

# EEO Training 2017

<https://www.youtube.com/watch?v=eaoe4QSm72w>

Montana Department of Transportation  
Office of Civil Rights

# Purpose and Scope

## **Purpose:**

- Provide basic information on what is discrimination.
- Provide guidance on how to deal with situations that may involve discrimination.
- Illustrate the principles discussed through practical and relevant examples.
- Ensure you know and understand how complaints are filed and the managers role and responsibility.
- Ensure you know you can speak out against discrimination.

## **Scope:**

The Office of Civil Rights is limited to laws and regulations applicable to illegal discrimination. However, if a person is experiencing difficulties outside of this scope, it does not mean the person would not be able to file a complaint or lawsuit under other authority.

# Protected Classes

Race, color, national origin, parental/marital status, age, physical or mental disability, marital status, pregnancy, parental/marital status, **pregnancy or childbirth or conditions related to pregnancy or childbirth**, religion, creed, sex, **sexual orientation or expression**, **gender identification**, political beliefs, genetic information, **military service** or veteran's status, culture, social origin or condition, or ancestry.

# Non Discrimination Laws & Policies

- Civil Rights Act of 1964 (Title VI and Title VII)
- Pregnancy Discrimination Act
- Sec. 504 of the Rehabilitation Act of 1973
- Age Discrimination in Employment Act of 1967
- Age Discrimination Act of 1975
- ADA
- ADA Amendments Act of 2008
- Genetic Information Nondiscrimination Act of 2008
- Equal Pay Act of 1963
- Federal-Aid Highway Act of 1968 and 1973
- Federal Transit Act
- Executive Order 11246
- Montana Human Rights Act
- Governmental Code of Fair Practices
- Governor's Executive Order 41-2008
- MDT internal policies
- Executive Order 13672
- State Executive Order 04-2016

# Montana Human Rights Act

- Age
- Marital Status
- Physical or Mental Disability
- Race/ National Origin
- Color
- Religion/Creed
- Sex (including pregnancy, maternity, sexual harassment, sexual orientation)
- Familial Status (housing only)
- Political ideas (only in the provisions or governmental services or governmental employment)
- Retaliation (for engaging in a protected activity)

# Title VI

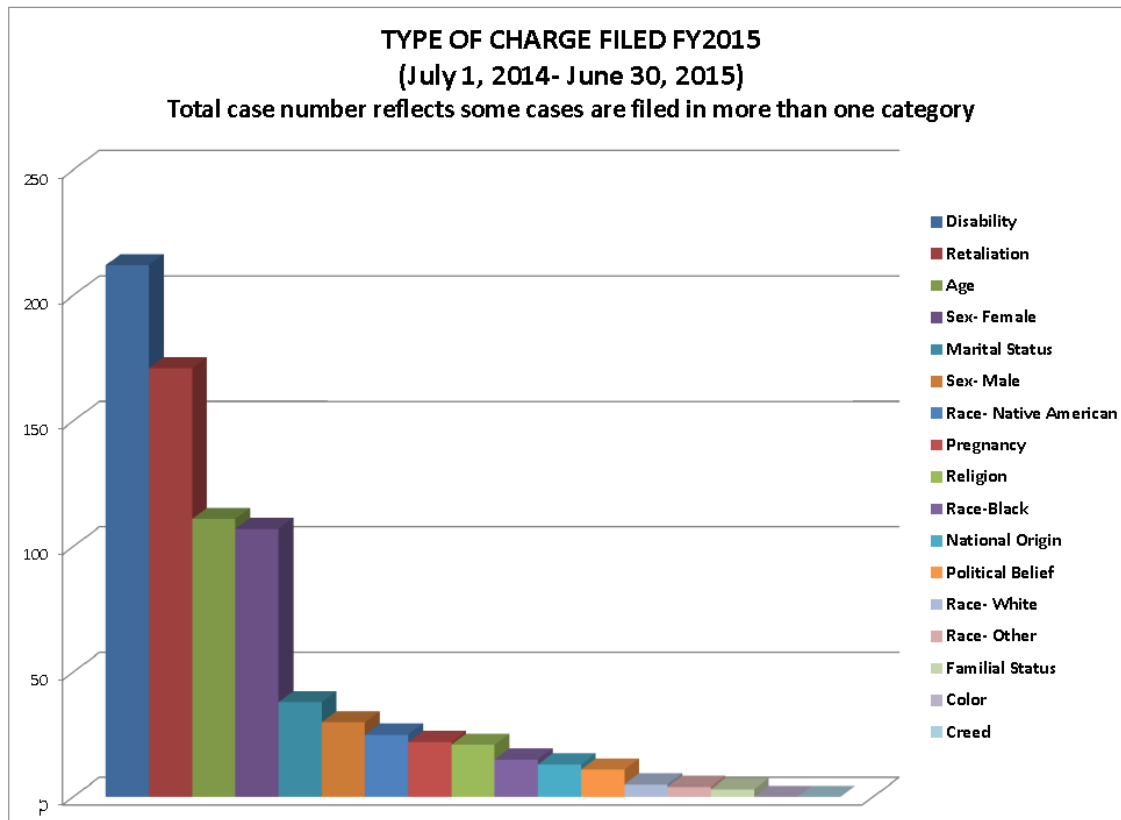
Title VI prohibits discrimination on the basis of race, color or national origin under any program or activity receiving federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is the provision of employment or where employment discrimination causes discrimination in providing services under such programs.

# Title VII

Title VII prohibits discrimination in employment on the basis of race, color, religion, sex or national origin. In certain instances, differential treatment is allowed for religion, sex, or national origin if it is a bona fide occupational qualification. Sexual harassment is also prohibited under this law as are all forms of harassment based on membership in a protected class.

# Montana Human Rights Cases

- Did you know that in FY 2010 employers in Montana have an average of **\$80,000.00** in awarded benefits for complaints of discrimination?

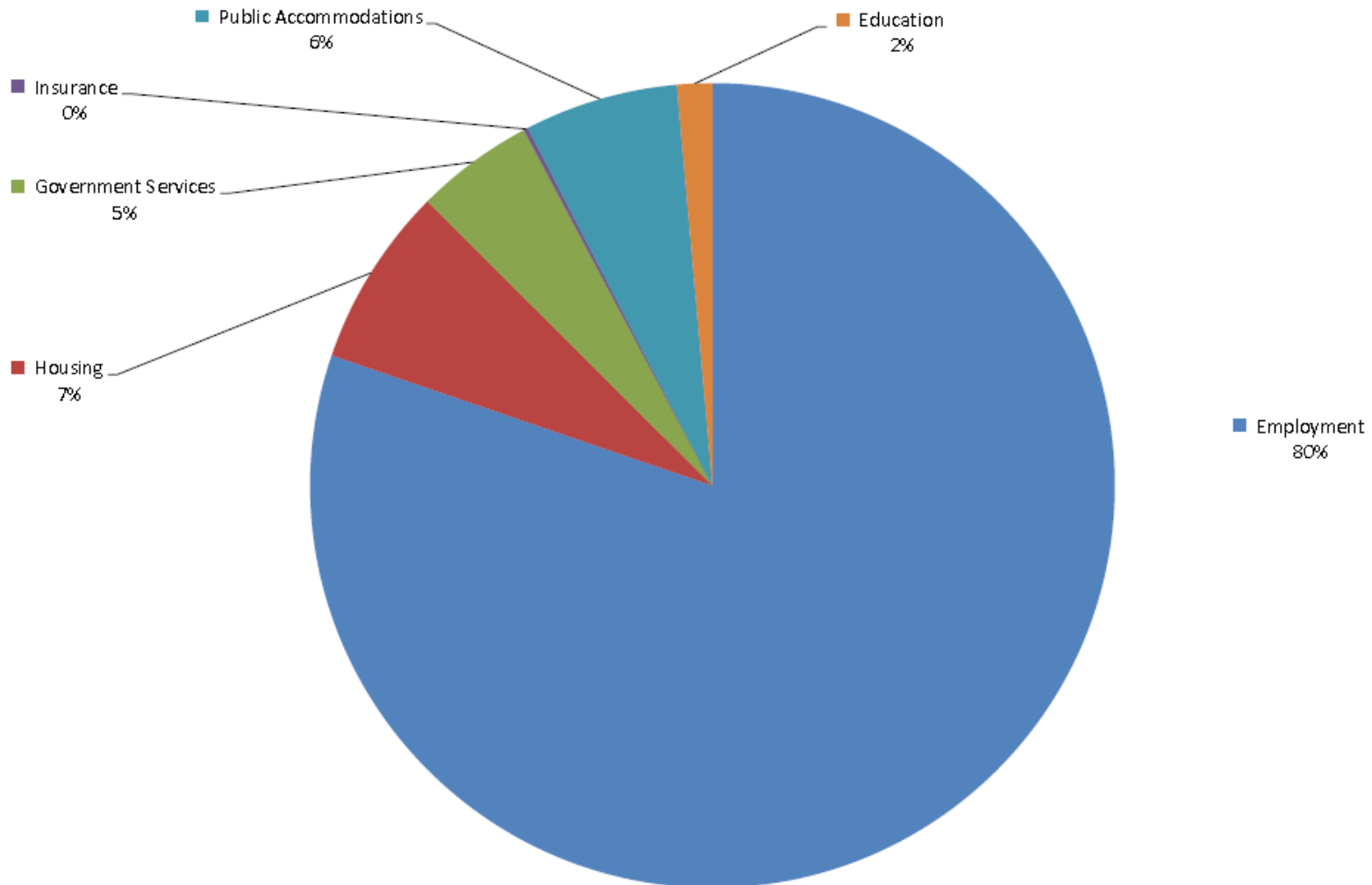




- The average complaint takes almost 250 days of the employers time!
- In 2015, there were a total of 537 Montana Human Rights complaints filed in Montana and 132 of these were against state and local government agencies.
- Out of the 537 cases filed, 455 were alleged employment discrimination cases.
- Out of those 537 cases: \* some cases are filed under multiple categories making the total higher\*
  - 212 Disability
  - 171 Retaliation
  - 107 Sex (female) 149 27 (male)
  - 111 Age
  - 49 Race: Native American 25, Black 15, White 5, and other 4
  - 22 Pregnancy
  - 38 Marital Status
  - 21 Religion
  - 11 Political Belief
  - 13 National Origin

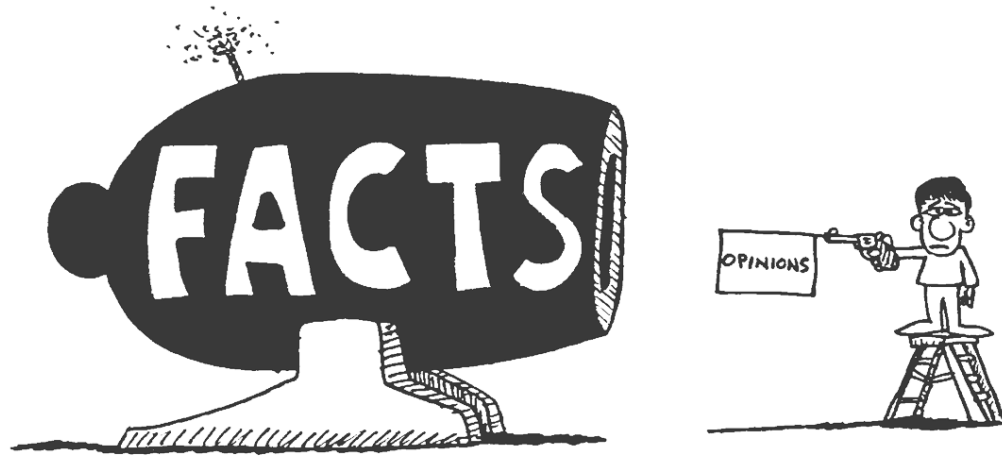
# Areas of Cases

AREA CASES FILED FY 2015



# Investigative Findings 2015

## Cause vs No Cause



**Montana Human Rights Cases**  
**410 investigative findings**

- **340 - No Reasonable Cause**
- **70 - Reasonable Cause**

# What is Unlawful Discrimination?

Unlawful Discrimination is defined as adverse action taken against an individual because of his or her protected class status.

It is a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.

<http://www.bing.com/videos/search?q=what+is+unlawful+discrimination&&view=detail&mid=C0E9E79EE1F3E37C6F89C0E9E79EE1F3E37C6F89&FORM=VRDGAR>

# What Constitutes an Adverse Action?

**An Adverse action is:**

**different treatment, failure to hire, termination of employment, different pay, failure to accommodate a disability, harassment, or hostile work environment.**

**This includes anything that would dissuade a reasonable person from engaging in a protected activity.**

# Employment Discrimination

In an employment setting it is illegal for an **employer/supervisor** to discriminate based on protected status in relation to:

- Recruitment
- Hiring
- Promotion
- Benefits
- Wages
- Training Practices
- Job Descriptions
- Work Reassignments
- Termination
- Other Adverse Employment Actions



**Generally, actions by co-workers are not covered**

# Harassment is NOT:

- Being held accountable for completing job tasks.
- Being held accountable for workplace behavior.
- Holding an individual to the exact same performance standard everyone else is held to.
- Having a boss who is an equal opportunity jerk! A boss with very high performance standards that holds **everyone** to those **same** standards.
- Not getting along with management-personality differences.
- Legitimate disciplinary action.
- Legitimate performance requirements.
- Petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation.
- “Snubbing” a colleague.
- Negative comments that are justified by an employee's poor work performance or history.
- Negative performance evaluation that accurately reflects employee’s performance.
- Comments by non-decision makers (i.e. co-workers)

# Harassment vs. Bullying

## Harassment

- based on a protected class
- illegal

## Bullying

- behavior that is ***not*** illegal, but is unacceptable in the workplace
- i.e. not based on a protected class





# Types of Harassment

- **1. Disparate Treatment/Intentional Discrimination Theory**
  - when an employer simply treats some people less favorably than others *because of* their protected status.
  - has to be *intentional*.
- **2. Disparate Impact**
  - when a facially neutral policy or practice has a significant disparate impact on a protected group.
  - can be *unintentional*.
  - *Example: requiring a college degree for an administrative staff position.*

# Speaking out Against Harassment is Important!



# Genetic Information

## Genetic Information Includes:

- Genetic Testing
- Family Medical History
- Genetic Tests During Pregnancy
- Information gained at the “water cooler” or through social media



## Examples

- Facebook status “went to the doctor today for my last chemo.”
- At lunch someone says “I have to fill my cholesterol prescription this week.”

# Color/Race

- Discrimination based on the tone of one's skin ( i.e. a fair white person can discriminate against a white person with an olive skinned complexion, even though they are both technically considered "white").



<http://www.bing.com/videos/search?q=Colorism+Skin+Tone+amongst+the+World&&view=detail&mid=E6DECBD3B978CE272E2FE6DECBD3B978CE272E2F&rvsmid=B377F38C2B5318BFE0C7B377F38C2B5318BFE0C7&fsscr=0&FORM=VDFSRV>

**James Duffy  
VS  
City of Los Angeles 2014**

**Awarded: 3.8 million plus interest**



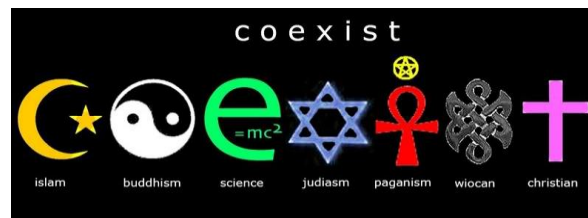
# Religion / Creed

<http://www.bing.com/videos/search?q=Religious+Discrimination+in+employment&&view=detail&mid=BB4A9008ABBE0C280027B B4A9008ABBE0C280027&FORM=VRDGAR>

Creed - Has not yet been defined by the courts.

The dictionary definition is: *a set of fundamental beliefs; guiding principles underlying a particular religion.*

- Beliefs must be “sincerely held.”
- Beliefs need not be acceptable, logical, consistent, or comprehensible to others.
- Includes freedom not to believe -> accommodations can not impede on the rights and liberties of others.
- Accommodations for religious beliefs do not implicate constitutional issues of freedom of religion.



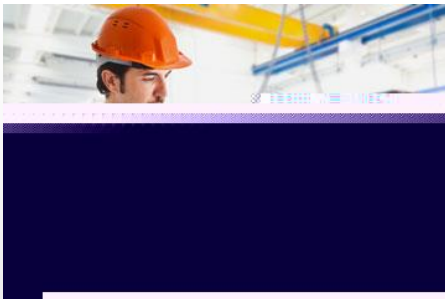
# AGE

- **ALL** ages are protected do **not** have to be over 40 to be protected.
- In Montana, age is protected from birth to death. “substantially younger/older” ~ 10+ years.



# Sex/Gender

Actions or comments that tend to reinforce gender stereotypes are gender discrimination. <https://www.youtube.com/watch?v=-57-i1S95Kk>





# Pregnancy or Medical Conditions Related to Pregnancy

- Employer can not discriminate against a woman because she is or may become pregnant.
- An employer may not discriminate against a woman because of medical conditions related to pregnancy or childbirth. <https://www.youtube.com/watch?v=Z6l9nc5yy1E>



# Gender Identification or Expression

Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.

It is illegal to discriminate against someone based on the gender they identify with!

Example: a woman who dresses like and identifies as man, or a man who dress like and identifies as female.

**Gender Expression** refers to the way that a person uses appearance, mannerisms and other personal traits to communicate their gender. Gender expression can be any combination of masculine, feminine and androgynous traits.

### **Examples:**

- clothing and accessories, hairstyle, make-up, removal or growth of body hair, development of musculature through exercise, stance and manner of walking, and manner of talking.
- The name, pronouns and titles you ask others to use in reference to you . It can also include using clothing, make-up and other methods to change the appearance of gender characteristics. Examples of these methods include padding, binding, packing and tucking.

# Sexual Orientation

The gender or genders someone is sexually and/or romantically attracted to!

Examples:

Straight, Homosexual, Bisexual

<https://www.youtube.com/watch?v=ago78PhUofl>

<http://www.bing.com/videos/search?q=zach+wahls&&view=detail&mid=39328A112E441626D50A39328A112E441626D50A&FORM=VRDGAR>

# Military Service or Veteran Status

- Veteran refers to anyone who served as active duty military (army, navy, air force, or marines,) for a minimum of 180 days.
- Military Status refers to someone currently on active duty or guard status.



# Sexual Harassment Explained

## **ARM 2.21.4013(2)**

Unwelcome verbal or physical conduct of a sexual nature when:

- (a) submission to the conduct is implicitly or explicitly made a term or condition of employment;
- (b) submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or
- (c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

# Example

Notable recent developments include a 2011 verdict from a New Orleans jury finding Boh Brothers Construction Co. liable for a male superintendent's harassment of a male subordinate—to the tune of \$451,000. The supervisor was alleged to have verbally abused, taunted, made sexual gestures at and exposed himself to the male employee because he believed the employee was feminine and did not fit the “rough ironworker” stereotype. The award included \$250,000 in punitive damages and \$200,000 for emotional distress, sending a strong message that juries are willing to punish employers for allowing male-on-male sexualized hazing.”

# Cultural/Social Origin or Condition/Ancstry

- General, all inclusive, terms to promote the idea that employment related decisions cannot be based on an employee's socio-economic background but instead on objective and merit based criteria.



<http://www.bing.com/videos/search?q=Origin+Discrimination&&view=detail&mid=06E3850E455BA062B3B906E3850E455BA062B3B9&rvsmid=E5FE7D5A89BAF55FCD97E5FE7D5A89BAF55FCD97&fsscr=0&FORM=VDFSRV>



# Disability

1. A physical or mental impairment that substantially limits one or more major life activities of an individual;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.



dislexia



# Retaliation

## What you need to Know:

If the action you are taking was made  
**BECAUSE** a person filed a complaint,  
it is retaliation!

# Prevention

- Supervisors must set the tone!
- They must recognize their obligation to create and preserve a work environment free from sexual harassment.
- Take immediate action and send the employee to OCR!
- Even if you feel a complaint made by an employee to you is groundless, treat it seriously.
- When in doubt, call OCR and ask for assistance or clarification. If we don't know the answer, we will find it.

# What Management Needs to Know

- You can not prohibit an employee from discussing that he or she has filed a complaint with co-workers.
- You can not prohibit a customer for talking about having filed a complaint.
- You may not discuss the complaint with the person who filed the complaint's co-workers and comment and discuss your thoughts or feelings.
- It is best practice to only discuss the complaint with those that need to know.

# How to File a Complaint

- Start first with the Office of Civil Rights.
- You can call, email, fax, write, or come in person to the Office of Civil Rights to file a complaint.
- File within 180 days of the last alleged discriminatory act.
- Complaint forms are available online or by contacting the Office of Civil Rights.

# OCR Complaint Process

## Step 1:

File a complaint (in writing and sign).

## Step 2

- OCR reviews complaint and conducts an intake interview.
- OCR determines whether to proceed with investigation.

## Step 3

- Notify complainant, person against whom the complaint is filed, and District Administrator that an investigation will take place.
- Conduct interviews of witnesses and review relevant documents.
- Investigation makes a final determination report “Cause” or “No Cause”.

## Step 4

- Closing and/or Final conference.
- Other parties might be present if there is a “Cause” finding (Complainant, OCR Operations Chief, MDT Director, etc.).
- Disciplinary action, if any will be discussed and decided by management, Legal, and HR.

**OCR GOAL:** Complete all investigations within 120 days of receipt of complaint.

# CONFIDENTIALITY

## ARM 2.21.4022

(2) Agency managers may not prohibit employees from discussing a complaint or ongoing investigation with coworkers UNLESS management conducts an individualized assessment and demonstrates that one of the following factors exists:

- (a) there are witnesses in need of protection;
- (b) evidence is in danger of being destroyed;
- (c) testimony is in danger of being fabricated; or
- (d) there is a need to prevent cover up.

(3) Agency managers shall document their rationale for requiring that employees refrain from discussing a complaint or ongoing investigation

**IMPORTANT:** “preserving the integrity of the investigative process” is NOT a good enough reason to impose strict confidentiality.

# Conflict Resolution

When a complaint is received in OCR, if at all possible, we will try to resolve it through conflict resolution.

## What it is:

- A good faith effort to mediate a disagreement or misunderstanding;
- A vehicle to resolve disputes and restore productivity quickly; and
- A tool to improve working relationships and communication.

## What it is not:

- The answer to all complaints; and
- Always successful



- There are three main terms that are used to describe retaliation. Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** *because* he or she engaged in a **protected activity**. These three terms are:
  - **Covered individual**
  - **Adverse action**
  - **Participation in a protected activity**

# Covered Individual

- People who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on a protected class.
- Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his spouse participated in employment discrimination litigation.
- Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of anti-discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the EEO enforced laws.

# Adverse Action

An action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include but are not limited to:

- Employment actions such as termination, refusal to hire, and denial of promotions
- Other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance, and
- Any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from filing a complaint.

# Protected Action

**Participation in a protected activity** means taking part in an employment discrimination proceeding. Participation is a protected activity even if the proceeding involved claims that ultimately were found to be invalid.

## **Protected examples include:**

- Opposing a practice believed to be unlawful discrimination;
- Informing an employer you believe he or she is engaging in prohibited discrimination;
- Complaining about alleged discrimination against oneself or others;
- Threatening to file a complaint of discrimination;
- Requesting an ADA or religious accommodation.

# Montana Human Rights Process



Montana Department of  
**LABOR & INDUSTRY**  
Employment Relations Division

- File within 180 days of last alleged discriminatory act.
- Within 300 days if filed an internal complaint and internal investigation is complete within 120 days.

- Contact Information:

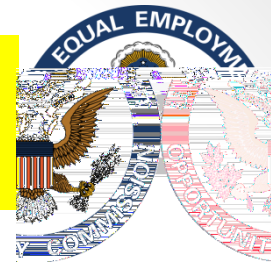
Address: PO BOX 1728  
Helena, MT 59624

Phone: (406) 444-2884  
(800) 524-0807  
TTY (406) 444-0532

website: <http://erd.dli.mt.gov/complaint-process.html>

**IMPORTANT:** Jurisdiction may vary based on the nature of the complaint.

# EEOC Process



## UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

### Federal Process

- File within 180 days of last alleged discriminatory act;
- Within 300 days if Human Rights Bureau also enforces the law in question.
- Contact Information:

**Address:** San Francisco District Office  
350 The Embarcadero  
Suite 500  
San Francisco, CA 94105

**Phone:** (800) 669-4000  
TTY (800) 669-6820

**Website:** [www.eeoc.gov](http://www.eeoc.gov)

# Public Notice is not optional

- You must have the Title VI and ADA language on your busses
- You must have Title VI and ADA language on your websites!

**For questions, comments, concerns, complaints, inquiries, additional training, information, brochures, or anything else contact:**

# **Nicole Cosby**

**Title VI, Title VII, and EEO Specialist Supervisor**

**MDT Civil Rights Bureau**

**(406) 444-6334**

**[nicosby@mt.gov](mailto:nicosby@mt.gov)**