

Montana FDI Legal References

Human Resources and Employment Law

Compensation

1. Minimum Wage: \$8.50/hour (as of 1/1/2019)
2. Final wages, upon termination, must be paid immediately unless there is a policy allowing for later payment (MCA 39-3-205).
3. Cannot require direct deposit or electronic funds transfer for payment of wages. (MCA 39-3-204)

Employment Laws

Federal Employment Laws

1. Age Discrimination in Employment Act (ADEA) (29 USC Sec. 621, et seq.)
2. Americans with Disabilities Act (42 USC Sec. 12181, et seq.)
3. Civil Rights Acts – (42 USC Sec. 2000, et seq.)
4. Davis-Bacon Act (40 USC Sec. 276a, et seq.)
5. Employee Retirement Income Security Act (ERISA) (29 USC Sec. 1001, et seq.)
6. Equal Pay Act (29 USC Sec. 206[d])
7. Fair Labor Standards Act (29 USC Sec. 201, et seq.)
8. Family Medical Leave Act (29 USC Sec. 2601, et seq.)
9. Federal Bankruptcy Code (Wages due within 90 days of filing are priority claim) (11 USC Sec. 1001, et seq.)
10. Immigration and Reform Control Act (8 USC Sec. 1324a, 1324b)
11. Job Training Partnership Act – Job Training Programs (29 USC Sec. 1501, et seq.)
12. Labor Management Relations Act (29 USC Sec. 141, et seq.)
13. National Labor Relations Act (29 USC Sec. 151, et seq.)
14. Occupational Safety and Health Act (OSHA) (29 USC Sec. 651, et seq.)
15. Portal to Portal Act (29 USC Sec. 251, et seq.) – Adds to Fair Labor Standards Act
16. Service Contract Act (41 USC Sec. 351, et seq.) – Extends Davis Bacon Act to service contracts
17. Social Security Act (42 USC Sec. 301, et seq.)
18. Unemployment Tax Act (26 USC Sec. 3301-3311)
19. Veterans' Reemployment Rights (38 USC Sec. 2021, [4321] et seq.)
20. Wagner-Peyser Act (Federal Employment Service) (29 USC Sec. 49, et seq.)
21. Worker Adjustment and Retraining Act Plant Closure Law (29 USC Sec. 2101, et seq.) (WARN Act)
22. State Directory of New Hires (42 USC Sec. 653a)
23. Pregnancy Discrimination Act
24. Rehabilitation Act

25. Affordable Care Act, including break time for nursing mothers
26. Uniformed Services Employment and Reemployment Rights Act

State Employment Laws (Montana Code Annotated)

1. Collective Bargaining
 1. Arbitration for Firefighters (Title 39, Chapter 34)
 2. Collective bargaining for nurses (Title 39, Chapter 32)
 3. General limitations on collective bargaining rights (Title 39, Chapter 33)
 4. Collective bargaining for public employers (Title 39, Chapter 31)
2. Construction
 1. Construction Contractor Registration (Title 39, Chapter 9)
3. Hiring/Firing
 1. Blacklisting and Protection of Discharged Employees (39-2-801 to 39-2-804).
 2. Child Labor Standards Act (Title 41, Chapter 2)
 3. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited (39-2-303).
 4. Discrimination prohibited for lawful product use during non-working hours – exceptions (39-2-313).
 5. Employment of aliens not lawfully authorized to accept employment prohibited (39-2-305).
 6. Employment of persons under eighteen as bartenders prohibited (39-2-306).
 7. Lie detector tests prohibited (39-2-304).
1. Regulation of blood and urine testing (Title 39, Chapter 2, part 2).
 1. Unlawful for employer to require employee to pay cost of medical examination as condition of employment (39-2-301).
 2. Wrongful Discharge from Employment (39-2-901 to 39-2-915)
 3. Discharge or layoff because of garnishment or attachment prohibited (39-2-302)
 4. Rehire preference for workers' compensation
 5. Background checks-cannot request information older than seven years. (31-3-112)
 6. Limited access to social media of employee or job applicant. (39-2-307)
2. Human Rights
 1. Human Rights (Title 49, Chapters 1 to 4). Prohibits employment discrimination based on race, color, national origin, religion, sex, age, physical and mental disability, marital status, and (for public employers only) political beliefs or ideas; includes hiring, firing, and all terms and conditions of employment; requires reasonable maternity leave; prohibits sexual harassment.
 2. Equal pay for women for equivalent service (39-3-104).
 3. Montana Maternity Leave Act (49-2-310; 49-2-311)
3. Insurance/Benefits
 1. Occupational Disease Act of Montana (Title 39, Chapter 72)
 2. Silicosis Benefits (Title 39, Chapter 73)
 3. Unemployment Insurance (Title 39, Chapter 51)

4. Workers' Compensation (Title 39, Chapter 71)
4. Safety
 1. Boilers and Steam Engines (Title 50, Chapter 74)
 2. Construction Blasting (Title 37, Chapter 72)
 3. Hoisting Engines (Title 50, Chapter 76)
 4. Occupational Safety (Title 50, Chapter 71)
 5. Safety Culture Act (39-71-1501 to 39-71-1508)
 6. Safety in Coal Mines (Title 50, Chapter 73)
 7. Safety in Mines Other Than Coal Mines (Title 50, Chapter 72)
5. Wages and Wage Protection
 1. Minimum Wage and Overtime Compensation. The Department enforces the payment of minimum wage and overtime compensation. (39-3-401 to 39-3-409.)
 2. Montana's Little Davis Bacon Act (standard prevailing wage) (18-2-401 to 18-2-432.)
 3. Payment of Wages. The Department may investigate and enforce the payment of wages through administrative actions, hearings and Court enforcement. (39-3-201 to 39-3-217.)
 4. Reciprocal Agreement for Collection of Wages Act. The Department may enforce Montana's wage payment laws through reciprocal enforcement in agreements with other states. (39-3-301 to 39-3-306.)
 5. Must notify employee on written demand of rate of wages and date of paydays (39-3-203)
 6. May only deduct board, room, or other incidentals supplied by the employer whenever the deductions are part of the conditions of employment or as otherwise provided by law. (39-2-204)
6. Other State Employment Laws
 1. Apprenticeship (Title 39, Chapter 6)
 2. Employee and Community Hazardous Chemical Information Act (Title 50, Chapter 78).
 3. Professional Employer Organization Licensing (Title 39, Chapter 8). Employee leasing firms and similar suppliers of labor must be licensed in order to do business.
 4. Seats for employees (39-2-201)
 5. Women in Employment (Title 39, Chapter 7) State training and child care programs.
 6. Workers' Compensation retaliation prohibited
 7. Workforce Drug and Alcohol Testing Act (39-2-205 et seq.)

Immigration Law for Employees and Investors

1. Employment-based Immigration

Immigrant Visas (Green Cards)

1. EB-5 Visa: Entrepreneurs (and their spouses and unmarried children under 21) are eligible to apply for a green card (permanent residence) if they:
 1. Make the necessary investment in a commercial enterprise in the United States; and
 2. Plan to create or preserve 10 permanent full-time jobs for qualified U.S. workers.
2. EB-1 Visa: Individuals with an extraordinary ability, outstanding professors or researchers, and multinational executives or managers may be eligible. Each occupational category has certain requirements that must be met.
3. EB-2 Visa: Members of the professions holding an advanced degree or a foreign nationals with exceptional ability may be eligible with employer sponsorship.
4. EB-3 Visa: Skilled workers, professionals, or other workers. Each category has eligibility requirements, but all EB-3 applicants must show that there is not an American worker qualified to perform the position.
5. **Other Options:** Family-based immigration (Immediate Relative of U.S. Citizen/Family Member of U.S. Citizen/Family Member of Green Card Holder); Diversity Visas; B-1, B-2, and Student Visas

Taxation and Liability

1. **The U.S. Tax System:** Businesses are subject to federal, state, and sometimes municipality tax. These taxes include income tax. Corporations are subject to federal income tax. In many states, state income taxes also apply. The Internal Revenue Service (IRS) collects Federal payroll taxes (including Social Security taxes, Federal Unemployment taxes and Medicare taxes) and Federal Income taxes.

Business Taxation

1. Federal and State Payroll Taxes
 1. Federal
 1. Employers generally must withhold and pay to the IRS income tax from wages paid to employees. The amount withheld is determined based on information provided by the employee on IRS Form W-4. Withheld income tax is credited against the employee's income tax liability when the employee files a tax return.
 2. Employee wages are generally subject to Social Security and Medicare taxes in addition to federal income tax. Employers are generally responsible for paying half of such taxes directly, and are required to withhold the other half from wages paid to the employee. The current tax rate for social security is 6.2% for the employer and 6.2% for the employee. The current rate for Medicare is 1.45% for the employer and 1.45% for the employee. Social security tax only applies to the first \$128,000 of wages.
 2. Montana

1. [Wage Withholding](#): Wage withholding is the money held back by an employer to pay an employee's income tax. This is the employee's money, held in trust by the employer until paid to the state.
 1. Employers can find more information in the [Montana Withholding Tax Table and Guide](#).

Federal Income Taxes

1. Domestic Corporations, US resident individuals and citizens are generally subject to federal income taxation on their worldwide income.
2. Foreign individuals and corporations that are engaged in a trade or business within the United States are generally subject to federal income tax on income that is effectively connected with a US trade or business.
3. For individuals, federal income tax is applied to taxable income at graduated rates. The top marginal income tax rate for individuals is currently 37%
4. For corporations, income tax generally applies to corporate income at a rate of 21%.

State Income Taxes

1. State Corporate Income Taxes: Any C corporation doing business in Montana has to file a [Montana Corporate Income Tax Return \(Form CIT\)](#) and pay a corporate income tax. You must file a [Form CIT](#) every year you do business in Montana.
 1. Standard Rate: The standard corporate tax rate is 6.75%.
 2. Water's Edge Election: The water's edge election tax rate is 7%.
 1. A corporation can apply for approval to take the water's edge election by submitting the [Water's Edge Election \(Form WE-ELECT\)](#).(15-31-322, MCA)
2. Other State Taxes and Credits
 1. [Miscellaneous Taxes and Fees](#): Montana has several taxes covering specific businesses, services, or locations. These taxes include telecommunications, tobacco, tourism, medical marijuana, and healthcare facilities among others.
 2. [Natural Resources Taxes](#): Montana collects taxes on natural resources harvested in the state including coal, metal, oil, and natural gas.
 3. Property
3. Montana Tax Credits: A tax credit is money a taxpayer can use to offset their tax liabilities.
 1. [Montana has several tax credits for both individuals and businesses.](#)
4. [Montana Taxpayer Resources](#): Resources to help taxpayers file and pay taxes, get the help they need, and work with the department to stay in compliance.
5. **Entity Choice**: The following are the most commonly used business entities in Montana:
6. Partnership
7. Limited Liability Company
8. Corporation

Structuring Your Business for Tax Purposes

1. Disregarded Entity
 1. US single Member LLCs and certain foreign single-owner non-corporate entities are taxed as disregarded entities by default but may elect to be taxed as a corporation.
 2. Generally disregarded for federal and state income tax purposes, so single owner is taxable on entity income directly.
 1. Owner must file a US federal and Montana state income tax returns and pay tax on business income.
 3. Can elect to be taxed as a corporation.
2. Partnership
 1. US partnerships, multi-member LLCs and foreign multi-member non-corporate entities are generally taxed as partnerships for US federal and state purposes but may elect to be taxed as corporations.
 2. Generally taxable as a “flow-through” entity so taxable income and loss is reported to partners and IRS, and partners pay tax
 1. Partners must file a US federal and Montana state income tax returns and pay tax on their allocable share of the business’s income
 2. Taxable income is not necessarily tied to distributed cash so partners may have “phantom income” in excess of cash distributions received
 3. Foreign partners/members may be subject to US federal withholding tax on their allocable share of income. Withheld amounts may generally offset net income tax due on the foreign partner’s US federal income tax return.
3. C Corporation
 1. US corporations and foreign corporate-like entities are treated as distinct taxable entities. Income is taxable at the corporate level. The corporate tax rate is currently 21%
 2. Shareholders are generally only subject to tax on dividends distributed. Distributed dividends may be subject to US withholding tax at a rate of 30% (which may be reduced if the recipient is eligible for benefits under a US tax treaty).
4. S Corporation
 1. Certain corporations (including non-corporate entities that elect corporate taxation) can elect to be taxed under a flow-through regime
 2. However, corporations with non-US residents or entities shareholders are generally not eligible to make this election

US Federal Withholding taxes

1. Dividends, Interest, royalties and certain other types of income paid by a US entity or otherwise treated as US source income may be subject to US withholding tax at a rate of 30%. The withholding rate may be reduced by tax treaty.
2. Flow through income from a US entity taxed as a partnership may be subject to withholding tax.

3. Withholding of FIRPTA tax may apply on disposition of US real property or US real property holding company interests.

Other Tax Considerations

1. [Disposition of U.S. Real Property](#): The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding by the transferee. The rate of withholding generally is 15% (10% for dispositions before February 17, 2016).
2. Transfer Pricing – the sale of goods and services between affiliated entities are generally subject to transfer pricing rules that require arms’ length pricing on such sales. The transfer pricing rules are complex,
3. [Foreign Tax Credit](#): An entity that pays or accrued foreign taxes on foreign source income and is subject to U.S. tax on the same income, may be able to take either a credit or an itemized deduction for those taxes. The credit to amount of US tax imposed on the taxpayer’s foreign source income. Other limitations may apply.
4. Sales Tax
 1. Montana does not have a general sales, use, or transaction tax.
 2. Montana businesses selling products to buyers in a state that requires retailers to collect sales tax will need to collect and pay those sales taxes to the taxing jurisdiction.
5. **Form 5472**: [Form 5472](#) is a separate filing requirement from the U.S. entity’s obligation to file income tax returns under the U.S. Internal Revenue Code (Code). This form must be attached to the reporting corporation’s federal income tax return. It requires certain information disclosures about the corporation’s foreign shareholders and any transactions between it and such shareholders during the tax year.

Other Legal Considerations

1. Intellectual Property
 1. Patents
 1. [U.S. Patent Considerations for Foreign Inventors](#)
 1. The patent laws of the United States make no discrimination with respect to the citizenship of the inventor. Any inventor, regardless of his or her citizenship, may apply for a patent on the same basis as a U.S. citizen.
 2. No U.S. patent can be obtained if the invention was patented abroad before applying in the United States by the inventor or his or her legal representatives if the foreign application was filed more than 12 months before filing in the United States. Six months are allowed in the case of designs. 35 U.S.C. 172.
 2. [Patents in Foreign Countries](#)

1. Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in other countries must apply for a patent in each of the other countries or in regional patent offices. Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country, in accordance with the requirements of that country. Similarly, local laws apply to trademarks, copyrights, and other forms of intellectual property in each jurisdiction.
 2. Paris Convention for the Protection of Industrial Property: Provides that each country guarantees to the citizens of the other countries the same rights in patent and trademark matters that it gives to its own citizens.
 3. Under U.S. law it is necessary, in the case of inventions made in the United States, to obtain a license from the Director of the USPTO before applying for a patent in a foreign country. Such a license is required if the foreign application is to be filed before an application is filed in the United States or before the expiration of six months from the filing of an application in the United States unless a filing receipt with a license grant issued earlier.
3. [USPTO Patent Help](#)
 2. [Trade Secrets](#)
 1. Trade secret protection is a complement to patent protection.
 2. Trade secrets consist of information and can include a formula, pattern, compilation, program, device, method, technique or process. To meet the most common definition of a trade secret, it must be used in business, and give an opportunity to obtain an economic advantage over competitors who do not know or use it.
 3. [Trademarks](#)
 1. Federal trademark registration has several benefits:
 1. Constructive notice nationwide of the trademark owner's claim.
 2. Evidence of ownership of the trademark.
 3. Jurisdiction of federal courts may be invoked.
 4. Registration can be used as a basis for obtaining registration in foreign countries.
 5. Registration may be filed with U.S. Customs Service to prevent importation of infringing foreign goods.
 2. USPTO trademark registration forms are available on the [Trademark Electronic Application System \(TEAS\)](#).
 3. There is no requirement of U.S. citizenship to apply to register a trademark in the United States. However, your citizenship must be provided in the application. If you have dual citizenship, then you must indicate which citizenship will be printed on the certificate of registration.



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4. Only the owner of the trademark may file an application for registration. The owner controls the use of the mark, and controls the nature and quality of the goods to which it is affixed, or the services for which it is used. The owner may be an individual, corporation, partnership, LLC, or other type of legal entity.
5. Federal trademark registration does extend to countries other than the United States. However, certain countries recognize a United States registration as a basis for filing an application to register a mark in those countries under international treaties. See TMEP Chapter 1000 and TMEP Chapter 1900 for further information.