



ADMINISTRATIVE RULES OF MONTANA

2.21.6615 ACCESS TO EMPLOYEE PERSONNEL RECORDS

- (1) All employee personnel records are confidential and access is restricted to protect individual employee privacy, except the following employee information which is considered public and must be released upon request:
 - (a) an employee's name;
 - (b) position title;
 - (c) dates and duration of employment;
 - (d) salary; and
 - (e) claims for vacation, holiday, or sick leave pay, except that the reason for taking leave is confidential and may not be disclosed.
- (2) Agencies may require that a request for information be in writing. Agencies may not require justification for a request.
- (3) An employee has access to all of his or her employee personnel records. An employee may file a written response to information contained in the employee's personnel records. The employee's response must be filed within ten working days of the date on which the employee is made aware of the information by the agency. The written response becomes a permanent part of the employee's personnel record.
- (4) As provided in the ADA and FMLA, access to medical information may not be disclosed except to:
 - (a) the employee about whom the information pertains;
 - (b) supervisors and managers when identifying restrictions on the employee's work or duties or identifying necessary accommodations;
 - (c) first aid and safety personnel, when appropriate, if the disability might require emergency treatment;
 - (d) government officials investigating compliance with the ADA or FMLA; and
 - (e) support an employee's compliance with the certification provisions of the FMLA.
- (5) As provided in GINA, genetic information may not be disclosed except:
 - (a) to an occupational or other health researcher if the research is conducted in compliance with the federal regulations and protections provided for under the Protection of Human Subjects, 45 CFR, Part 46;

- (b) in response to a court order, but only the genetic information expressly authorized by the court order may be disclosed and the employee must be informed before the disclosure;
 - (c) to government officials investigating compliance with GINA;
 - (d) to support an employee's compliance with the certification provisions of the FMLA; and
 - (e) to a federal, state, or local public health agency only regarding information about the manifestation of a contagious disease that presents an imminent hazard of death or life-threatening illness, and the employee must be notified before the disclosure.
- (6) The Legislative Audit Division has access to employee personnel records under 5-13-309, MCA, for the purposes of auditing state agencies.
 - (7) The Human Rights Bureau, Department of Labor and Industry, has access to employee personnel records directly related to discrimination complaints.
 - (8) The professional staff of the State Human Resources Division has access to confidential records when gathering summary data on personnel programs or systems or when providing technical assistance to an agency.
 - (9) Certain governmental entities have authority under state or federal law to access an employee's personnel record.
 - (10) Other persons may access an employee's personnel record only if there is a job-related purpose, the employee has granted written permission, or if a valid court order grants access. An agency shall inform the employee when a valid court order has been received directing access to an employee's personnel record.

Authorizing statute(s): 2-18-102, MCA

Implementing statute(s): 2-18-102, MCA

History: TRANS & AMD, from ARM 2.21.6611, 2010 MAR p. 1070, Eff. 4/30/10; AMD, 2011 MAR p. 1677, Eff. 8/26/11.