

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2014-017

**TO:** Gail Verlanic, Laurie Pfau, Janez Gingery, Kay James, Leigh Griffing, Scott Paasch, Mayor John Engen, Bruce Bender

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE:** April 21, 2014

**RE:** Confidentiality of information obtained from any individual under Montana Unemployment Insurance law and criminal penalties for violating confidentiality law.

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### FACTS:

The City of Missoula Human Resources office received a request from an attorney in private practice who generally requested a copy of seasonal notices used by the City for each employee who is laid off as well as requested a copy of notice from the Montana Department of labor and Industry that the City receives when a laid off city employee files for unemployment benefits..

### ISSUE(S):

Are employer records concerning information obtained from any individual pursuant to Montana's unemployment insurance laws record materials that are available for public inspection and publication?

### CONCLUSION(S):

No. Pursuant to section 39-51-603 MCA pertaining to Montana's unemployment insurance laws, information obtained from any individual under title 39, chapter 51, Montana's Unemployment Insurance Law must be held confidential and may not be published or be open to public inspection. Section 39-51-603 MCA establishes criminal penalties for violations of this Montana State confidentiality law.

### LEGAL DISCUSSION:

Title 39, chapter 51 Montana Code Annotated (MCA) is entitled "unemployment insurance". Section 39-51-101 MCA provides that title 39, chapter 51 shall be known as the

“UNEMPLOYMENT INSURANCE LAW”. There are more than sixty (60) pages of codified Montana unemployment insurance law provisions in the Montana Code Annotated.

Section 39-51-603 of Montana’s “UNEMPLOYMENT INSURANCE LAW” is entitled “EMPLOYING UNIT TO KEEP RECORDS AND MAKE REPORTS-CONFIDENTIALITY-RULES”. Subsection 39-51-603(3) MCA provides that information obtained from any individual under title 39, chapter 51 MCA “must . . . be held confidential and may not be published or be open to public inspection”.

Subsection 39-51-603(4) MCA provides that the Montana Department of Labor and Industry “shall adopt rules providing for confidentiality of unemployment insurance information, including the circumstances and conditions under which the information is disclosed to appropriate persons and government agencies”.

Subsection 39-51-603(5) MCA provides criminal penalties for those persons who violate the unemployment insurance confidentiality laws. The potential criminal penalties include “shall be fined not less than \$20 or more than \$200 or shall be imprisoned for not longer than 90 days, or both”.

Section 39-51-603 MCA provides in its entirety as follows:

**39-51-603. Employing unit to keep records and make reports -- confidentiality --**

**rules.** (1) Each employing unit shall keep true and accurate work records containing the information that the department may prescribe. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employing unit that maintains its records outside Montana shall furnish a copy of those records to the department at the employing unit's expense or shall pay the department for the costs associated with conducting the audit outside Montana.

(2) The department and the presiding officer of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it that the department considers necessary for the effective administration of this chapter.

(3) Information obtained from any individual under this chapter must, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or the claimant's legal representative at a hearing before the board or appeal tribunal must be supplied with information from the records to the extent necessary for the proper presentation of the claim.

(4) In order to prevent the misuse of personal and other sensitive information collected by the department in the administration of the unemployment insurance laws, the department shall adopt rules providing for confidentiality of unemployment insurance information, including the circumstances and conditions under which information may be disclosed to appropriate persons and government agencies. The rules must be consistent with federal requirements regarding confidentiality and disclosure of unemployment insurance

information.

(5) (a) Any employee or member of the department or any other state or local government employee who violates any provision of this section shall be fined not less than \$20 or more than \$200 or shall be imprisoned for not longer than 90 days, or both.

(b) Any person other than those described in subsection (5)(a) who receives information from the department may use the disclosed information only for purposes authorized by law. A person who violates the provisions of this subsection (5)(b) is subject to the penalties provided for in subsection (5)(a). (emphasis added)

**CONCLUSION(S):**

No. Pursuant to section 39-51-603 MCA pertaining to Montana's unemployment insurance laws, information obtained from any individual under title 39, chapter 51, Montana's Unemployment Insurance Law must be held confidential and may not be published or be open to public inspection. Section 39-51-603 MCA establishes criminal penalties for violations of this Montana State confidentiality law.

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Jim Nugent, City Attorney

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