hold	12/17/2020	Generally revise sexual harassment/abuse (2 LC's requested)
LC1890	12/10/2020	Dave Fern (D) HD 5	(C) Draft Request Received	12/10/2020	Provide for remote worker grant program
LC2352	12/12/2020	Mary Ann Dunwell (D) HD 84	(C) Draft Request Received	12/12/2020	Generally revise energy laws related to labor

Bill Draft No. (LC No.)	Request Date	Requestor	Status	Status Date	Short Title
LC2595	12/13/2020	Scot Kerns (R) HD 23	(C) Draft On Hold	12/28/2020	Generally revise laws on veterans discrimination and disability rights
LC2627	12/13/2020	Danny Tenenbaum (D) HD 95	(C) Draft Request Received	12/13/2020	Revise laws related to wage theft
LC2631	12/13/2020	Danny Tenenbaum (D) HD 95	(C) Draft Request Received	12/13/2020	Revise laws related to source-of-income discrimination
LC2709	12/13/2020	Kathy Whitman (R) HD 96	(C) Draft Request Received	12/13/2020	Generally revise unemployment compensation qualification law
LC2738	12/13/2020	Jedediah Hinkle (R) HD 67	(C) Draft Request Received	12/13/2020	Generally revise business laws
LC2839	12/13/2020	Carl Glimm (R) SD 2	(C) Draft Request Received	12/13/2020	Generally revise privacy laws regarding protected facilities
LC2882	12/13/2020	Pat Flowers (D) SD 32	(C) Draft Request Received	12/13/2020	Study related to location-based cost-of-living adjustment for state employees
LC2892	12/13/2020	Mallerie Stromswold (R) HD 50	(C) Draft Request Received	12/13/2020	Generally revise privacy laws pertaining to genetic information
LC2896	12/13/2020	Steve Gist (R) HD 25	(C) Draft to Requester for Review	12/29/2020	Create tax incentive for employers of volunteer first responders
LC2920	12/13/2020	Laurie Bishop (D) HD 60	(C) Draft Request Received	12/13/2020	Revise laws related to employee disclosure of wage information
LC2927	12/14/2020	Derek J Harvey (D) HD 74	(C) Draft Request Received	12/14/2020	Generally revise workers' compensation death benefit laws
LC3022	12/22/2020	Kathy Whitman (R) HD 96	(C) Draft in Edit	01/02/2021	Revise laws regarding distribution lists of registered apprentices
LC3058	12/31/2020	Brandon Ler (R) HD 35	(C) Draft Request Received	12/31/2020	Generally revise workers compensation dividends
LC3087	12/31/2020	Lola Sheldon-Galloway (R) HD 22	(C) Draft Request Received	12/31/2020	Revise laws to provide protection for citizens with animal allergies