

**Cut and Paste
 Post: February 2015**

**Montana Legislative Update
 &
 National Labor Relations Act Primer**

MONTANA LEGISLATIVE UPDATE

Montana’s 2015 Legislative Session is in full swing. Compared to previous sessions, there are very few Bills affecting HR practitioners.

Here is a list of Bills of “general” interest to Montana’s HR professionals that were working their way through the process as of February 12th. The link will take you to the Bill’s information; the Legislative website is <http://leg.mt.gov/css/Default.asp>. February 16th is the last day for Committees to request general bills and general bill amendments, and February 26th is the ‘transmittal deadline’ for general bills. (e.g., a general bill originating in the House must be transmitted to the Senate by 2/26.)

Bill No.	Sponsor	Most Recent Status (S=Senate; H=House)	Description
SB 70	Jim Keane	Transmitted to Governor	Revise qualifications for crane operators
SB 93	Pat Connell	(H) Transmitted to House; Hearing Scheduled	Revise laws related to DUI convictions and restricted-use driving permit
SB 99	Jill Cohenour	(S) Hearing	Revise insure Montana small business health insurance laws
SB 105	Elsie Arntzen	(H) Hearing	Revise unemployment insurance laws
SB 135	Tom Facey	(H) Hearing	Extend overtime exemption to certain air carrier employees
SB 138	Brian Hoven	(S) Passed 2nd Reading as Amended	Give safe harbors for employers, schools, landlords for criminal rehabilitation
SB 196	Mary Caferro	(S) Committee Report passed as amended	Private sector veteran hiring preference protection
SB 270	Janna Taylor	(S) Hearing	Exempt seasonal entities from minimum wage
HB 68	Kathy Kelker	(S) Referred to Committee	Revising protections for military service in the National Guard
HB 277	Christy Clark	(H) Hearing	Provide for an apprenticeship tax credit
HB 343	Bryce Bennett	(H) Passed 3rd reading	Prohibit request of online passwords as a condition of hiring or employment
HB 362	Mary Ann Dunwell	(H) Hearing	Revise public employer occupational health and safety standards
HB 413	Chuck Hunter	(H) Hearing	Create OSHA laws applicable to private employers
HB 456	Rae Peppers	(H) Hearing	Add PTSD to the list of debilitating medical conditions for marijuana use

The following bills are probably dead, but a merit a “check in’ once and a while during the session to see if they’ve been resurrected:

Bill No.	Sponsor	Most Recent Status (S=Senate; H=House)	Description
HB 113	Steve Fitzpatrick	(H) Second Reading Not Passed	Exclude certain vessel sales/parts persons & mechanics from overtime laws
HB 349	Kathleen Williams	(H) Tabled in Committee	Address discriminatory health insurance policy practices
HB 384	Mary Anne Dunwell	(H) Tabled in Committee	Raise state minimum wage
SB 2	Jonathan Windy Boy	(S) Tabled in Committee	Raise state minimum wage
SB 158	Diane Sands	(S) Tabled in Committee	Provide for pay check fairness laws
SB 179	Christine Kaufmann	(S) Tabled in Committee	Prohibit discrimination of gender identity/expression and sexual orientation
SB 195	Mary Caferro	(S) Tabled in Committee	Revise employment protections for national guard members of other states
SB 205	Robyn Driscoll	(S) Tabled in Committee	Provide for the Hire Montana First Act

EVERYTHING YOU'VE ALWAYS WANTED TO KNOW ABOUT THE NLRA**

Introduction: Today I read a new NLRB decision and got to thinking about the impact of the NLRA on non-union workplaces, and how critical it is for every HR professional to understand this Act. It also occurred to me that lots of us have very limited experience in this area. Therefore, here is a “primer” on the NLRA.

The National Labor Relations Act (NLRA) guarantees the rights of private sector employees to organize into unions, engage in collective bargaining, and take collective action, including strikes if necessary. The NLRA applies to most private sector employers, but not federal, state, or local governments. (Most State governments have adopted rules similar to the NLRA for its governmental employees.) Employers who employ only agricultural workers and employers subject to the Railway Labor Act are also exempt from the provisions of the NLRA.

NLRA...
NLRB...
ALJ...
OMG!

Sections 7, 8 and 9 are the key provisions of the NLRA:

- **Section 7** defines **protected activity**. This includes the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other “concerted” activities for the purpose of collective bargaining or other mutual aid and protection. *In non-union environments, concerted activities include activities taken by a group of people in order to enhance their status and/or achieve a common objective.*
- **Section 8** defines employer **unfair labor practices**, which are illegal under the NLRA. These include:
 - Employer interference, restraint, or coercion directed against union or collective activity;
 - Employer domination of unions;
 - Employer discrimination against employees who take part in union or collective activities;
 - Employer retaliation for filing unfair labor practice charges or cooperating with an NLRB investigation; and
 - Employer refusal to bargain in good faith with union representatives.
- **Section 9** prescribes the manner by which union representation elections are conducted.

The **National Labor Relations Board (NLRB)** is an independent federal agency created to enforce the NLRA. The President appoints the Board members, subject to Congressional approval. The NLRB has

** ...BUT WERE AFRAID TO ASK ☺

regional offices where employees, employers and unions can file charges alleging illegal behavior, or file petitions for union representation election.

Employment Polices under the NLRB Microscope

Historically, employers with nonunionized workforces have gone happily about their business, not giving much thought to the NLRB. In the past few years, there has been an increase in the number of complaints filed with the NLRB by non-union employees. As a result, nonunion companies can no longer be 'blissfully ignorant' to the actions taken by the NLRB.

Here is a list of common personnel policies or practices which, in the past 2 years, were found by the NLRB to be unlawful under the NLRA:

- **Prohibitions on the use of employer's email system on non-working time:** In December, 2014, the NLRB decreed that employers must allow their employees to use email for protected communications on nonworking time if employers have already given employees access to the workplace email communication system. The case is *Purple Communications, Inc.* <http://www.nlr.gov/case/21-CA-095151>
- **No Gossip Policies:** In June, 2014 the NLRB affirmed an Administrative Law Judge (ALJ) finding that Lauras Technical Institute's "No Gossip Policy" was unlawful. Download this case at: <http://www.nlr.gov/case/10-CA-093934>.
- **Prohibitions on Pay Discussions:** In *Jones & Carter Inc. /Cotton Surveying Company*, the NLRB found that employees have a protected right to share information about wages and benefits, even in nonunion workplaces, and policies which prohibit these conversations violate the NLRA. The case documents are found at: <http://www.nlr.gov/case/16-CA-027969>.
- **Confidential Workplace Investigations:** In *Banner Health and Verso Paper*, the NLRB found that policies which prohibit (or discourage) employees from disclosing information about ongoing investigations into employee misconduct may violate the NLRA. Download the [Verso Paper](#), NLRB Div. of Advice, No. 30-CA-89350 for guidance.
- **Social Media Policies:** The rights of employees to act together to address conditions at work extends to some work-related conversations conducted on social media, such as Facebook and Twitter. The NLRB reviewed several policies and even shared an 'approved' social media policy. Read more at: <http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media>.
- **At Will Disclaimers** - The NLRB says At Will Language in employment policies may be unlawful. (Keep in mind that, under the MT WDEA, non-union, non-probationary employees are not At-Will.) Here are two related NLRB decisions for your reading entertainment: <http://www.ballardspahr.com/media/~media/files/alerts/2012-11-06-mimi.pdf> and <http://www.ballardspahr.com/media/~media/files/alerts/2012-11-06-rocha.pdf>

In non-union environments, 'concerted activities' are activities undertaken by a group of people to address wages, benefits and/or working conditions.

What's an HR Person to Do?

There were some legal issues with the timing of appointments to the NLRB Board in 2012. This may mean some of these Board decisions were invalid but, unless they are appealed, they stand. In addition, while Republican majorities in the House and Senate could pass laws reversing NLRB actions, it is unlikely this will happen. At this point, HR professionals must: 1) make sure they understand the NLRA; 2) monitor NLRB activities; and 3) review their employment policies and practices to identify any that may interfere with their employees' NLRA rights.

Please send ideas/suggestions for the *Cut N Paste* to pattieberg@yahoo.com. Thanks!