

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2022-007

TO: Mayor John Engen, Dale Bickell, Angela Simonson, Leigh Griffing, Marty Rehbein, Eric Hallstrom, Eran Pehan, Ellen Buchanan, Jill Dunn, Jaeson White, Scott Hoffman, Gordy Hughes, Brad Davis, Mike Brady, Ian Ortlieb, Donna Guakler, David Selvage, Ryan Applegate, Morgan Valiant, Scot Colwell, Jeremy Keene, Kevin Slovarp, Troy Monroe, Ross Mollenhauer, Logan McInnis, Brian Hensel, Katie Emery, Dept City Clerk, Dept City Attorney's Office

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE March 17, 2022

RE: City employees may be monetarily subject to personal punitive damage assessments as well as misdemeanor criminal prosecution for blacklisting prior discharged employees such as when contacted by a potential future employer as part of a reference check.

FACTS:

As a cautionary note, it is imperative that all city supervisors and employees be aware that they could be subject to both personal punitive damage assessments and misdemeanor criminal prosecution for blacklisting prior employees, such as when contacted by a potential future employer as part of a reference check.

ISSUE(S):

Does Montana have state laws addressing blacklisting and protection of discharged employees?

CONCLUSION(S):

Montana state law Title 39, Chapter 2, Part 8 MCA is entitled BLACKLISTING AND PROTECTION OF DISCHARGED EMPLOYEES.

LEGAL DISCUSSION:

Montana's state laws pertaining to blacklisting and protection of discharged employees are set forth in Title 39, Chapter 2, Part 8. Section 39-2-802 "PROTECTION OF DISCHARGED

EMPLOYEES” and Section 39-2-803 MCA “BLACKLISTING PROHIBITED” provide as follows:

39-8-802 PROTECTION OF DISCHARGED EMPLOYEES. If a person, after having discharged an employee from service, prevents or attempts to prevent, by word or writing of any kind, the discharged employee from obtaining employment with any other person, the discharging person is punishable as provided in 39-2-804 and is liable in punitive damages to the discharged person, to be recovered by civil action. A person is not prohibited from informing by word or writing any person to whom the discharged person or employee has applied for employment a truthful statement of the reason for discharge.

39-8-803 BLACKLISTING PROHIBITED. If a company or corporation in this state authorizes or allows any of its agents to blacklist or if a person does blacklist any discharged employee or attempts by word or writing or any other means to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, the company, corporation, or person is liable in punitive damages to the employee prevented from obtaining employment, to be recovered in a civil action, and is also punishable as provided in 39-2-804.

It should also be noted that pursuant to Section 39-2-804 MCA, violation of Section 39-2-802 or 39-2-803 MCA may be a misdemeanor violation of Montana’s BLACKLISTING AND PROTECTION OF DISCHARGED EMPLOYEES laws and a violator may be guilty of a misdemeanor. Section 39-2-804 MCA states:

39-2-804 VIOLATION OF PART A MISDEMEANOR. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor.

Also, it should be noted that Montana’s blacklisting law, pursuant to Section 39-2-803 MCA authorizes that punitive damages may be awarded against a violator of Montana’s blacklisting laws. Governments are immune from the award of punitive damages pursuant to Section 2-9-105 MCA. However, government employees are not personally immune from the award of punitive damages against the government employee personally. Montana courts have indicated that punitive damages are intended to punish the wrongdoer, not the innocent government taxpayers.

Also, it is important to note that there is no MMIA liability program liability insurance coverage for punitive damages. There is no government obligation to pay punitive damages awarded against a government employee whose misconduct was such that punitive damages were awarded against the government employee.

It would be prudent and best practice for all city employees to coordinate with the City of Missoula Human Resource director/department with respect to any reference check inquiries they may receive with respect to prior employees.

CONCLUSION(S):

Montana state law Title 39, Chapter 2, Part 8 MCA is entitled BLACKLISTING AND PROTECTION OF DISCHARGED EMPLOYEES.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

Jim Nugent, City Attorney

JN:aa