

THE
EMPLOYEE
DEFINITION GUIDE

FOR MONTANA STATE GOVERNMENT

| APRIL 2017

STATE HUMAN RESOURCES



This page intentionally left blank.

Table of Contents

Introduction	1
<hr/>	
Permanent Employees	1
Definition:.....	1
Transfers and Terminations:.....	1
Benefits:.....	2
Layoffs and Reductions in Force:.....	2
Grievances:	3
Performance Management:	3
Seasonal Employees	3
Definition:.....	3
Transfers and Terminations:.....	4
Benefits:.....	4
Layoffs and Reductions in Force:.....	5
Grievances:	5
Performance Management:	5
Temporary Employees	6
Definition:.....	6
Transfers and Terminations:.....	6
Benefits:.....	7
Layoffs and Reductions in Force:.....	8
Grievances:	8
Performance Management:	8

Short-Term Workers	8
Definition:.....	8
Transfers and Terminations:.....	9
Benefits:.....	9
Layoffs and Reductions in Force:.....	10
Grievances:	10
Performance Management:	10
Student Interns	10
Definition:.....	10
Benefits:.....	11
Layoffs and Reductions in Force:.....	12
Grievances:	12
Performance Management:	12
Definitions	12
Quick Reference Chart	14

Introduction

This guide assists agency human resources staff and managers to understand the various state employee statuses under Montana law. This guide discusses definitions, recruitment options, benefit eligibility, collective bargaining issues, and other employment considerations relating to employee status.

Included at the end of this guide is a quick-reference chart that contains hyperlinks to relevant Montana Operations Manual (MOM) Policies, Administrative Rules of Montana (ARM), and Montana Code Annotated (MCA) statutes.

This guide does not apply to personal appointed staff of elected officials. For guidance with these positions, please see the [Elected Officials and Appointed Staff](#) fact sheet.

Permanent Employees

Definition

A permanent employee is an employee designated by an agency as permanent who has attained or is eligible to attain permanent status (2-18-101, MCA). Employees attain permanent status by successfully completing a probationary period. Once employees attain permanent employment status, they retain permanent status in permanent positions until they terminate employment from the state. Permanent employees must be hired through a competitive recruitment process.

Transfers and Terminations

A permanent employee may only be terminated for good or just cause. You may only make an exception to this requirement if an employee

agreed to employment for a specific term in a written contract. A permanent employee who transfers to a permanent position with the same agency or different agency retains permanent employment status. A permanent employee who transfers to a temporary position (or another position not eligible for permanent status) may be terminated from the temporary position without cause. If a permanent employee transfers to a temporary position and then transfers to a permanent position, the employee retains permanent status in the new permanent position. You may not require permanent employees to complete a new probationary period to “regain” or “maintain” permanent employment status.

Benefits

Permanent employees are eligible for sick leave, annual leave, holiday pay, retirement benefits, and longevity. Permanent employees working an average of 20 or more hours per week are eligible for group health insurance benefits. If a permanent employee is expected to work an average of less than 20 hours per week or if the employee’s number of hours or days of work are intermittent or unknown at the time of hiring, the employee is not eligible for group health insurance benefits unless the employee has previous state employment history which makes the employee eligible.* Variable employees may become eligible for benefits during their stability period whenever they are employed with the State of Montana.

Layoffs and Reductions in Force

If a permanent employee’s position is eliminated because of privatization, reorganization, closure, or a reduction in force, the employee is entitled to benefits under the State Employee Protection Act (2-18-1201, MCA, et seq.) and the Reduction in Force Policy if the employee has achieved permanent status. Laid-off permanent employees receiving benefits under the Reduction in Force policy retain permanent status when reinstated.

Grievances

Employees may file a grievance under the Grievance Policy (ARM 2.21.8010, et seq.) after they have attained permanent status. If an agency has an alternative grievance policy, eligible employees must file under the agency's policy. If employees are members of a bargaining unit, they may be required to file grievances according to the procedures set forth in the collective bargaining agreement.

Performance Management

Permanent employees' performance must be managed and evaluated on a regular basis. See the Performance Management and Evaluation Policy for more information.

Seasonal Employees

Definition

A "seasonal employee" is a permanent employee designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season (2-18-101, MCA).

Seasonal employees must be initially hired through a competitive recruitment process. Seasonal employees attain permanent status by completing a probationary period. Since the length of seasonal work varies, a seasonal employee's probationary period may span several seasons.

Transfers and Terminations

Seasonal employees retain permanent status in the same manner as permanent employees. (See the Transfers and Terminations paragraph for permanent employees above.)

The seasonal break is not a break-in-service or a termination; it is treated as an approved leave of absence without pay. Seasonal employees are recalled each season without a loss of rights or benefits.

Benefits

Seasonal employees are eligible for sick leave, annual leave, holiday pay, retirement benefits, and longevity. Seasonal employees expected to work an average of 20 hours per week for 6 months or more are eligible for group health insurance benefits. If seasonal employees are expected to work an average of less than 20 hours per week or if their number of hours or days of work are intermittent or unknown at the time of hiring, they are not eligible for group health insurance benefits unless they have previous state employment which makes them eligible.* Variable employees may become eligible for benefits during their stability periods while they are employed with the State of Montana. Seasonal employees working for less than 6 months are not eligible for group health insurance benefits regardless of the number of hours worked unless they have previous state employment history which makes them eligible.*

Seasonal employees receiving group health insurance benefits must continue to receive benefits during the seasonal break. The employer is responsible for continuing to pay the employer portion during the seasonal break.

For the purposes of sick and annual leave eligibility, actual time worked counts toward the qualifying period and accrual process. In some cases, the qualifying period may span several seasons. Seasonal employees do

not accrue leave benefits when in a leave-without-pay status during the off-season.

For longevity purposes, calculate the length of employment as if the seasonal employee were continuously employed during the off-season (2-18-304, MCA).

Seasonal employees are also eligible for statutory raises.

Layoffs and Reductions in Force

If a seasonal employee's position is eliminated because of privatization, reorganization, closure, or a reduction in force, the employee is entitled to benefits under the State Employee Protection Act (2-18-1201, MCA, et seq.) and the Reduction in Force Policy if the employee has achieved permanent status. Laid-off seasonal employees receiving benefits under the Reduction in Force policy retain permanent status when reinstated.

Grievances

Seasonal employees may file a grievance under the Grievance Policy (ARM 2.21.8010, et seq.) after they have attained permanent status. If an agency has an alternative grievance policy, eligible employees must file under the agency's policy. If seasonal employees are members of a bargaining unit, they may be required to file grievances according to the procedures set forth in the collective bargaining agreement.

Performance Management

Seasonal employees' performance must be managed and evaluated on a regular basis. See the Performance Management and Evaluation Policy for more information.

Temporary Employees

Definition

A temporary employee is an employee who:

- is designated as temporary by an agency for a definite period of time not to exceed 12 months;
- performs duties on a temporary basis;
- is not eligible for permanent status;
- is terminated at the end of the employment period; and
- is not eligible to become a permanent employee without a competitive selection process (2-18-101, MCA).

Temporary employees may be hired using either a competitive or non-competitive recruitment process.

Transfers and Terminations

To move a temporary employee to a permanent position within your agency, a competitive selection process must be conducted. If the temporary employee was hired through a non-competitive process, an external recruitment process must be conducted to consider the employee for the permanent position. Temporary employees hired through a non-competitive process are not eligible to compete in internal recruitments for permanent positions.

You may terminate a temporary employee at any time without cause. However, you may not terminate a temporary employee's employment, allow a five-day break in service, and reinstate the same employee to the same position.

Benefits

Temporary employees are eligible for certain state benefits including sick leave, annual leave, and holiday pay.

Temporary employees working an average of 20 hours per week or more are eligible for group health insurance benefits unless they are performing seasonal work. Temporary employees performing seasonal work are eligible for group health insurance benefits if they are expected to work an average of 20 hours per week for 6 months or longer. If temporary employees are expected to work an average of less than 20 hours per week or if their number of hours or days of work are intermittent or unknown at the time of hiring, they are not eligible for group health insurance benefits unless they have previous state employment which makes them eligible.* Variable employees may become eligible for benefits during their stability period if they are employed with the State of Montana. Temporary employees performing seasonal work for less than 6 months are not eligible for group health insurance benefits regardless of the number of hours worked unless they have previous state employment history which makes them eligible.*

Temporary employees working 960 hours or less in a fiscal year may choose whether to participate in the Montana Public Employee Retirement System. After a temporary employee exceeds the 960-hour threshold, participation becomes mandatory (19-3-411 and 19-3-412, MCA).

Temporary employees may receive credit toward years of service for longevity-allowance purposes only if the temporary employee transfers immediately to a permanent position and remains in a pay status or is on an authorized leave of absence as defined in 2-18-304, MCA.

Layoffs and Reductions in Force

Most temporary employees are not entitled to benefits under the State Employee Protection Act during privatization, reorganization, closure, or a

reduction in force. Temporary employees in teaching positions under the authority of the Department of Corrections or Department of Public Health and Human Services may be entitled to protections if they have been employed for at least six continuous months (2-18-1201, MCA, et seq).

Grievances

Some temporary employees are eligible to file grievances. Temporary employees are not eligible to file a grievance under the state Grievance Policy (ARM 2.21.8010, et seq). However, they may be eligible to file a grievance under an alternative agency policy or a collective bargaining agreement. If your agency has an alternative grievance policy, make sure it addresses temporary employee eligibility.

Performance Management

Although formal performance evaluations are not required for temporary employees, these employees should receive regular and on-going feedback.

Short-Term Workers

Definition

Short-term workers are paid an hourly wage and may not work for an agency for more than 90 days in a continuous 12-month period (2-18-101, MCA). Short-term employees are not eligible for permanent status.

Short-term workers may be hired through either a competitive or non-competitive recruitment process.

Transfers and Terminations

To consider a short-term worker for a permanent position within an agency, an external competitive selection process must be conducted. Short-term workers are not eligible to compete in internal recruitments for permanent positions. Short-term workers may be discharged without cause.

Benefits

Short-term workers are not eligible for sick leave, annual leave, holiday pay, or longevity. Short-term employment also does not count towards years of service for longevity purposes.

Short-term workers expected to work an average of 20 hours per week or more are eligible for group health insurance benefits unless they are performing seasonal work. If short-term workers are expected to work an average of less than 20 hours per week, or if their hours or days worked are intermittent or unknown at the time of hiring, they are not eligible for group health insurance benefits unless they have previous state employment which makes them eligible.* Variable employees may become eligible for benefits during their stability period if they work more than 1040 hours during their measurement period and are still employed with the State of Montana. Short-term workers performing seasonal work within a period of less than 6 months are not eligible for group health insurance benefits regardless of the number of hours worked unless they have previous state employment history which makes them eligible.*

Short-term employees working 960 hours or less in a fiscal year may choose whether to participate in the Montana Public Employee Retirement System. After a short-term employee exceeds the 960-hour threshold, participation becomes mandatory (19-3-411 and 19-3-412, MCA).

Layoffs and Reductions in Force

Short-term workers are not entitled to benefits under the State Employee Protection Act during privatization, reorganization, closure, or a reduction in force.

Grievances

Most short-term workers are not eligible to file grievances under the state's Grievance Policy (ARM 2.21.8010, et seq.). They may be eligible to file a grievance under an alternative agency policy or a collective bargaining agreement. Typically, short-term workers are not members of collective bargaining units. If an agency has an alternative grievance policy, make sure it addresses short-term workers' eligibility.

Performance Management

Although formal performance evaluations are not required for short-term workers, these employees should receive regular and on-going feedback.

Student Interns

Definition

A student intern is a person who has been accepted in or is currently enrolled in an accredited school, college, or university and is hired directly by an agency into a student intern position (2-18-101, MCA). Student interns are not eligible for permanent status.

You may hire student interns through either a competitive or non-competitive recruitment process.

A student intern may not be hired to a permanent position within an agency unless an external competitive selection process is conducted. Student interns are not eligible to compete in internal recruitments for permanent positions. If a student intern transitions into a short-term worker or temporary position, the time worked in the student intern position must be considered with the time to be worked in the new position to determine which employee status to use.

Benefits

Student interns are not eligible for sick leave, annual leave, holiday pay, or longevity. Student-intern employment also does not count towards years of service for longevity purposes.

Student interns expected to work an average of 20 hours per week or more are eligible for group health insurance benefits unless they are performing seasonal work. If student interns expected to work an average of less than 20 hours per week or if their number of hours or days of work are intermittent or unknown at the time of hiring, they are not eligible for group health insurance benefits unless they have previous state employment which makes them eligible.* Variable employees may become eligible for benefits during their stability period if they are still employed with the State of Montana. Student interns performing seasonal work are eligible for group health insurance benefits if they are expected to work an average of 20 hours per week for 6 months or longer. Student interns performing seasonal work for less than 6 months are not eligible for group health insurance benefits regardless of the number of hours worked unless they have previous state employment history which makes them eligible.*

Student interns working 960 hours or less in a fiscal year may choose whether to participate in the Montana Public Employee Retirement System. After a student intern exceeds the 960-hour threshold, participation becomes mandatory (19-3-411 and 19-3-412, MCA).

Layoffs and Reductions in Force

Student interns are not entitled to benefits under the State Employee Protection Act during privatization, reorganization, closure, or a reduction in force.

Grievances

Most student interns are not eligible to file grievances under the state Grievance Policy (ARM 2.21.8010, et seq.). They may be eligible to file a grievance under an alternative agency policy or a collective bargaining agreement. Typically, student interns are not members of collective bargaining units. If an agency has an alternative grievance policy, make sure it addresses student intern eligibility.

Performance Management

Although formal performance evaluations are not required for student interns, these employees should receive regular and on-going feedback.

Definitions

A “**variable**” employee is an employee whose hours are expected to average less than 20 hours per week; OR the facts and circumstances at the employee’s start date do not allow the employer to determine whether the employee is reasonably expected to work at least 20 hours per week because the hours vary or days worked are intermittent or unknown.

The “**measurement period**” or “**look-back period**” is the first 12 months from the first day of the first full month after the employee was hired. For on-going employees, it is the twelve months from the first pay period in October to the first pay period the following October.

The “**stability period**” for a new employee is the twelve months beginning one month following the end of the measurement period.

*When an employee moves from one position to another, whether the position is in the same agency or not, the employee must be treated as a continuing employee for group health insurance eligibility unless a 13-week break-in-service occurs. If an employee is receiving group health insurance benefits in one position, the employee must continue to receive benefits in the next position until the end of the stability period regardless of how many hours the employee works in the next position (unless a 13-week or longer break-in-service occurs). See the [benefits eligibility table](#) for more information.

We designed this guide to assist executive branch human resources professionals, supervisors, and managers with understanding the different employee definitions. It is a companion to information contained in statute and policy.

We will provide alternative accessible formats of this guide upon request. If you need an alternative format, please contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., P.O. Box 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.

Quick Reference Chart

	References	Permanent Employee	Seasonal Employee	Temporary Employee	Short-Term Worker	Student Intern
Definition	Definitions 2-18-101, MCA					
Permanent Status	Recruitment and Selection Policy ARM 2.21.3701, et seq. Probation Policy	Yes	Yes	No	No	No
Competitive Process Required	Recruitment and Selection Policy ARM 2.21.3701, et seq.	Yes	Yes	No	No	No
Sick and Annual Leave	Sick Leave Policy Annual Leave Policy	Yes	Yes	Yes	No	No
Holiday Pay	Holiday Policy	Yes	Yes	Yes	No	No
Performance Management	Performance Management and Evaluation Policy ARM 2.21.6401 et seq.	Yes	Yes	Recommended	Recommended	Recommended
Group Benefits	State Employee Group Benefits 2-18-701 through 711, MCA Benefits Eligibility Table	May	May	May	May	May
Retirement System	Public Retirement Systems 19-3-411 & 19-3-412, MCA	<p>If scheduled to work more than 960 hours/fiscal year, membership is mandatory.</p> <p>If scheduled to work less than 961 hours/fiscal year, membership is optional until the 961-hour limit is met.</p> <p>Once the employee meets 961 hours/fiscal year, membership is mandatory.</p> <p>Note: If an employee is already a member of the retirement system then membership is mandatory regardless of hours worked in the current fiscal year.</p>				

Longevity Allowance	Longevity Allowance 2-18-304, MCA	Yes	Yes	May	No	No
Collective Bargaining	Collective Bargaining Agreements 39-31-306, MCA	May	May	May	May	May
Grievance Rights	Grievance Policy ARM 2.21.8010 et seq. Also see agency's CBA	Yes	Yes	May Not eligible under Policy, but may be eligible under CBA	May Not eligible under Policy, but may be eligible under CBA	May Not eligible under Policy, and not usually eligible under CBA