



CUT AND PASTE POST MARCH 2021

Equality Act Passes the House

[HR 5: The Equality Act](#) was introduced in the House of Representatives by Rep. David Cicilline (D-RI) on February 18, 2021, and in the Senate by Sens. Jeff Merkley (D-OR), Tammy Baldwin (D-WI), and Cory Booker (D-NJ) on February 23, 2021. The Equality Act passed in the U.S. House of Representatives on February 25, 2021, with a bipartisan vote of 224-206.

This Act would amend existing civil rights law—including the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, the Jury Selection and Services Act, and several laws regarding employment with the federal government—to explicitly include sexual orientation and gender identity as protected characteristics. The legislation also amends the Civil Rights Act of 1964 to prohibit discrimination in public spaces and services and federally funded programs on the basis of sex. The Act now goes to the Senate for further Action.

Other Legislation in the Federal Pipeline

Here's just a few of the other bills we're tracking at the federal level:

[H.R. 7: Paycheck Fairness Act](#) Sponsor: Rep. Rosa DeLauro [D-CT3]

[H.R. 603: Raise the Wage Act of 2021](#) Sponsor: Rep. Robert "Bobby" Scott [D-VA3]

[H.R. 156: Blue Collar to Green Collar Jobs Development Act of 2021](#) Sponsor: Rep. Bobby Rush [D-IL1]

[H.R. 236: To nullify the effect of Executive Order 13950 relating to combating race and sex stereotyping](#)
Sponsor: Rep. Joyce Beatty [D-OH3]

Recent 9th Circuit Decisions Worth a Read

McCUE, v. INTEGRA IMAGING, P.S. [CV 19-147-M-DLC](#). - This Montana based case discusses the WDEA-related impacts of letters giving employee the option to "resign voluntarily or be terminated".

BAYER v NEIMAN MARCUS GROUP, INC. [No. 19-16282](#). - In this case, the court reviewed a letter which gave an employee the option to resign or consent to arbitration.

HUTCHINSON, v. CITY OF THOMPSON FALLS, Defendant. [No. CV 19-195-M-DLC](#). - This case evaluates how long an employee who is no longer able to perform their job duties due to a disability has a right to be considered for vacant positions.

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DOL RESCINDS TRUMP ERA DIRECTIVES

In the last month, the U.S. Department of Labor has withdrawn the following Opinion Letters:

- FLSA2021-4, which addressed whether a restaurant may institute a tip pool under the Fair Labor Standards Act that includes both servers, for whom the employer takes a tip credit, as well as hosts and hostesses, for whom a tip credit is not taken;
- FLSA2021-8, addressing whether certain distributors of a manufacturer's food products are employees or independent contractors under the FLSA; and
- FLSA2021-9, addressing whether requiring tractor-trailer truck drivers to implement safety measures required by law constitutes control by the motor carrier for purposes of their status as employees or independent contractors under the FLSA, and whether certain owner-operators are properly classified as independent contractors.

Other Trump-era guidance/directives/rules that have probably seen the chopping block include:

- The **Independent Contractor Status Final Rule**, which was to have taken effect on 3/8/21, will not. Its effective date has been extended to May 7, 2021.
- The implementation date for the **Tip Regulations Final Rule** has been postponed 60 days, from March 1, 2021 to April 30, 2021.

These Rules were generally thought to have been very employer friendly. It's likely they'll get another long look, and further public comment requested, before they are finally adopted.

National Labor Relations Board Changes

In the 2 months since President Biden entered office, we have seen a change in direction at the National Labor Relations Board (NLRB). First, in an unprecedented move, President Biden removed the Board's General Counsel Peter Robb. Following Robb's departure, Peter Sung Ohr was named acting General Counsel. While the General Counsel does not change the Board's precedent, the individual in the position sets the Board's agenda on policy. After being appointed, Ohr rescinded a number of memos issued by Robb which instructed investigators and lawyers on enforcement priorities. This has reshaped the Board's position on critical labor initiatives.

The memos rescinded by Ohr addressed topics such as: (1) employer policies that could affect employee rights under the National Labor Relations Act; (2) neutrality agreements in which employers allow organizing activities or negotiate terms before a union is recognized as the representative of employees; and (3) encouraging the Board to place more stringent burdens on unions, including memos and guidance regarding the duty of fair representation which would have made it easier for employees to allege such claims. Overall, these changes make it clear that the NLRB will be union/employee friendly for the next four years.

Montana 2021 Legislative Update

Wednesday, March 3rd was Legislative Day 45. This is the deadline to transmit General Bills (no financial impact) from one chamber to the other. If general bills aren't transmitted by now, they are probably dead. March 3rd was also the last day to request Appropriation Bills. See the next 2 pages for the status of HR-related Bills.

Montana 2021 Legislative Session

HR-Related Bills Status as of March 7, 2021

Please note: The links are not cooperating on some (most?) of these Bills. If you want read/track/testify on a particular Bill, enter the **Bill Type** and **Number** at: [http://laws.leg.mt.gov/legprd/law0203w\\$.startup?P_SESS=20211](http://laws.leg.mt.gov/legprd/law0203w$.startup?P_SESS=20211)

Bill Type - Number	Primary Sponsor	Status	Status Date	Short Title
HB 13	Julie Dooling (R) HD 70	(S) In Second House – Non Tabled	02/04/2021	State Employee Pay Plan
HB 95	Brad Tschida (R) HD 97	(S) Referred to Committee	01/28/2021	Revise ethics laws related to confidentiality
HB102	Seth Berglee (R) HD 58	(H) Signed by Governor	02/18/2021	Generally revise gun laws
HB 143	Llew Jones (R) HD 18	Transmitted to Governor	03/20/2021	Provide incentives for increasing starting teacher pay
HB 198	Derek J Harvey (D) HD 74	(S) Hearing -- (S) Business, Labor, and Economic Affairs	03/10/2021; 9:00 AM, Rm 422	Revise workers' compensation death benefit laws
HB 199	Derek J Harvey (D) HD 74	(S) Committee Report--Bill Concurred -- (S) Business, Labor, and Economic Affairs	02/16/2021	Revise workers compensation laws relating to information and reopening of claims
HB 201	Kenneth L Holmlund (R) HD 38	(S) Referred to Committee -- (S) Business, Labor, and Economic Affairs	02/25/2021	Revise prevailing wage district laws and dispatch city designations
HB 213	Jim Keane (D) HD 73	(S) Hearing -- (S) Business, Labor, and Economic Affairs	03/11/2021; 9:00 AM, Rm 422	Revise apprenticeship rules
HB 252	Llew Jones (R) HD 18	(S) Hearing -- (S) Taxation	03/09/2021; 9:00 AM, Rm 405	Non-refundable tax credit for employer-paid education of trade professions
HB 254	Ross H Fitzgerald (R) HD 17	(S) Hearing -- (S) Business, Labor, and Economic Affairs	03/10/2021; 9:00 AM, Rm 422	Revise the wrongful discharge act
HB 282	Fred Anderson (R) HD 20	(S) Hearing -- (S) Business, Labor, and Economic Affairs	03/10/2021; 9:00 AM, Rm 422	Revise labor laws relating to the employment of minors
HB 283	Fred Anderson (R) HD 20	(S) Hearing -- (S) Business, Labor, and Economic Affairs	03/10/2021; 9:00 AM, Rm 422	Revise workers' compensation laws relating to student interns
HB 289	Matt Regier (R) HD 4	(H) Transmitted to Senate	03/01/2021	Generally revise labor laws relating to employee associations.
HB 379	Sue Vinton (R) HD 56	(S) Referred to Committee -- (S) Business, Labor, and Economic Affairs	02/25/2021	Revise laws for non-discriminatory rate setting in insurance
HB 397	Joshua Kassmier (R) HD 27	(H) Committee Report--Bill Passed as Amended -- (H) Taxation	02/22/2021	Establish workforce housing tax credits
HB 446	Ron Marshall (R) HD 87	(H) Transmitted to Senate	03/02/2021	Revise workers' compensation laws relating to prosthetic devices
HB 590	Scot Kerns (R) HD 23	(H) Transmitted to Senate	03/02/2021	Clarify military access to federal leave of absence
SB 56	Jason W Ellsworth (R) SD 43	(S) Transmitted to Governor	03/01/2021	Make MDT, FWP employee grievance procedures same as for other state employees
SB 118	Terry Gauthier (R) SD 40	(S) Returned from Enrolling	03/01/2021	Revise laws relating to false statements to employers and workers' compensation
SB 190	Terry Gauthier (R) SD 40	(H) Hearing -- (H) Business and Labor	03/16/2021; 08:30 AM, Rm 172	Establish valid tip pool agreements
SB 283	Carl Glimm (R) SD 2	(H) Referred to Committee -- (H) Judiciary	03/02/2021	Generally revise laws regarding firearms on school grounds
SB 301	Theresa Manzella (R) SD 44	(H) Referred to Committee -- (H) Business and Labor	03/02/2021	Provide statewide uniformity regarding wages/benefits for political subdivisions
SB 341	David Howard (R) SD 29	(S) Rereferred to Committee -- (S) Finance and Claims	03/01/2021	Revise business laws related to sale of marijuana
SB 346	Theresa Manzella (R) SD 44	(S) Transmitted to House	03/02/2021	Inflationary adjustments for prevailing wages
SB 367	Shane A Morigeau (D) SD 48	(S) Transmitted to House	03/02/2021	Generally revise labor laws relating to independent contractor certification
SJ 13	Steve Hinebauch (R) SD 18	(S) Hearing -- (S) Business, Labor, and Economic Affairs	03/09/2021; 9:00 AM, Rm 422	Interim study of prevailing wage laws

Bill Type - Number	Primary Sponsor	Status	Status Date	Short Title
SR 28	Steve Fitzpatrick (R) SD 10	Filed With Secretary of State	02/18/2021	Confirm Governor appointees to Commission for Human Rights: <ul style="list-style-type: none"> Debra Broadbent, Kalispell MT Curtis Almy, Miles City, MT Pete Damrow, Billings, MT
SR 31	Steve Fitzpatrick (R) SD 10	(S) Hearing -- (S) Business, Labor, and Economic Affairs	02/18/2021	Confirm Gov appointees to Personnel Appeals and Unemployment Insurance Appeals <ul style="list-style-type: none"> Jenny Springer, Livingston, Montana Clint Penny, Butte, Montana Stacey Yates, Colstrip, Montana
SR 78	Steve Fitzpatrick (R) SD 10	(S) Filed with Secretary of State	03/02/2021	Confirm Governor's appointee to the Board of Personnel Appeals (Bryan Hopkins)
SR 79	Steve Fitzpatrick (R) SD 10	(S) Filed with Secretary of State	03/02/2021	Confirm Governor's appointee to the Commission for Human Rights (Richard Bartos)

The HR-related Bills that are probably dead include (not an all-inclusive list):

Bill #	Sponsor	Status	Short Title
HB 125	Jeremy Trebas (R) HD 26	(H) Tabled in Committee* -- (H) Taxation	Provide exemption from income tax withholding
HB 168	Bill Mercer (R) HD 46	(H) Tabled in Committee* -- (H) Business and Labor	Generally revise laws related to union fees
HB 228	Moffie Funk (D) HD 82	(H) Tabled in Committee* -- (H) Business and Labor	Establish family medical leave insurance
HB 251	Caleb Hinkle (R) HD 68	(H) 2nd Reading Not Passed*	Implement right-to-work
HB 284	Mary Ann Dunwell (D) HD 84	(H) Tabled in Committee* -- (H) Business and Labor	Provide living wage
HB 412	Andrea Olsen (D) HD 100	(H) Tabled in Committee* -- (H) Business and Labor	Restore right for worker to choose treating physician in workers' compensation
HB 415	Jennifer Carlson (R) HD 69	(H) 2nd Reading Not Passed*	Prohibit discrimination based on vaccination status
HB 486	Kelly Kortum (D) HD 65	(H) Tabled in Committee* -- (H) Business and Labor	Providing an increase in minimum wage
HB 500	Jeremy Trebas (R) HD 26	(H) Tabled in Committee* -- (H) Business and Labor	Generally revise labor laws
HB 513	Mark Noland (R) HD 10	(H) Tabled in Committee* -- (H) Business and Labor	Generally revise workers' compensation laws relating to the Montana State Fund
HB 514	Mark Noland (R) HD 10	(H) Tabled in Committee* -- (H) Business and Labor	Revise workers' compensation laws relating to the Montana State Fund
HB 550	Andrea Olsen (D) HD 100	(H) Tabled in Committee* -- (H) Business and Labor	Establish presumption in workers compensation for COVID-19
HB 582	Robert Farris-Olsen (D) HD 79	(H) Tabled in Committee* -- (H) Business and Labor	Clarify employer limitations in the Montana Medical Marijuana Act
HB 600	Mary Caferro (D) HD 81	(H) 3rd Reading Failed*	Private sector hiring preference protection for spouses of military members
SB 89	Keith Regier (R) SD 3	(S) 2nd Reading Indefinitely Postponed*	Revise laws related to collection of union dues
SB 132	Keith Regier (R) SD 3	(H) Tabled in Committee -- (H) Business and Labor	Require accommodations to employer-mandated vaccinations to be uniformly offered
SB 187	Mark Sweeney (D) SD 39	(S) Tabled in Committee* -- (S) Business, Labor, and Economic Affairs	Increase the minimum wage
SB 195	Tom McGillvray (R) SD 23	(S) Tabled in Committee* -- (S) Judiciary	Generally revise human rights laws
SB 228	Greg Hertz (R) SD 6	(S) 2nd Reading Indefinitely Postponed*	Generally revise public employee union laws
SB 289	Brian Hoven (R) SD 13	(S) Tabled in Committee* -- (S) Business, Labor, and Economic Affairs	Revise employment application by eliminating reference to criminal record
SR 17	Steve Fitzpatrick (R) SD 10	(S) Adverse Committee Report Adopted	Confirm Governor's appointee to the Commission for Human Rights <ul style="list-style-type: none"> Margaret Campbell, Havre, MT
SR 18	Steve Fitzpatrick (R) SD 10	(S) Adverse Committee Report Adopted	Confirm Governor's appointee to Board of Personnel Appeals: <ul style="list-style-type: none"> Anne McIntyre, East Helena, MT

