

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
2.21.6608, 2.21.6612, and 2.21.6613) PROPOSED AMENDMENT
pertaining to the Employee Records)
Management Policy)

TO: All Concerned Persons

1. On September 7, 2017, at 11:00 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 24, 2017, to advise us of the nature of the accommodation needed. Please contact Ann Brewer, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, Montana 59620; telephone (406) 444-3879; fax (406) 444-0703; Montana Relay Service 711; or e-mail annbrewer@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.21.6608 DEFINITIONS As used in this subchapter the following definitions apply:

- (1) remains the same.
- (2) "~~Confidential records~~ information" ~~means records which, by law, are not public records~~ has the meaning set forth in 2-6-1002(1), MCA.
- (3) through (6) remain the same.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment to ARM 2.21.6608 reflects the definition of confidential information included in HB 123 passed by the 2015 Legislature. To avoid repeating statutory language, the definition of confidential information is proposed to be removed and replaced with a reference to the statute only.

2.21.6612 RECORDS THAT CONSTITUTE EMPLOYEE PERSONNEL RECORDS (1) through (1)(h) remain the same.

- (i) background check information, including criminal, credit, and reference checks, and employment verification;

(j) and (k) remain the same.

~~(2) Employee personnel records do not include documents, information, or other evidence developed as part of an investigation. If an investigation results in disciplinary action, the disciplinary action record is an employee personnel record. Investigations include, but are not limited to, grievances, violations of agency rules, policies, and procedures, or matters that may result in civil or criminal liability. Disciplinary action records resulting from an investigation are part of the employee personnel records and are confidential. Other documented information related to an investigation, while not a part of the employee personnel records, is confidential to protect the privacy of the employees involved.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes new language to (1)(i) to clarify for agencies the types of background checks to be included in employee personnel records. Section (2) is proposed for change to clarify that investigation files are kept confidential, as well as the disciplinary action records that may result from the investigation. Whether an agency should maintain the confidentiality of the investigation files was unclear. However, the confidentiality should be maintained to protect the privacy of the employee witnesses involved and to reduce involved employees' concern that information provided during an investigation may not be maintained as confidential.

2.21.6613 RECORDS THAT CONTAIN CONTAINING GENETIC INFORMATION (1) through (3)(e) remain the same.

(4) GINA prohibits the collection of genetic information, except in specific instances. For exceptions to obtaining genetic information, refer to:

(a) the Family and Medical Leave Policy
(<https://montana.policytech.com/docview/?docid=428&public=true&fileonly=true>);
FMLA (MOM #03-0309),

(b) the Sick Leave Policy
(<https://montana.policytech.com/docview/?docid=175&public=true&fileonly=true>);
(MOM #03-0310),

(c) the Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy (ARM Title 2, chapter 21, subchapter 40); and

(d) the Reasonable Accommodations and Equal Access Policy (ARM Title 2, chapter 21, subchapter 41) ~~policies for exceptions to obtaining genetic information.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to amend this rule to provide current links to policies regarding genetic information. Remaining proposed changes are to improve readability and follow drafting conventions.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Ann Brewer, Department of Administration, P.O. Box 200127, Helena, MT 59620; telephone (406) 444-3879; Montana Relay Service 711; fax (406) 444-0703; or e-mail annbrewer@mt.gov, and must be received no later than 5:00 p.m., September 15, 2017.

5. Ann Brewer, Department of Administration, has been designated to preside over and conduct this hearing.

6. The State Human Resources Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The department has determined that under 2-4-111, MCA, the proposed rule amendments will not significantly and directly affect small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 7, 2017.