



# Montana

# Human Resources LEGAL FACT SHEET

*Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor, and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in January 2019, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.*

## ARE THERE MONTANA STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

### HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate <sup>1</sup>	YES	On written demand, employers must notify each employee of (1) the rate of wages to be paid; (2) whether by hour, day, week, month or year, and (3) the date of paydays. The notice may be in writing to each employee or posted in a conspicuous place.
Reporting <sup>2</sup>	YES	<a href="#">New hires</a> and rehires must be reported to the Montana New Hire Reporting Program within 20 days of the date of hire.

### WAGES

TOPIC	ANSWER	DETAILS
Payday <sup>3</sup>	YES/NO	Montana law does not require a particular schedule for pay periods, but, if there is no set schedule, it is assumed to be semimonthly. <a href="#">More information.</a>
Final Pay <sup>4</sup>	YES	<p>If an employee is terminated, all unpaid wages are due the earlier of:</p> <ul style="list-style-type: none"> <li>• The next regular payday for the period during which the employee's termination occurred; or</li> <li>• Within 15 days of termination.</li> </ul> <p>If an employee is laid off or discharged for cause, all unpaid wages are due immediately unless the employer has a written policy that extends that time to the earlier of:</p> <ul style="list-style-type: none"> <li>• The next regular payday; or</li> <li>• Within 15 days of termination.</li> </ul> <p>If an employee is discharged due to allegations of theft connected to the employee's work, the employer may withhold the value of the theft if either:</p> <ul style="list-style-type: none"> <li>• The employee agrees in writing to the withholding; or</li> <li>• The employer files a police report of the theft within 7 business days of the discharge.</li> </ul> <p>If no charges are filed for the alleged theft within 30 days of the employer's report, wages are due when the 30-day period expires. If charges are filed but the employee is found not guilty or the employer withholds an amount in excess of the value of the theft, a court may order the employer to pay the withheld amount plus interest.</p>
Overtime <sup>5</sup>	NO	Farm workers are exempt from Montana's overtime requirements. However, they must be paid the minimum hourly wage or a monthly salary of at least \$635.00 per month. Federal rules may apply. Refer to the federal fact sheet.



# WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Minimum Wage <sup>6</sup>	YES	<p>The current minimum wage is \$8.50. It is subject to annual cost-of-living adjustments each year based on CPI.</p> <p>In the case of a farm worker employed for a part of a calendar year that includes periods requiring working hours in excess of 8 hours a day and other seasonal periods requiring working hours substantially less than 8 hours a day, the employer may pay the worker at a fixed rate of compensation during the term of employment.</p> <p>The employer may:</p> <ul style="list-style-type: none"> <li>• keep a record of the total number of hours worked by the worker during the part of the year in which the worker was employed by the employer, but the total wages paid for that period of employment may not be less than the applicable minimum wage rate multiplied by the total number of hours worked; or</li> <li>• in lieu of the minimum wage set forth in this part, pay the farm worker a wage on a monthly basis. This monthly compensation must constitute a minimum wage and may not be less than \$635 a month beginning January 1, 1990.</li> </ul> <p>Employers may pay below the minimum wage to:</p> <ul style="list-style-type: none"> <li>• Any employee, if the employer has annual gross sales of \$110,000 or less, a minimum wage of \$4 or per hour, although the employer may be subject to federal minimum wage provisions under the Fair Labor Standards Act;</li> <li>• Farm workers who work seasonal periods requiring working over eight hours per day and at other times work substantially less than eight hours per day, a fixed rate of compensation;</li> <li>• Any employee who meets one of the <a href="#">exemptions from the minimum wage</a> provided in Mont. Code Ann. 39-3-406(1).</li> </ul>
Hours Worked <sup>7</sup>	YES	<p>Montana law defines “<a href="#">hours worked</a>” as all of the time an employee must be on duty, on the employer’s premises, or at a prescribed workplace, during which the employee is suffered or permitted to work.</p> <p>Hours worked includes time:</p> <ul style="list-style-type: none"> <li>• Spent changing clothes if doing so is an integral part of the employee’s duties (and not merely a convenience to the employee);</li> <li>• Spent attending training programs, lectures or meetings, unless (1) attendance is outside the employee’s regular working hours; (2) is voluntary; (3) is not directly related to the employee’s job; and (4) does not require the employee perform any productive work while attending.</li> <li>• Traveling from home to work on special assignments in another city;</li> <li>• Traveling that is all in the day’s work;</li> <li>• Traveling that keeps the employee away from home;</li> <li>• Spent performing work while traveling;</li> <li>• In rest periods 20 minutes or less in length; and</li> <li>• Spent performing activities that are an integral part of a principal activity.</li> </ul>
Reporting Time Pay <sup>8</sup>	NO	<p>Montana law does not require <a href="#">reporting time pay</a>, i.e. an employee is only required to be paid for actual hours worked. However, employers may agree, through an employment agreement, to pay an employee at his or her applicable rate for a specified number of hours in which an employee reports to work but receives no work.</p>
Pay Stub <sup>9</sup>	YES	<p>Employers must provide an <a href="#">itemized statement of deductions</a> when paying employees. If no deductions have been made, the employer must provide the employee a statement that the payment does not include any deductions.</p>
Taxes and Withholding <sup>10</sup>	YES	<p>Employers are not required to withhold state income tax on any amount paid for agricultural labor. However, wages are likely subject to federal income tax withholding. Refer to federal fact sheet. Employers must give employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R.</p> <p>Employers must pay <a href="#">Montana Unemployment Insurance</a> taxes if:</p> <ul style="list-style-type: none"> <li>• You employed agricultural workers and paid \$20,000 or more in cash for agricultural labor in any quarter during the current or preceding calendar year; OR</li> <li>• You employed 10 or more workers in agricultural labor in 20 different weeks during the current or preceding calendar year.</li> </ul> <p>Certain family employment is excluded from coverage requirements where the farm is a sole proprietorship (dependent – a qualifying child or relative) – or spouse of the sole proprietor). Unemployment taxes are paid by the employer; they are not taken out of employee pay. You can credit the amount you pay to Montana in calculating how much you owe for federal unemployment taxes. <a href="#">More details.</a></p>



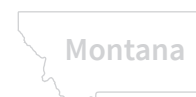
## WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Deductions and Allowances <sup>11</sup>	YES	<p>An employer may make reasonable deductions from an employee's wages:</p> <ul style="list-style-type: none"> <li>• For board, room and other incidentals supplied by the employer.</li> <li>• Whenever the deductions are a part of the conditions of the employment.</li> <li>• As provided for by state or federal law.</li> </ul> <p>At the time of payment, employers must give employees itemized pay statements that show deductions for the pay period.</p>
Bonuses <sup>12</sup>	YES	<p>Montana's definition for "wages" includes "bonus." An example given on computing the hourly rate of pay (related to overtime) discusses production bonuses as factoring into the hourly rate. Generally, discretionary bonuses are not considered wages, while nondiscretionary bonuses (like production bonuses) are likely considered wages and protected under wage laws.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p> <p>Employers should follow any written policy they have about paying bonuses as a best practice.</p>

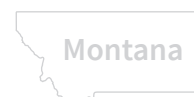
## RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll <sup>13</sup>	YES	<p>Employers subject to the minimum wage law must keep payroll or other records that contain the following information:</p> <ul style="list-style-type: none"> <li>• Full name and the employee's identifying symbol or number used instead of the name for recordkeeping purposes.</li> <li>• Home address, including the zip code.</li> <li>• Birth date.</li> <li>• Sex and occupation.</li> <li>• Time of day and the day in which the employee's workweek begins.</li> <li>• Hourly rate and length of pay period.</li> <li>• Hours worked each workday and total hours worked per workweek.</li> <li>• Total daily or weekly straight-time earnings or wages.</li> <li>• Total weekly overtime compensation.</li> <li>• Additions or deductions from wages paid each pay period.</li> <li>• Total wages paid each pay period.</li> <li>• Date of payment and pay period covered.</li> </ul> <p>Payroll records must be maintained for at least three years.</p>
Personnel Files – Employee Access	NO	<p>Montana law does not require private employers to give employees access to their personnel files.</p>
Unemployment Insurance <sup>14</sup>	YES	<p>Employers subject to the Unemployment Insurance tax must submit <u>quarterly wage reports</u>.</p> <p>For Unemployment Insurance purposes, employers must keep a record of:</p> <ul style="list-style-type: none"> <li>• Beginning and ending date of each pay period;</li> <li>• total wages paid during each pay period;</li> <li>• employee expense reimbursements;</li> <li>• method of payment;</li> <li>• number of employees who worked during or received pay for the payroll period that includes the 12th of each month;</li> <li>• each employee's name, full social security number and wages for each pay period;</li> <li>• date each employee was hired, rehired or returned to work after a temporary lay-off;</li> <li>• date an employee was terminated; and</li> <li>• articles issued by the Secretary of State.</li> </ul> <p>Employers must keep the records for five calendar years. The records must be made available to the Department of Labor and Industry for periodic review upon request.</p>
Workers' Compensation	YES/NO	<p>Montana Workers' Compensation law does not specifically require employers maintain injury and illness records unless they are self-insured. However, there are recordkeeping requirements under OSHA. Reporting requirements are detailed under the "Health &amp; Safety" section of this fact sheet.</p>
OSHA	YES	<p>Employers must comply with the federal OSHA recordkeeping standard. See the federal fact sheet for details.</p>
Federal	YES	<p>There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.</p>



## WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms <sup>15</sup>	YES	Montana has incorporated the federal Pasteurized Milk Ordinance (PMO). The PMO specifies that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated and maintained in a sanitary manner.
Working Hours	NO	Montana law does not specify max hour or day requirements for adults working in agriculture.
Rest and Meal Breaks <sup>16</sup>	NO	Montana law does not require rest or meal breaks for adults. If rest periods are provided, short rest periods must be counted as hours worked (5 minutes – 20 minutes). Bona fide meal periods are not worktime and may be unpaid if: <ul style="list-style-type: none"> <li>employees are completely relieved from all duties, both active and inactive; and</li> <li>the break is sufficiently long (at least 30 minutes).</li> </ul>
Labor Relations <sup>17</sup>	YES/NO	No provision in state law recognizing farm worker rights to organize. However, Montana is not an “at will” state:  Under the Montana Wrongful Discharge from Employment Act, discharge of an employee will be considered wrongful if: <ul style="list-style-type: none"> <li>The employee had completed his or her probationary period (6 months from the date of hire unless the employer establishes a different probationary period) and the discharge was not for good cause; or</li> <li>The employer violated the express provisions of its own written personnel policy.</li> </ul> In other words, employees who have completed their probationary period are not employed “at will;” i.e., such employees can only be terminated for good cause. Employers can practice “at will employment” during the employee’s probationary period.
Whistleblower Protection <sup>18</sup>	YES	Under the Montana Wrongful Discharge from Employment Act, employers are prohibited from discharging an employee due to the employee’s refusal to violate public policy or reporting a violation of a public policy (among other things). Public policy means “a policy in effect at the time of discharge concerning the public health, safety, or welfare established by the constitutional provision, statute, or administrative rule.”  There are also topic-specific laws (like wage discrimination, wage laws, non-discrimination laws, etc.) that may protect employees that report unlawful practices or assist in the investigation of potential unlawful practices. And specific employee disclosures (for example, OSHA-related violations) are protected from retaliation.
Paid Sick and Vacation Leave	NO	Not required under Montana law. Employers who choose to provide fringe benefits should follow their written policy/contract.
Breaks for Nursing Mothers <sup>19</sup>	NO	Montana law does not address workplace accommodations for employees that are nursing, but there may be requirements under federal law. Employers should refer to the federal fact sheet.  Montana law does protect a nursing mother’s right to breastfeed in any location, public or private, where the mother and child are otherwise authorized to be present, irrespective of whether or not the mother’s breast is covered during or incidental to breastfeeding.
Pregnancy Accommodations and Leave <sup>20</sup>	YES	Montana law recognizes a disability related to pregnancy, childbirth or a related medical condition as a temporary disability and requires employers to treat pregnancy-related disabilities no less favorably than any other temporary disability for purposes such as, but not limited to, leave duration, accrual of seniority and other benefits, reinstatement or payment under any health, medical, or temporary disability insurance plan, or under any sick leave, disability leave or disability benefit plan.  Under Montana’s Maternity Leave law, employees are entitled to a “reasonable leave of absence” for: <ul style="list-style-type: none"> <li>pregnancy; and</li> <li>temporary disabilities associated with pregnancy.</li> </ul> Reasonableness is determined on a case-by-case basis. To calculate leave time, an employer must apply standards at least as inclusive as those applied to requests for other medical leaves of absence.  The leave can be either paid or unpaid. Maternity leave can run concurrently with federal leave laws, like the Family and Medical Leave Act (FMLA). The employee is not required to provide notice before taking maternity leave but must give notice of her intent to return to work following maternity leave. The employee must be returned to her former position or a comparable position with equivalent pay, benefits, and other service credits, unless the situation has so changed that to do so would be impossible or unreasonable.



## WORKING CONDITIONS

(Continued)

TOPIC	ANSWER	DETAILS
Family and Medical Leave	NO	Montana does not have a state-level family and medical leave law. Federal law requiring unpaid leave may apply depending on the size of the employer. Refer to federal fact sheet.
Military and other Service Leave <sup>21</sup>	YES	Any employee who is a member of the state's organized militia, including the National Guard and Montana's Home Guard, or a member of another state's national guard can take when ordered to state military duty. Such employees are entitled to leave for the duration of the state military duty. Federal rules may also apply; refer to the federal fact sheet.
Crime Victim and Witness Leave	NO	Montana law does not require employers to provide crime victim or witness leave. A crime victim may be entitled to leave under federal law, like the FMLA, depending on the circumstances; refer to the federal fact sheet.
Jury Duty Leave	NO	Montana law does not require employers to grant jury duty.
Voting Leave <sup>22</sup>	NO	No specific voting leave law covering private employers in Montana. However, any employee who has been elected or appointed to public office in the city, county, or state may take leave to perform public service – up to 180 days per year.
School Activity Leave	NO	Montana law does not address leave for private sector employees to attend a child's school activity.

## HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination <sup>23</sup>	YES	Montana law prohibits employment discrimination based on race, color, sex, including pregnancy, maternity, and sexual harassment, age, religion, creed, national origin, physical or mental disability, marital status, and political beliefs or ideas. Applies to employers with one or more employees. Employers cannot discriminate against a person in recruitment/job application procedures, hiring (including during interviews), promotion, upgrading, transfer, layoff, right to return from lay off, discipline, discharge, and other terms and conditions of employment. Employers are required to reasonably accommodate an employee based on religion unless the accommodation would cause more than a de minimis hardship or would violate contractual obligations that cannot be reconciled. The employee must make the request for accommodation in a timely manner. It is illegal to retaliate against employees for filing or otherwise aiding with a complaint, or opposing any acts or practices made unlawful by the Montana Human Rights Act.
Harassment/ Sexual Harassment <sup>24</sup>	YES	Harassment based on the protected classes above is unlawful in Montana. Harassment is unwelcome conduct. It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe or pervasive that a reasonable person would see it as intimidating, hostile, or abusive. Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when: <ul style="list-style-type: none"> <li>Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it.</li> <li>Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just "treated her right."</li> <li>The conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or "just to go out for drinks after work." The worker says she isn't interested, but the co-worker won't take "no" for an answer.</li> </ul> It is illegal to retaliate against employees for filing or otherwise aiding with the filing or investigation of a harassment complaint.
Forced Labor <sup>25</sup>	YES	Human trafficking is illegal. Any person or business entity that subjects or attempts to subject another person to forced services or recruits, entices, harbors, or transports another person for forced labor, or attempts to do so, violates Montana law. Employers also cannot benefit, financially or otherwise, from forced labor. This is a felony under Montana law.



## CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor <sup>26</sup>	YES	<p><u>Montana child labor laws</u> do not apply to a minor who is employed in an agricultural occupation not otherwise prohibited under the law who:</p> <ul style="list-style-type: none"> <li>• Has received written consent from his/her parent or guardian;</li> <li>• Works on a farm owned by his/her parents or guardians; or</li> <li>• Works on a farm where his/her parent or guardian also works on the farm or ranch.</li> </ul> <p>For those minors who do not fall within this exemption, employers should be aware that:</p> <p>Limitations on Employment:</p> <ul style="list-style-type: none"> <li>• Minors under the age of 14 may not be employed.</li> <li>• Minors 14 or 15 are prohibited from performing certain types of agricultural jobs (with some exceptions for student learners in vocational agricultural programs or certificates of completion of training under a 4-H or vocational agriculture program).</li> <li>• Minors 16 or 17 may not be employed in or in connection with hazardous occupations unless working as an apprentice or student-learner under Mont. Code Ann. § 41-2-110.</li> </ul> <p>Working Hours for Minors:</p> <ul style="list-style-type: none"> <li>• A minor who is 14 or 15 years of age may not be employed: <ul style="list-style-type: none"> <li>- during school hours, except as provided for in Work Experience and Career Exploration Programs approved by the department or the office of public instruction;</li> <li>- before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during the periods outside the school year (June 1 through Labor Day, depending on local standards); or</li> <li>- employed more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day, or 40 hours in a week in a non-school week.</li> </ul> </li> </ul>

## HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation <sup>27</sup>	YES	<p>Employers with at least one person in service are required to <u>provide workers' compensation coverage</u> – either self-insurance, private insurance, or through the <u>Montana State Fund</u>. Farmers generally do not have to cover dependents (qualifying children or relatives) and spouses.</p> <p>Within 6 days of receiving notice of an accident, injury or occupational disease an employer shall submit to its workers' compensation insurer or the Montana Department of Labor and Industry a First Report of Injury. The injured employee can choose a doctor for initial treatment; however, at any time after the insurer accepts liability it can designate a treating physician.</p>
OSHA	YES	Montana falls under federal OSHA jurisdiction. See the federal fact sheet for more information.
Housing	YES/NO	Montana law does not explicitly address standards for farm-provided permanent agricultural housing, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The <u>FARM HR Manual</u> has guidance around best practices for agricultural worker housing. Federal laws may also apply; refer to the federal fact sheet.

### References

1. Mont. Code Ann. § 39-3-203(1).
2. Mont. Code Ann. § 40-5-922.
3. Mont. Code Ann. § 39-3-204(3).
4. Mont. Code Ann. § 39-3-205(1); Mont. Code Ann. § 39-3-205(2); Mont. Code Ann. § 39-3-205(3)
5. Mont. Code Ann. § 39-3-405(2).
6. Mont. Code Ann. § 39-3-409; Mont. Code Ann. 39-3-404; Mont. Code Ann. 39-3-406(1).
7. Mont. Admin. R. 24.16.1002(3); Mont. Admin. R. 24.16.1008(1)(b); Mont. Admin. R. 24.16.1009(1); Mont. Admin. R. 24.16.1010; Mont. Admin. R. 24.16.1006(1); and Mont. Admin. R. 24.16.1008(1)(a)(i).
8. Mont. Admin. R. 24.16.2522.
9. Mont. Code Ann. § 39-3-101.
10. Mont. Code Ann. § 15-30-2501; Mont. Code Ann. § 39-51-202; Mont. Code Ann. § 39-51-204; Mont. Code Ann. § 39-51-205.
11. Mont. Code Ann. § 39-3-204(1); Mont. Code Ann. § 39-3-101.
12. Mont. Code Ann. § 39-3-201(6).
13. Mont. Admin. R. 24.16.6102(1) & (2).
14. Mont. Admin. R. 24.11.2704; Mont. Admin. R. 24.11.2711.
15. Mont. Admin. R. 32.8.101(2).
16. Mont. Admin. R. 24.16.1006(1) & (2).
17. Mont. Code Ann. §§ 39-2-901 – 39-2-915.
18. Mont. Code Ann. §§ 39-2-901 – 39-2-915.
19. Mont. Code Ann. § 50-19-501.
20. Mont. Code Ann. §§ 49-2-310 & 49-2-311; Mont. Admin. R. 24.9.1201 to 1207.
21. Mont. Code Ann. 10-1-1006 to 10-1-1007 and 10-1-1015 to 10-1-1022.
22. Mont. Code Ann. § 39-2-104.
23. Mont. Code Ann. §§ 49-2-101 to 49-2-602; Mont. Admin. R. 24.8.201 and 24.9.601 to 24.9.612.
24. Mont. Code Ann. § 49-2-301; Mont. Code Ann. § 49-2-303; Mont. Admin. R. 24.9.603.
25. Mont. Code Ann. §§ 45-5-701 – 45-5-703.
26. Mont. Code Ann. §§ 41-2-102 – 41-2-118.
27. Generally Mont. Code Ann. § 39-71-101 et seq. Specifically, Mont. Code Ann. 39-71-117; Mont. Code Ann. § 39-71-401; Mont. Admin. R. 24-29-801; Mont. Code Ann. § 39-71-116; Mont. Code Ann. § 39-71-119; Mont. Code Ann. § 39-71-1101.

