

HOUSE BILL NO. 500

INTRODUCED BY J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LABOR LAWS; PROVIDING FOR WRONGFUL DISCHARGE CLAIMS FOR PROBATIONARY EMPLOYEES; PROVIDING REMEDIES; AND AMENDING SECTIONS 39-2-904 AND 39-2-905, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-904, MCA, is amended to read:

"39-2-904. Elements of wrongful discharge -- presumptive probationary period. (1) A discharge is wrongful only if:

(a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(b) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(c) the employer violated the express provisions of its own written personnel policy.

(2) (a) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

(b) If an employer does not establish a specific probationary period or provide that there is no probationary period prior to or at the time of hire, there is a probationary period of 6 months from the date of hire.

(c) A probationary employee may bring a wrongful discharge claim for retaliation when a report of a public policy violation is made in good faith."

Section 2. Section 39-2-905, MCA, is amended to read:

"39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together

1 with interest on the lost wages and fringe benefits. Interim earnings, including amounts the employee could
2 have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before
3 interim earnings are deducted from lost wages, there must be deducted from the interim earnings any
4 reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment.

5 (2) The employee may recover punitive damages otherwise allowed by law if it is established by clear
6 and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the
7 employee in violation of 39-2-904(1)(a) or (2)(c).

8 (3) There is no right under any legal theory to damages for wrongful discharge under this part for pain
9 and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages,
10 except as provided for in subsections (1) and (2)."

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