

CUT AND PASTE POST JUNE, 2017

Four Pieces of New Montana Law That May Affect HR

Mental Health Parity Act:

On Friday, June 2, Governor Steve Bullock signed the Montana Mental Health Parity Act ([HB 142](#)). The Act will require insurance companies to cover mental health care the same way physical health care is covered. The Act will also provide state-level accountability and a customer assistance resource for mental health and substance use care coverage.

According to Governor Bullock, this legislation will help safeguard Montanan's mental health benefits if Congress continues with its plan to remove the consumer protections for mental health under the Affordable Care Act.

Reporting Deadline Changes:

HB 63 indicated that it changed filing dates for withholding annual returns, W2s, and 1099's. Here's what I found:

- **Withholdings annual returns:** These deadlines remained the same, except for employers who had a total state income tax withholding liability of less than \$1,200 during the preceding lookback period. In this case, the remittance due date was moved back from February 28 to January 31.
- **W-2 forms.** The deadline has also moved back from February 28 to January 31st.



I did not specifically find a change in the deadline for reporting non-employee compensation on the 1099-MISC form. However, since the changes were intended to bring the State's deadlines in compliance with similar federal requirements, I am assuming the deadline is January 31st. (It's likely that, given the intent of the bill, you may not experience any change the way you already operate.)

Expunging Misdemeanor Records:

Under HB 168, a person who has a misdemeanor record and who has completed the terms of their sentence may petition the district court for an order requiring the expungement of all records of the arrest, investigation, and detention, if any, and any court proceedings that may have been held in the case.

The bill goes on to describe how this process would work. It's important to understand that expungement is not 'presumed' if the person has one or more convictions for assault, partner or family member assault, stalking, violation of a protective order, or driving under the influence of alcohol or drugs. In these cases, the district court must consider, "in addition to any other factors, the age of the petitioner at the time the offense was committed, the length of time between the offense and the request, the rehabilitation of the petitioner, and the likelihood that the person will reoffend."

HB168 will be codified in MCA Title 46, Chapter 18. Based on the legislative record, the intent of the bill is to allow people with misdemeanors to end up

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with a clean record so they may serve in the military, hold a job, etc. The State's Department of Justice may adopt rules relating to this expungement. Montana's HR professionals will need to monitor this process and take the steps necessary to insure their employment practices do not violate this law.

Safe Harbor for employers who hire individuals with criminal records:

SB325 will provide some protection to private employers who employ some individuals with criminal records. It says:

"A private employer who acts reasonably and complies in good faith with this section may not be held liable regarding claims of negligent hiring or negligent employment for acts committed by an employee with a criminal record if the acts are committed outside the scope of the employment and:

- (1) the employer reviewed an arrest record prior to hiring that did not show a disposition of the case or that indicated an acquittal or a dismissal;
- (2) the conviction was for:
 - (a) a misdemeanor offense; or
 - (b) an offense that was not related to the employment; or
- (3) the employee with a criminal record is under the supervision of the probation and parole division of the department of corrections and the employment has been approved by the supervising officer."

The language is to be codified in MCA Title 39, Section 2 which includes other "Employment Relationship" provisions. Please note this bill does not apply to 'public' employers, or to acts committed inside the course and scope of employment. It also fails to define what you have to do to 'comply in good faith'. Finally, it seems to require that, in order to take advantage of the protection, employers must look at arrest records prior to hiring. This seems to conflict with HB168 (above). From the layperson's point of view, the language of the Bill lends itself to some really interesting Court decisions! As always, HR professionals should monitor and respond appropriately.

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