

# **The Legal Rights of Women in Wyoming**



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***A publication of the Wyoming  
Council for Women's Issues***

***Dona Playton***



## **Disclaimer**

**DUE TO THE CHANGING NATURE OF THE LAW, the information in this handbook may become out-dated.** This handbook was recently revised and updated to include some significant changes in both state and federal laws affecting the rights of women in Wyoming. The handbook is intended to provide explanation of basic legal concepts in simple terms and identifies key legal rights and responsibilities. **It is not intended to offer legal advice in any particular situation or to substitute for the advice of an attorney.**

While we have made every effort to ensure that the information provided in this handbook is accurate and thorough, we recommend you consult a lawyer if you want legal assurance that our information, and your interpretation of it, is appropriate to your particular situation.

## **Acknowledgements**

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## **Wyoming Council for Women's Issues**

The Wyoming Council for Women's Issues was founded in 1965 by Governor Clifford Hansen. The Council's purpose is to raise awareness of issues and provide information that will allow women to improve their lives. The Council's focus is action on the needs and concerns of Wyoming women in the following areas: educational opportunities, employment, family and community, public policy, and legal rights and responsibilities.

The Wyoming Council for Women's Issues is comprised of representation from each of Wyoming's nine judicial districts in addition to four at-large positions and one ex-officio member from the Wyoming Business Council. The functions of the Council include: (1) To gather and distribute information on issues pertinent to women and children in Wyoming; (2) To advocate and/or recommend changes in public policy and practices which prevent the full and equal participation of women in our society; and (3) To network with other agencies and organizations to share information and provide support for actions to improve the quality of life for Wyoming's women and children.

For more information on the Wyoming Council for Women's Issues, visit

Visit: **[www.wyomingwomenscouncil.org](http://www.wyomingwomenscouncil.org)**





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# Adoption and Guardianship



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# **Adoption and Guardianship**

## **Adoption**

### **Parties to an Adoption**

In order for an adoption to take place, a person available to be adopted must be placed in the home of a person or persons eligible to adopt.

#### **Who may adopt?**

In Wyoming, any single adult, a husband and wife who maintain a home together or a stepparent seeking to adopt a stepchild may file a petition to adopt. The party or parties seeking to adopt must reside in this state during the sixty (60) days immediately preceding the filing of the petition for adoption and be determined by the court to be fit and competent to be a parent. **W.S. 1-22-103.**

#### **What is a “putative father”?**

"Putative father" means the alleged or reputed father of a child born out of wedlock, whether or not the paternity rights and obligations of the father have been judicially determined.

### **"Open" Adoption**

An open adoption involves an agreement between a child's adoptive family and birth family that says that the two families will keep in touch. In other words, open adoption allows for birth parents, siblings, or other people who may be psychologically important to the child to contact the child through letters, pictures, and visits with the child and his family. These “cooperative adoption” arrangements are often negotiated for children with special needs, older children, and children who have been in foster care before the adoption.

While Wyoming does not have a specific “open” adoption law, an open adoption may be negotiated when do-

ing so would be in the child's best interest. Certain factors are necessary for an “open” adoption to stand a chance at being successful. First of all, all parties should agree on what contact is appropriate, how often and where it will occur. The primary concern should always be whether an “open” adoption will meet the child's needs, interests, and desires, not the interests of the adults. In the event, the parties no longer agree to the terms of the adoption once finalized, enforcement of an open adoption agreement is highly unlikely. Upon the entry of a final decree of adoption the former parent, guardian or putative father of the child shall have no right to the control or custody of the child. **W.S. 1-22-114.** The adopting persons shall have all of the rights and obligations respecting the child as if they were natural parents.

### **Consent to Adoption**

Consent refers to the agreement by a parent, or a person or agency acting in place of a parent, to relinquish the child for adoption and to release all rights and duties with respect to that child. Either one or both parents may have these rights terminated for a variety of reasons, including abandonment, failure to support the child, mental incompetence, or a finding of parental unfitness due to abuse or neglect. The consent must be in writing and filed with the petition to adopt and shall be signed by:

- (i) Both parents, if living; or
- (ii) The surviving parent; or
- (iii) The mother and putative (alleged) father of the child if the name of the putative father is known; or
- (iv) The mother alone if she does not know the name of the putative father, in which case she shall sign and file an affidavit so stating and the court shall determine whether the putative father has registered under **W.S. 1-22-117**, the putative father registry, and if so, shall require notice to be given to the putative father; or
- (v) The legal guardian of the person of the child if neither parent is living or if parental rights have been judicially terminated; or



- (vi) The executive head of the agency to whom the child has been relinquished for adoption; or
- (vii) The person having exclusive legal custody of the child by court order; or
- (viii) The legally appointed guardian of any parent or putative father who has been adjudged mentally incompetent.

**W.S. 1-22-109.**

### **When Consent Can Be Executed**

In Wyoming, any consent to adoption shall be signed any time after the birth of a child. **W.S. 1-22-109(c).**

### **Consent of Minors**

In Wyoming, if a child to be adopted is over the age of 14, the child's written consent to adoption shall be filed with a Petition to Adopt. **W.S. 1-22-109(b).**

### **Consent to Adopt an Adult**

When a petition to adopt an adult is filed, a copy of the Petition together with a summons is issued and served on the adult. If the adult objects to adoption, the petition shall be dismissed. When the consent of the adult is given, the Petition shall be granted and a final decree of adoption made and entered. **W.S. 1-22-113.**

### **Revocation of Consent**

Adoption is meant to create a permanent and stable home for a child; therefore, a validly executed relinquishment and consent to adopt is intended to be final and irrevocable. As a result, the right of a birth parent to revoke consent is strictly limited. In Wyoming, consent to adoption and the relinquishment of a child for adoption are irrevocable unless obtained by fraud or duress. Except that if the court should deny the adoption on account of a claim or objection of the putative father of the child, the court may also allow the mother of the child to withdraw her consent and relinquishment. The consent or relin-

quishment by a parent who is a minor is valid and may not be revoked solely because of minority. **W.S. 1-22-109(d).**

### **Adoption without Consent**

Adoption of a child may be ordered without the written consent of a parent or the putative father if the Court finds that the non-consenting parent or putative father is unknown and has not registered as the putative father. Again, a "putative father" is the alleged or reputed father of a child born out of wedlock. **W.S. 1-22-110.**

**Putative father registry (W.S. 1-22-117)** Wyoming has established a putative father registry which shall record the names and addresses of:

- (i) Any person adjudicated by a court of this state to be the father of a child born out-of-wedlock;
- (ii) Any person who has filed with the registry before or after the birth of a child out-of-wedlock, a notice of intent to claim paternity of the child;
- (iii) Any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed with the registry by that person or any other person; and
- (iv) Any person who has filed with the registry an instrument acknowledging paternity.

The Court may order adoption without written consent if the putative father or the non-consenting parent or parents have:

- Been given notice of a hearing and failed to answer or appear at the hearing;
- Been judicially deprived of parental rights of the child for any reason; or
- Willfully abandoned or deserted the child; or
- Willfully failed to contribute to the support of a child for a period of 1 year immediately prior to the filing of a Petition to Adopt; or
- Willfully permitted the child to be maintained in or by a public or private institution or by the Department of Family Services (DFS) for a pe-



riod of 1 year immediately prior to filing of the Petition without substantially contributing to the support of the child; or

- Failed, within 30 days after receiving notice of the pending birth or birth of the child, to advise or notify the agency which gave the putative father the notice of pending birth of his interest in or responsibility for the child; or
- Been adjudged by a court to be guilty of cruelty, abuse, neglect or mistreatment of the child; or
- Caused the conception of the child born out of wedlock as a result of sexual assault or incest for which he has been convicted; or
- Willfully failed to pay a total dollar amount of at least 70% of the court ordered support for a period of 2 years or more and has failed to bring the support obligation 100% current within 60 days after service of the Petition to Adopt.

## Evaluations of Adoptive Parents

The Court may order the Department of Family Services (DFS) or a private licensed agency to:

- Investigate and report to the Court the background of the child and the petitioners, and
- Investigate the medical, social and psychological background and status of the consenting parent and putative father. **W.S. 1-22-111(a)(ii).**

## Medical History of Natural Parents and Adoptive Child

To the extent available, the medical history of a child subject to adoption and his natural parents, without identifying the natural parents, shall be provided by an authorized agency or may be provided by order of a court to the child's adoptive parent any time after the adoption decree or to the child after he attains the age of majority. The history shall include but not be limited to all available information regarding conditions or diseases believed to be hereditary, any drugs or medication taken during pregnancy by the child's natural mother and any other information which may be a factor influencing the child's present or future health. The De-

partment of Family Services was given the authority to promulgate rules governing the release of medical histories under this section. **W.S. 1-22-116.**

## Using a Confidential Intermediary

A "confidential intermediary" is a person who is at least twenty one (21) years of age and who has received qualified training to inspect confidential relinquishment and adoption records at the request of an adult adoptee, adoptive parent, biological parent, biological sibling or biological grandparent who is eighteen (18) years of age or older. **W.S. 1-22-201(a)(viii).**

Often, the person seeking information wants to determine the whereabouts of the unknown biological relative or relatives, who must also be an adult in order for their whereabouts to be investigated. **W.S. 1-22-203.**

A court may rule to appoint a confidential intermediary. If so, all costs related to the proceeding and investigation are the responsibility of the party filing the motion for appointment and investigation.

Any information obtained by the confidential intermediary during the course of his or her investigation shall be kept strictly confidential and shall be utilized only for the purpose of arranging a contact between the individual who initiated the search and the sought after biological relative.

When a sought after biological relative is located by a confidential intermediary on behalf of the individual who initiated the search:

- (i) Contact shall be made between the parties involved in the investigation only when written consent for such contact has been obtained from both parties and filed with the court;
- (ii) If consent for personal communication is not obtained from both parties, all relinquishment and adoption records and any information obtained by any confidential intermediary during the course of his investigation shall be returned to the court and shall remain confidential.



The intermediary must have written consent in order to arrange a personal contact among biological relatives. This service is available to adopted adults age 18 or older, adoptive parents, birth grandparents, or birth siblings age 19 or older.

Contact:  
Wyoming Confidential Adoption Intermediary Services  
Hathaway Building, Room 336  
2300 Capitol Avenue  
Cheyenne, WY 82002-0710  
(307) 777-3570  
(307) 777-3693 fax

## Procedure for Adoption

Adoption proceedings are commenced by a Petition filed in District Court. **W.S. 1-22-104(a)**. Along with the Petition, the following documents are filed:

- Consent to adoption; and
- Any relinquishment necessary to show the court that the person or agency legally authorized to have custody and control of the child prior to the adoption, has relinquished the child to the petitioners for adoption.
- Within 30 days immediately preceding the filing of the Petition to Adopt, a report by a licensed Wyoming physician of the medical examination of the child. A medical report is not required when a parent of the child joins in the Petition to Adopt or when the child resides with the adoptive parents for more than 6 months prior to filing a Petition.
- An affidavit from each petitioner which states any previous or current diagnosed psychiatric disorders of the Petitioner(s); all felony convictions of the Petitioner(s) within the preceding 10 years; all misdemeanor convictions of the Petitioner(s) within the preceding 5 years; and the current parole or probation status of the Petitioner(s).

**W.S. 1-22-104(c).**

After the Petition to Adopt has been filed and a hearing held, the Court acting in the best interest and welfare of the child may make:

- An interlocutory decree giving the care and custody of the child to the Petitioner(s) pending further order of the Court;
- A final decree of adoption if the child has resided in the home of the Petitioner(s) for 6 months.

If an interlocutory decree has been entered, Petitioner(s) may apply for a final decree of adoption after the child has resided in the home of the Petitioner(s) for 6 months. **W.S. 1-22-112(a)**. Otherwise, if an interlocutory decree has not been entered a hearing on the petition for a final decree of adoption will be held. **W.S. 1-22-112(b)**.

## Rights of Birth Fathers

If the putative father (the alleged or reputed father of a child born out of wedlock) files and serves objections to a Petition to Adopt, the Court will hear the evidence in support of the Petition to Adopt and in support of the objection to the Petition and shall then determine whether:

- The putative father's claim to paternity of the child is established;
- The putative father's objections to the Petition to Adopt are valid; and
- The best interests and welfare of the child will be served by granting the putative father's claim to paternity or by allowing the Petition to Adopt.

**W.S. 1-22-108(c).**

The putative father has no right to assert paternity in adoption, dependency or termination of parental rights proceedings unless he is known and identified by the mother or agency, or unless he has lived with or married the mother after the birth of the child and prior to the filing of the Petition to Adopt, and unless he has acknowledged the child as his own by affirmatively asserting paternity or registered as a putative father. **W.S. 1-22-108(d)**.

## Rights of People Who Have Been Adopted

Upon entry of a final decree of adoption, the former parent, guardian or putative father of the child shall



have no right to the control or custody of the child. The adopting persons shall have all of the rights and obligations respecting the child as if they were natural parents.

Adopted persons may assume the surname of the adoptive parents. They are entitled to the same rights of person and property as children and heirs at law of the persons who adopted them. **W.S. 1-22-114(b).**

“Upon the entry of the final decree of adoption, all records in the proceedings shall be sealed and may be available for inspection only by order of court for good cause shown.” Under this section of the law, you may petition the court for access to your records, and the court will determine if there is “good cause” to release the file information to you. **W.S. 1-22-104(d).**

## **Guardianship**

### **General Provisions for Guardianship of Minors and Incompetents**

#### **What is a guardianship?**

Guardianship is established by a court order. The court grants the guardian authority and responsibility to act on behalf of another person. The relationship is ***fiduciary*** which means that the guardian is obliged to act in the best interests of the ward. **W.S. 3-1-106.** The court supervises the guardian to assure proper actions on behalf of the ward. An individual may serve as guardian of a minor or of an incapacitated person. For a minor, the court considers which individual's appointment will be in the best interest of the minor.

The appointee might be the spouse, an adult child or parent of the ward, or any responsible adult with whom the ward is residing. **W.S. 3-2-107.**

**Minors over 14 years of age:** In Wyoming, a minor ward over fourteen (14) can nominate his or her own choice for guardian. **W.S. 3-2-105.**

To establish a guardianship, a petition is filed in the district court where the ward lives. **W.S. 3-1-103** and

**3-2-101.** This petition names the potential guardian and provides information about the parties' relationship (if any). If the ward is a minor, information about the minor's parents and whether and where they are living is generally necessary. In the case of an adult ward, if mental incapacity is the reason for the petition, medical documentation should accompany the filing. Notice of the time and place of the ***hearing*** is given to the potential ward and other persons specified by ***statute***. **W.S. 3-2-102.**

#### **What is a guardian?**

A guardian is a person, association or corporation appointed by the district court judge to be legally responsible for another person and/or another person's property. Most commonly, individuals are appointed to serve as guardians. A person for whom a guardian has been appointed is called a ***ward***. **W.S. 3-1-101(v)** and **W.S. 3-1-101(xv).**

#### **Why are guardians appointed?**

A guardian is appointed by the court to oversee the legal and financial affairs (and/or the personal care) of a minor, or of an adult who is not able to manage his or her own affairs because of advanced age or some other physical or mental disability. Once appointed, a guardian/conservator is answerable to the court for providing proper care and management of the ward's affairs in the ward's best interest.

#### **Who may be a guardian?**

The court may ***not*** appoint a person to be a guardian of an incompetent person or a minor if the person proposed to act as guardian:

- Provides, or is likely to provide during the guardianship period, substantial services to the ward in a professional or business capacity unrelated to the person's authority as a guardian;
- Is, or is likely to become during the guardianship period, a creditor of the ward, other than in the capacity as guardian;



- Has, or is likely to have during the guardianship period, interests that may conflict with those of the ward; or
  - Is employed by a person who would be disqualified under the above provisions.
- The parent or parents of the minor;
  - The person nominated as guardian in the will of the custodial parent;
  - The person requested by a minor who has reached the age of fourteen (14) years;
  - Any other person whose appointment would be in the best interests of the minor.
- W.S. 3-2-107(d).**

However, ***a person may be appointed*** as guardian of a respondent (ward), notwithstanding the provisions above that would otherwise disqualify the person, if the person is the spouse, adult child, parent or sibling of the respondent and the court determines that the potential ***conflict of interest is insubstantial*** and that the appointment would clearly be in the ***best interests*** of the respondent (ward). **W.S. 3-2-107.**

**Priority of appointment for incompetent person.** Qualified persons have priority for appointment as guardian of an ***incompetent person*** in the following order:

- A person nominated by the respondent if at the time of the nomination the respondent has the capacity to make a reasonably intelligent choice;
- The spouse of the respondent;
- A nomination in the will of the respondent's deceased spouse;
- The parent of the respondent;
- An adult child of the respondent;
- A person named in the will of the respondent's deceased parent;
- A relative of the respondent with whom the respondent has resided for more than six (6) months during the year preceding the filing of the petition;
- A relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the respondent;
- Any other person whose appointment would be in the best interests of the respondent;
- A person with a guardianship program for incompetent persons.

**W.S. 3-2-107(c).**

**Priority of appointment for minor.** Subject to subsection (e) of this section, qualified persons have priority for appointment as guardian of a ***minor*** in the following order:

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***The court shall consider the priorities established above, but shall not be bound by those priorities. The court shall appoint the person who is best qualified and willing to serve as guardian.***

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## **What are the general powers and duties of a guardian?**

### **The guardian shall:**

- Determine and facilitate the least restrictive and most appropriate and available residence for the ward;
- Facilitate the ward's education, social and other activities;
- Subject to certain restrictions, authorize or expressly withhold authorization of medical or other professional care, treatment or advice;
- Take reasonable care of the ward's personal property;
- Commence protective proceedings if necessary to protect the property of the ward;
- Apply to the ward's current needs for support, care and education as much of the money or property paid or delivered to the guardian as may be appropriate under the law;
- Exercise due care to conserve excess funds for the ward's future needs;
- Pay to the conservator excess funds at least annually;
- Request the court to modify the guardian's range of duties if the changed circumstances of the ward require such modification; and
- Following the death of a ward, arrange for the final disposition of the ward's remains accord-



ing to the ward's expressed wishes if known, if the immediate family is unavailable or unwilling to assume responsibility. For purposes of this paragraph, "immediate family" is defined as parents, spouse, grandparents, siblings and adult children.

**W.S. 3-2-201.**

### **The guardian may:**

- Receive money payable from any conservatorship for the support of the ward;
- Receive money or property of the ward paid or delivered to the guardian pursuant to the law (**W.S. 3-3-108**);
- Institute proceedings to compel the performance by any person of the duty to support or contribute to the support of the ward;
- Consent to the marriage or adoption of the ward.

**Liability.** The guardian is not liable for injury to the ward resulting from the negligence or acts of third persons performed by authority given by the guardian for medical or other professional care, treatment or advice, unless it would have been negligent for a parent to have given that authority.

**Same powers as parent.** The guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his unemancipated minor child. A guardian who is not a parent of the minor is not obligated to expend his own funds for the support of the ward. A guardian who is not the parent of a minor is not liable to third persons for acts of the ward by reason of the relationship of guardian and ward.

### **Other powers requiring court approval.**

Upon order of the court, after notice and hearing and appointment of a guardian ad litem, the guardian may:

- Commit the ward to a mental health hospital or other mental health facility;

- Consent to the following treatments for the ward:

- (A) Electroshock therapy;
- (B) Psychosurgery;
- (C) Sterilization;
- (D) Other long-term or permanent contraception.

- Relinquish the ward's minor child for adoption, provided:

- (A) Notice of any hearing was given to the ward and the legal or putative father; and
- (B) The ward attended the hearing if the court so ordered.

- Execute any appropriate advance medical directives, including durable power of attorney for health care.

### **What are the powers of the ward?**

A ward who is a minor or a mentally incompetent person for whom a conservator has been appointed does not have the power to convey, encumber or dispose of property in any manner, *except*:

- By will if he possesses the requisite testamentary capacity; or
- As provided by **W.S. 2-1-203(a), 13-7-302 and 34.1-4-405.**  
**W.S. 3 1 202.**

### **Title to ward's property.**

Title to all property of the ward remains in the ward and is subject to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition as provided by law. **W.S. 3-1-203.**

## **Guardianship of Minors**

Guardianship of a minor is typically appropriate when a child is permanently living with someone other than a parent. This might occur if both parents died, or if one parent died and the other is incarcerated or otherwise



absent. Guardianships of minors are often established when neither parent is able to provide a safe, secure home for the child because of drug abuse, alcoholism, and other serious personal problems.

The difference between guardianship and **adoption** is that guardianship does not sever the biological parents' rights and responsibilities. Guardianship of a child means that a caregiver is responsible for the care and **custody** of the child. This arrangement allows the guardian to access services on behalf of the child. Unlike adoption, a birth parent can return to court at any time and ask for the guardianship to be terminated.

When a guardian is appointed for a minor child, the court may impose conditions. For instance, courts sometimes require that grandparent guardians attend grandparent caregiver support groups.

For more information on Grandparent Guardianships, contact:

The Grandparent Information Center  
AARP 601 E Street, N.W.  
Washington, D.C. 20049

"Do-it-yourself" (pro se) packets are available from the AARP web site at: [www.aarp.org/wy](http://www.aarp.org/wy). Scroll down to the heading: Grandparent Resources, click the link and then select "You Are Not Alone" from the bulleted list of options.

Your local Area Agency on Aging may also be able to identify services and supports for grandparents with a variety of needs.

See Also **Temporary Guardianship for Educational, Medical Care and Dental Care Purposes** (next section)

## **Temporary Guardianship for Educational, Medical Care and Dental Care Purposes**

This type of guardianship is new in Wyoming (2006) and was passed in response to the large numbers of grandchildren who are being raised by their grandparents in our state. **W.S. 3-2-301 et seq.**

A temporary guardian for educational, medical care and dental care purposes may be appointed through an ex parte temporary guardianship order without notice to the child's natural parents if the court finds by a preponderance of the evidence from the petition and testimony, if any testimony is deemed necessary by the court, that temporary guardianship is in the best interest of the child and not detrimental to the interests of any other person and that no other person appears to have authority and willingness to act in the circumstances. The court shall cause the ex parte temporary guardianship order, together with notice of right to a hearing, to be served on the natural parents of the child pursuant to Rule 4 of the Wyoming Rules of Civil Procedure.

The notice of right to a hearing shall clearly inform the child's natural parents that a temporary guardianship for educational, medical care and dental care purposes has been granted to the petitioner and that the natural parents, individually or jointly, have the right to request a full hearing on the temporary guardianship by filing a written request for hearing with the court. A request for full hearing by a natural parent shall be filed with the court and shall be served on the temporary guardian pursuant to Rule 4 of the Wyoming Rules of Civil Procedure. Upon receipt of a request for hearing, the court shall set the full hearing at its earliest convenience.

Except upon a showing of good cause, an ex parte order appointing a temporary guardian of a child for educational, medical care and dental care purposes shall be limited to ***not more than one (1) year***.

**Temporary Guardianship for Educational, Medical Care and Dental Care Purposes "Do-it-yourself" (pro se) packets** are available from the AARP web site at: [www.aarp.org/wy](http://www.aarp.org/wy). Scroll down to the heading: Grandparent Resources, click the link and then select "You Are Not Alone" from the bulleted list of options.

***The information contained in this handbook is general and should not be applied to specific legal problems without first consulting your own attorney.***

# Credit, Consumer Protection and Finances



## In this chapter:

### Credit

**Federal Equal Credit Opportunity Act**  
**Fair Credit Reporting Act**  
**The Fair and Accurate Credit Transactions Act**  
**Debt Collection Practices**  
**Bankruptcy**

### Consumer Protection

Telemarketing and Home Solicitation Sales  
The “NO CALL” Law  
Contests and Prizes  
Payday Loans  
Wyoming’s Lemon Law  
Identity Theft  
Multilevel Marketing Plans  
To Complain/For More Information



# **Credit, Consumer Protection and Finances**

As a consumer, you have rights that protect you against fraud and deceptive practices.

Women should be aware of their rights under a number of different federal and state laws and regulations regarding consumer and credit issues. Women should also be aware of their responsibilities. Signing your name is a significant power that can lead to serious obligations. When you are considering a transaction that requires your signature, be sure that you:

- Understand what you are signing;
- Check that the writing contains all the important things you have discussed;
- Are not rushed;
- Ask questions;
- Never sign anything with blanks;
- Know the total cost of the transaction;
- Get a copy of what you are signing.

For more specific information on issues that may be important to you, go to [www.consumer.gov](http://www.consumer.gov) or [www.federalreserve.gov/pubs/consumerhdbk/cost.htm](http://www.federalreserve.gov/pubs/consumerhdbk/cost.htm).

## **Credit**

Credit is the privilege of using money, goods, or services before you pay for them. A creditor grants a “credit-worthy” applicant the right to defer payment for money lent or goods and services purchased until a later agreed-upon date. “Creditworthiness” is determined by the applicant’s income, ability to repay the loan, past credit history, and other debts and assets.

The credit laws do not guarantee that a woman will receive credit in all situations; however, the laws do require that the rules creditors use to take credit applications and decide whether to give credit are fair and non-discriminatory.

## **Federal Equal Credit Opportunity Act**

Under the 1974 Equal Credit Opportunity Act (ECOA), with regard to any aspect of a credit transaction, it is unlawful for a creditor to discriminate on the basis of the applicant’s sex, marital status, race, color, religion, national origin, or age (provided the applicant has the capacity to contract); because of the applicant’s receiving public assistance; or because the applicant has exercised any right under the Consumer Credit Protection Act.

Lending institutions (like banks, credit unions, auto loan companies) are prohibited from bringing up, in the taking of applications for loans, certain specific subjects which lend themselves to discrimination. Lenders may not:

- Make oral or written statements that would discourage a reasonable person from pursuing an application for credit;
- Ask whether or not you have or will have children. (Although inquiring as to the number and age of dependents is proper).
- Ask whether or not there exist child care problems.
- Ask whether or not there will be interruptions of income due to childbirth.
- Request a courtesy title (Mrs., Miss, Ms.) unless the application discloses that this request is optional;
- Ask about marital status if the credit requested is for a separate, unsecured loan;
- Ask whether you are widowed, divorced, or single. (Allowable designations are: married, unmarried, separated).
- Ask whether or not your telephone number is listed.
- Ask whether or not you are receiving alimony, child support or separate maintenance. (Unless voluntarily disclosed as a source of additional income which you wish to be considered).
- Refuse to consider alimony and child support as income if they are likely to be regularly made;
- Consider the submission of a joint financial statement to be an application for joint credit.



Lenders must:

- Take and report action on your application "within a reasonable time."
- Give reasons for denial of your application if asked.
- If the denial was based completely or partly on information contained in a credit report provided by a credit reporting agency, notify the applicant that this happened, provide information so the applicant can contact the agency, and indicate that the applicant is entitled to a free report from that agency.

Upon a woman's divorce, retirement, or the death of her spouse, a creditor cannot terminate an account, change the terms of an account, or require reapplication unless the creditor has evidence of the woman's unwillingness or inability to repay the debt. However, a creditor may require reapplication for an account if the credit granted was based in whole or in part on the income of a woman's deceased or ex-spouse and the creditor has information to indicate that the woman's income alone is not sufficient to support the amount of credit currently available.

If a woman requests secured credit, a creditor may require the signature of her spouse on any instrument necessary to make the property being offered as collateral for the loan available to satisfy the debt in the event of default.

***Creditors are required to report all joint accounts of spouses in the names of both spouses to credit reporting agencies.***

## Fair Credit Reporting Act

If you have ever applied for a credit card, personal loan, or insurance, a credit reporting agency (CRA) has a file about you. These companies gather information and sell it to creditors, employers, insurers, and other businesses in the form of a document called a "credit report." There are three major nationwide credit bureaus: Equifax, Experian, and Trans Union. Credit bureaus collect and sell four basic types of information: your identification and employment information; your payment history on accounts with different creditors; a record of every

creditor who has asked for your credit history within the past year and every individual who has requested your credit history for employment purposes during the past two years; and all matters of public record, such as bankruptcies, foreclosures, or tax liens.

There are laws that give consumers the right to know what information credit bureaus and consumer reporting agencies are distributing about them to creditors, insurance companies and employers. The **federal FAIR CREDIT REPORTING ACT** provides that:

- You have the right to be told, at the time you apply for insurance, that a credit report will be ordered.
- If your application for credit or insurance is turned down or treated adversely in any way, you have the right to be told whether the decision was based in any way on information obtained by the investigating agency.
- You must be told where your credit file is located, and that you and another person (such as a lawyer) may inspect it at reasonable times.
- **You have the right to dispute incomplete or inaccurate information in your file.** You should report errors in writing both to the CRA and to the person or company who provided the information to the CRA. The CRA must investigate your complaint unless it determines your dispute to be frivolous. It must also forward all the relevant data you submit about the inaccuracy to the person or company that provided the information. This information provider must also conduct an investigation.
- If you suffer damages from mishandling of information, you can sue and recover.
- There are also criminal penalties.

The information contained in credit reports affects whether you will be able to get a loan or credit to buy goods and services, and it may influence decisions on whether you will be hired or insured. You may receive a copy of your credit report before you apply for a loan for a major purchase, buy insurance, or apply for a job. Doing so may help guard against identity theft.



## The Fair and Accurate Credit Transactions Act

The Fair and Accurate Credit Transactions Act, signed into law in December 2003, gives every American the right to a free credit report every year from each of the three major credit bureaus. Equifax, Experian and TransUnion joined forces to offer a one-stop free credit report center. **Annual Credit Report Request Service** at [www.annualcreditreport.com](http://www.annualcreditreport.com) allows you to request, view and print one, two or all three of your free credit reports quickly via a secure Internet site. Or you can request the report by phone or mail (these will be processed within 15 days of receipt).

- Internet address: [www.annualcreditreport.com](http://www.annualcreditreport.com)
- Toll-free number: (877) 322-8228
- Mailing address: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281

The bureaus stressed that this is the only service they have authorized for requesting your free annual report.

## Debt Collection Practices

Federal consumer protection regulations (US Code: Title 15, Chapter 41) exist to protect consumers against unfair and deceptive debt collection practices. Many times companies hire collection companies to collect debt that consumers owe to them. This is called “third party collections” or “debt collectors.” In other words, the debt collector’s purpose is to collect debt for other people. If you have a “third party” collection agency calling you, you can get them to stop calling as long as you notify them in writing stating that you want them to stop calling you.

The collection agency can only call between the hours of 8 a.m. and 9 p.m. and if they know that you have a lawyer regarding this debt, they must contact the lawyer. The collection agency must not call you at your place of employment if it is forbidden by your employer.

Debt collectors are not permitted to harass you or engage in the following conduct:

- Use or threat of violence;

- Use of obscene language;
- They cannot publish your name as a consumer who refuses to pay debts (except to the credit reporting agencies); or
- Call you repeatedly or continuously with the intent to annoy or harass.

## Bankruptcy

For individuals, there are two main kinds of bankruptcy:

- **Chapter 7** -- a bankruptcy where many, if not all, of your debts are cancelled outright in a short three- to six-month process.
- **Chapter 13** -- a bankruptcy where you use your income to make payments on your debts over the next three to five years.

In Chapter 7, the debtor’s assets are liquidated and distributed among creditors, and many remaining debts are discharged, or cancelled, leaving the debtor free to make a fresh start. (Some debts are not dischargeable, and secured debts like mortgages are not affected by bankruptcy.) In practice, most Chapter 7 filings are “zero asset” cases, where unsecured creditors get nothing. (Several types of assets are exempt from liquidation and cannot be distributed to creditors.)

In Chapter 13 bankruptcies, debtors with regular incomes agree to a plan to pay back some or all of their debt under court supervision over a period of several years. At the plan’s conclusion, remaining debts are discharged. An advantage of Chapter 13 for debtors is that a wider range of debts can be discharged than under Chapter 7. If the debtor is unable to complete the series of payments required by the Chapter 13 plan, the case may be dismissed or converted to Chapter 7. Upon dismissal, remaining debts are not discharged, unless the court finds that the debtor cannot justly be held accountable for failure to complete the plan, and creditors have received at least the amount of repayment they would have received under a Chapter 7 filing. Under the old law, the choice of chapters was left entirely up to the debtor.

**New Bankruptcy Law:** On October 17, 2005, a new Federal Bankruptcy Law took effect. The new law tight-



ens requirements for filers and for bankruptcy lawyers who handle their cases. A major goal under the new provisions is to shift filers from Chapter 7 ("straight") bankruptcy, in which consumer debt is typically liquidated, to Chapter 13 ("reorganization") bankruptcy, which requires that you repay secured and much unsecured debt within five years. No "clean start" in this case.

Here are some of the major changes under the new law:

- **The "Means Test"** - The means test calculates your monthly income minus certain allowable expenses. Each state uses its "median income" as a guide. If the balance left is more than about \$100 a month, the filing is considered abusive, unless you can show "special circumstances." If you don't meet the "means test," you may have to file Chapter 13 instead.
- **Stringent expense allowances** - Guidelines for allowable expenses are set by the IRS and are very conservative. For example, the food allowance is around \$200 per month and housing allowance about \$800.
- **Mandatory credit counseling** - You must undergo credit counseling within six months before filing for bankruptcy relief and to complete a financial management instructional course after filing bankruptcy.
- **More paperwork** - In the new "get tough" environment, consumers will have to provide a lot more documentation to show that bankruptcy is warranted. The American Bankruptcy Institute lists some of the proof debtors must provide: a list of secured and unsecured creditors; documentation of credit counseling; monthly income and expenses; assets and liabilities; most recent tax return and any earlier returns that were not filed; pay stubs and photo ID.
- **More expensive legal fees** - The burden on bankruptcy lawyers has also increased under the new statute. Besides merely gathering the facts from a client, an attorney must now "certify" that a client's numbers are accurate. If they aren't, both lawyer and client could face sanctions. So, in effect, your lawyer must do more fact-checking and investiga-

tion to assure that both your information and his/her own certification is above-board. This takes time, which translates into money. Many lawyers are getting out of bankruptcy practice, not wanting to put their careers on the line for filing cases that don't pay very well anyway.

- **Filing fee changes** - The cost for filing a Chapter 7 bankruptcy is \$274. This fee may not be waived but you may be able to pay it in installments. The fee of \$189 for a Chapter 13 bankruptcy can not be waived. ([Wyomingbankruptcy.com](http://Wyomingbankruptcy.com))
- **Valuation increases—replacement value** - The law provides that "collateral," which includes your furniture, clothes, autos and electronics, be assessed at a higher value than under the previous law. Replacement value is the new amount used to value your personal property. Chances are, by the time you add up the total value of your possessions using this formula, it will be pretty high.
- **You'll wait longer to file again** - The new law provides that, under Chapter 7, **eight years** must elapse before you can re-file. If you go for Chapter 13 after a Chapter 7, you must wait four years. Going from one Chapter 13 to another, two years must elapse.
- **Last minute luxuries** - The new law requires that any luxury items purchased within 60 days of filing for bankruptcy be repaid in full. Likewise for cash advances and services worth more than \$500.
- **Student loans** - Under the old law, you couldn't get rid of student loans backed by the government or a non-profit. This protection has been extended to private lenders as well.

**NOTE: Bankruptcy and Divorce:** Alimony, maintenance, and/or support are protected from discharge. Divorce decrees and separation agreements are covered by 11 U.S.C. Section 523(a)(15). This section states that these debts are not dischargeable unless:

- (A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continu-



ation, preservation, and operation of such business;  
or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

*For more information go to **WyomingBankruptcy.com**.*

Wyoming bankruptcy attorneys can be located by contacting the Wyoming State Bar association's Lawyer Referral Service and requesting a referral to an attorney who practices in the area of consumer bankruptcy law.

**Wyoming State Bar**  
Cheyenne, WY  
(307) 632-9061  
Consumer Protection

## **Consumer Protection**

**Consumer Protection Unit**  
**123 State Capitol**  
**Cheyenne, WY 82002**

**To request a complaint form, please access one of the following forms of contact:**

**E-mail: [baylwa@state.wy.us](mailto:baylwa@state.wy.us)**

**Phone: 307-777-7874 Toll Free: 800-438-5799**  
**FAX: 307-777-7956**

## **Telemarketing and Home Solicitation Sales**

One of the most frequently experienced consumer interactions occurs when someone calls to try to sell goods and services over the telephone. This is called “telemarketing” or “telephonic home solicitation sales.”

Under Wyoming law (**W.S. 40-12-101** - Wyoming Consumer Protection Act), the “home solicitor” (seller) must obtain your signature, along with the date of the sale, on a written agreement which is in the same language used in the sales presentation; contains the name and address of the seller; and has a statement of your right to cancel the sale.

Under Wyoming law, you have a right to a full refund if you comply with the following rules:

- You notify the seller by midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase and is furnished with a copy of the completed, approved, and accepted contract;
- You notify the seller in writing at the address stated in the sales contract; and
- When you return the goods they must be in substantially as good a condition as when you received it from the seller.

Do not, under any circumstance, give your social security number, bank account numbers, or credit card numbers to anyone ***calling you***. If the caller is legitimate (your bank, credit card company, etc.) they will never expect you to give this information over the telephone. However, if you call their offices you may have to disclose the last four digits of your account number or social security number.

## **The "No-Call" Law**

Now it is possible to place your telephone number and cellular phone numbers on a list so that you will not receive most types of telemarketing calls.

The "No-Call" law requires most telemarketers to refrain from calling residential or wire-less telephone or pager numbers that have been enrolled in the Direct Marketing Association's (DMA) Telephone Preference Service (TPS). The law also requires telemarketers to disclose the purpose of the call (to sell something) and to identify the business on whose behalf they are calling.

You must contact the DMA and request that your number be included on the TPS list. You can visit the DMA's web site at [www.the-dma.org/consumers/](http://www.the-dma.org/consumers/) (go to the consumer assistance page) to submit your request electronically. The national Do Not Call List is available at: [www.DoNotCall.com](http://www.DoNotCall.com). This website allows you to include your numbers on the list and gives information about how to report an organization if they violate the law.



There are exceptions for telemarketers with whom you already have a business relationship and for businesses making less than 225 telephone solicitation calls per year, therefore, you will probably continue to receive some calls from telemarketers. Political campaigns and non-profit organizations (charitable contributions) are exempt from the do not call list and are permitted to call you during the hours specified even if you are on the list.

The Wyoming Attorney General's Office enforces the "No-Call" law. If you have enrolled your number on the TPS list at least 60 days prior to receiving a call from a telemarketer, you can file a complaint with the Attorney General. If you wish to file a complaint, please download one from the Attorney General's consumer protection website or request the Telephone Solicitation Complaint Form, complete it and return it to the Wyoming Attorney General's Office, Consumer Protection Unit, 123 Capitol, Cheyenne, WY 82002, **Phone: 307-777-7874 Toll Free: 800-438-5799**.

## Contests and Prizes

If you get an e-mail saying you won something -- and you didn't enter -- you should just delete it. This is a common scam.

Under Wyoming law (**W.S. 40-12-201, 202-209**) a solicitor cannot request nor accept a payment from you in any form until you receive a written prize notice that contains the following information:

- The name and address of the solicitor and sponsor;
- The verifiable retail value of each prize;
- Any requirements they may have for you to receive the prize, such as attending sales presentations;
- Any shipping and handling fees—these fees must be clearly marked in dollars and cents; and
- Any limitations on eligibility or other restrictions on you receiving the prize.

See **W.S. 40-12-201 et seq.** <http://legisweb.state.wy.us/statutes/titles/title40/c12a02.htm>.

## Payday Loans

### What is a payday loan?

A cash advance loan secured by a personal check - such as a payday loan - is very expensive credit. Let's say you write a personal check for \$115 to borrow \$100 for up to 14 days. The check casher or payday lender agrees to hold the check until your next payday. At that time, depending on the particular plan, the lender deposits the check, you redeem the check by paying the \$115 in cash, or you roll-over the check by paying a fee to extend the loan for another two weeks. In this example, the cost of the initial loan is a \$15 finance charge and 391 percent APR. If you roll-over the loan three times, the finance charge would climb to \$60 to borrow \$100.

### - Federal Trade Commission

- Payday loan companies, in the business of "regularly" extending credit to consumers, must adhere to the *Truth In Lending Act* (15 USC 1601). Depending on how many days you will need to repay the loan you will pay an APR ranging from 295% - 886.43%. Often, the quicker you pay off the loan, the higher the APR. Wyoming law limits finance charges to the greater of \$30.00 or 20% per month on the principal balance. **W.S. 40-14-363**

Although they are required to disclose the finance charge and the annual percentage rate, the contracts are usually very difficult to understand.

For more information and alternative options, visit [www.ftc.gov/bcp/online/pubs/alerts/pdayalrt.htm](http://www.ftc.gov/bcp/online/pubs/alerts/pdayalrt.htm).

### Resources:

National Foundation for Credit Counseling  
<http://www.nfcc.org/>

Consumer Credit Counseling Services  
<http://www.cccsintl.org/>

The Credit Counseling Professionals  
<http://www.consumercredit.com/>



Credit Counseling Services

<http://www.consolidatedcredit.org/>

## Wyoming

Department of Audit Division of Banking

Hershler Building 3rd Floor

East Cheyenne, WY 82002

phone: (307) 777-7797

<http://audit.state.wy.us>

## Rent To Own Companies

There has been an explosion of Rent-To-Own companies in the last decade. These companies serve the purpose of allowing people to rent furniture, appliances, etc., for a weekly or monthly term, which makes it appealing to consumers who do not have enough money to buy the items with cash or credit card. Consumers must be aware that Rent-To-Own companies are **NOT** covered by the *Truth In Lending Act*.

### **In Wyoming, the following disclosures are required for Rent-To-Own contracts:**

- Whether the payment is weekly, monthly, or otherwise;
- The dollar amount of each payment and the total number of payments necessary to own the item;
- A statement that the consumer will not own the property until the consumer has paid the total amount due;
- Disclosure of the cash sale price of the property;
- Other fees shall be separately disclosed and explained;
- Clear statement of the terms of the option to purchase;
- Clear statement that consumer may terminate without penalty by return of the property in "good repair" with reasonable wear and tear expected;
- Notice that the consumer may reinstate the agreement;
- Notification if the property is NEW or USED;
- Conditions that would be considered a "default."

## Wyoming's Lemon Law

You have the right to return your car for a new one or an adjusted refund, if it turns out that you have purchased a "lemon." This is defined under Wyoming law (**W.S. 40-17-101**) as a motor vehicle that does not conform to the manufacturer's written warranty and which, after a "reasonable number of attempts," cannot be properly repaired.

A reasonable number of attempts are considered to have been taken if either:

- You have taken the car in to be repaired for the same problem at least three times, as long as the first attempted repair occurred within the first year after purchase, or
- Your vehicle is out of service for a total of 30 or more days during the warranty period.

## Identity Theft

Despite your best efforts to manage the flow of your personal information or to keep it to yourself, skilled identity thieves may use a variety of methods to gain access to your data.

They get information from businesses or other institutions by:

- They may steal personal information from you through email or phone by posing as legitimate companies and claiming that you have a problem with your account. This practice is known as "phishing" online, or pretexting by phone.
- Stealing records or information while they're on the job.
- Bribing an employee who has access to these records.
- They may steal your mail, including bank and credit card statements, credit card offers, new checks, and tax information.
- They may rummage through your trash, the trash of businesses, or public trash dumps in a practice known as "dumpster diving".
- They may get your credit reports by abusing their employer's authorized access to them, or by posing



as a landlord, employer, or someone else who may have a legal right to access your report.

- They may steal your credit or debit card numbers by capturing the information in a data storage device in a practice known as "skimming." They may swipe your card for an actual purchase, or attach the device to an ATM machine where you may enter or swipe your card.
- They may steal your wallet or purse.
- They may complete a "change of address form" to divert your mail to another location.
- They may steal personal information they find in your home.

Once identity thieves have your personal information, they use it in a variety of ways (**W.S. 6-3-901**).

If an identity thief is opening credit accounts in your name, these accounts are likely to show up on your credit report. To find out, order a copy of your credit reports (see above for more information for how to order a credit report).

## Pretexting

Pretexting is the practice of getting your personal information under false pretenses. Pretexters sell your information to people who may use it to get credit in your name, steal your assets, or to investigate or sue you. Pretexting is against the law.

Pretexters use a variety of tactics to get your personal information. For example, a pretexter may call, claim he's from a survey firm, and ask you a few questions. When the pretexter has the information he wants, he uses it to call your financial institution. He pretends to be you or someone with authorized access to your account. He might claim that he's forgotten his checkbook and needs information about his account. In this way, the pretexter may be able to obtain personal information about you such as your Social Security number, bank and credit card account numbers, information in your credit report, and the existence and size of your savings and investment portfolios.

Keep in mind that some information about you may be a matter of public record, such as whether you own a home, pay your real estate taxes, or have ever filed for bankruptcy. It is not pretexting for another person to collect this kind of information.

By law (**W.S. 6-3-901a,b**), it's illegal for anyone to:

- use false, fictitious or fraudulent statements or documents to get customer information from a financial institution or directly from a customer of a financial institution.
- use forged, counterfeit, lost, or stolen documents to get customer information from a financial institution or directly from a customer of a financial institution.
- ask another person to get someone else's customer information using false, fictitious or fraudulent statements or using false, fictitious or fraudulent documents or forged, counterfeit, lost, or stolen documents.

## Wyoming's Credit Freeze Law:

If you've lost personal information or identification, or if it has been stolen from you, taking certain steps quickly can minimize the potential for identity theft. Effective July 1, 2007, Wyoming passed the *Credit Freeze Law* which allows consumers who suspect identity theft to place a security freeze on their credit report for free. This freeze prohibits third parties from accessing your credit report for the purposes of determining eligibility for credit or opening new accounts without prior approval from the consumer. To place a security freeze in Wyoming visit: [www.consumersunion.org/pdf/security/securityWY.pdf](http://www.consumersunion.org/pdf/security/securityWY.pdf)

## Multilevel Marketing Plans

Multilevel marketing plans, also known as "network" or "matrix" marketing, are a way of selling goods or services through distributors. These plans typically promise that if you sign up as a distributor, you will receive commissions -- for both your sales of the plan's goods



or services *and* those of other people you recruit to join the distributors. Multilevel marketing plans usually promise to pay commissions through two or more levels of recruits, known as the distributor's "downline."

**If a plan offers to pay commissions for recruiting new distributors, *watch out!*** Most states outlaw this practice, which is known as "pyramiding." Wyoming laws against pyramiding say that a multilevel marketing plan should only pay commissions for retail sales of goods or services, not for recruiting new distributors (**W.S. 40-3-106**).

## **To Complain/For More Information**

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit [www.ftc.gov](http://www.ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

# Criminal Law



## In this chapter:

### Constitutional Safeguards

### Criminal Investigations

- Providing Information
- Investigatory Stops
- Miranda Rights
- Search and Seizure

### Process and Procedure

- Arrest
- Booking
- Bail
- Arraignment
- Plea Bargains
- Preliminary Hearing

Pre-trial Motions

Trial

Sentencing

Difference between probation and parole

Appeals

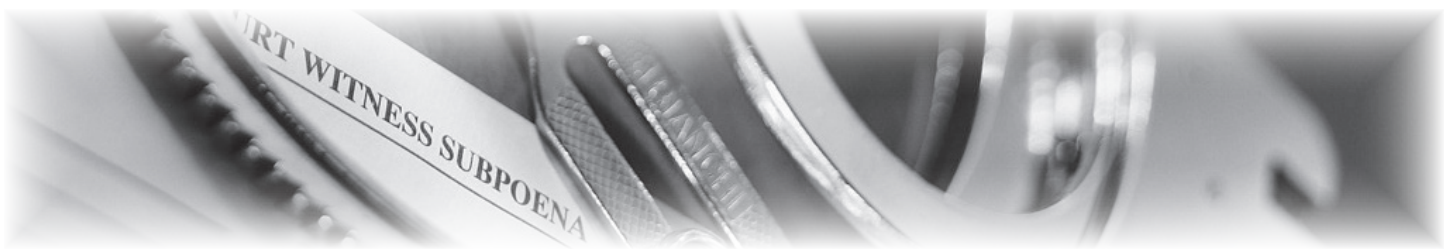
Expungement

**Wyoming Victim Notification Program**

**Wyoming Victim Bill of Rights**

**Resources for Victims**

**Wyoming Criminal Code**



## **Criminal Law**

A crime is a violation of the law that is punishable by a fine or a jail sentence. Criminal laws define the actions which are “crimes” (offenses against society) and sets out punishments for these crimes. They differ from civil laws because the state, not a private citizen, brings the action against the alleged wrongdoer. The state is represented by lawyers called County or District Prosecuting Attorneys. The person accused of committing the crime is the defendant.

Crimes are categorized into classes that are defined by their punishments:

**Petty Offenses** - A petty offense is a sub-group of misdemeanor offenses. Petty offenses typically may be tried before a magistrate or judge in a summary proceeding as the matter typically is handled all on the date of the first appearance by the defendant in court. The defendant may be denied the right to a jury trial without violating their constitutional rights. Offenses such as minor traffic tickets, parking violations, and minor infractions of local ordinances are treated as petty offenses. The typical punishment for a violation of a petty offense is the imposition of a fine.

**Misdemeanors** - Violation of a misdemeanor law can result in imposition of punishment greater than that of a petty offense but not as severe as that of a felony (examples might be a heavier fine, or short jail sentence).

**Felonies** - A felony crime can result in the imposition of the greatest punishment for violation of law, such as a jail sentence greater than one year and fines exceeding \$1,000.

The class of a crime is important to consider since the laws and rights differ between the classes. Petty offenses are provided the least amount of protections while felonies have numerous protections built into their treatment by the court system. The punishment for a petty offense is much smaller than the punishment for a felony - which can result in loss of life (death penalty) or liberty (jail).

## **Constitutional Safeguards**

The United States Constitution provides fundamental rights which cannot be denied. All laws must comply with the basic fundamental rights and guarantees provided by the United States Constitution. The protections afforded under the Constitution of the United States, as well the constitutions of the various states, are provided to all persons. Those accused of crimes are legally innocent until they plead guilty or are convicted in a trial. The burden to prove guilt is on the prosecutors, it is not up to the defendant to prove he or she is not guilty.

Other specific safeguards in the Bill of Rights include:

- The Fourth Amendment - prohibits unreasonable search and seizure. It states that a warrant shall be issued based upon probable cause, supported by oath or affirmation which describes the place to be searched and the person or things to be seized. There are many exceptions to the warrant requirement, such as exigent circumstances (an emergency which requires immediate action), consent, and search and seizure incident to an arrest. Some detentions ("seizures of persons") may proceed upon less than probable cause.
- The Fifth Amendment - provides several critical protections:
  - prohibition against double jeopardy (you may not be tried more than once for the same offense)
  - prohibition against self-incrimination (you may not be forced to testify against yourself)
  - prohibition against deprivation of life, liberty or property without due process of law
- The Sixth Amendment - provides you with:
  - the right to a speedy and public trial by an impartial jury
  - the right to be informed of the law and potential punishment faced for violation of the law
  - the right to confront (examine at trial) witnesses against you
  - the right to compel witnesses in your favor to appear and testify at trial
  - the right to have an attorney for your defense



- The Eighth Amendment - requires that bail not be excessive and protects you against cruel and excessive punishment such as any form of torture or an unreasonably long sentence.
- The Fourteenth Amendment - gives you the right to equal protection under the law.

Additional guarantees of our individual rights have been added through federal legislation and case law, i.e., the rulings of federal courts year after year. Also important are the various laws of the State of Wyoming, case law in our state and the ordinances of our county's various municipal governments.

## **Criminal Investigations**

### **Providing Information**

Police do not need probable cause to investigate a crime. An officer or detective can ask you to provide information without having any level of suspicion that you committed a crime or were involved in a crime. At the same time, the law does not require a citizen to respond when an officer seeks information. You are under no obligation to assist in any criminal investigation. This is especially true if you are the subject or focus of the investigation because you have the right not to incriminate yourself, granted by the Fifth Amendment to the United States Constitution. Anytime an individual who may be the focus of an investigation is asked to speak with law enforcement officers that person should consider getting a lawyer first.

### **Investigatory Stops**

At times police have reasonable suspicion that criminal activity is taking place. When they do, they can perform an "investigative detention." Such a detention is not an arrest; it is a stop that subjects you to a brief period of detention so that the officer can determine if, in fact, there is criminal activity going on. However, all investigative stops must be reasonable in scope and nature; the officer called upon to testify in court must be able to point to specific facts of a certain nature that warrant that initial stop.

When a police officer actually observes unusual conduct which leads him/her reasonably to conclude in light of his/her experience that criminal activity may be afoot, the officer may briefly stop you as a suspicious person and ask questions aimed at confirming or dispelling those suspicions.

The officer may also search your person if there is reason to believe that you are armed and dangerous. Any evidence located during such a search may or may not be suppressed if you are subsequently arrested. Note that there can be a significant difference between an investigatory stop and an arrest.

Ultimately, the courts determine whether contact with the police was merely investigatory or was indeed custodial in nature. Remember that you are up against the power and resources of the law enforcement community. That means that it is important for you to contact an attorney immediately if you are placed under arrest following a stop by the police. Your attorney will review the details and explain to you whether or not the police followed the rules. You may face serious repercussions so you should review your options.

### **Miranda Rights**

The United States Constitution guarantees every citizen the right to remain silent. Under the Fifth Amendment to the Constitution, you cannot be compelled to incriminate yourself. In the famous case of *Miranda v. Arizona*, the United States Supreme Court ruled that your privilege against self-incrimination is triggered when you are placed in custody or your freedom is otherwise deprived and you are subjected to questioning. Most people know that the police must advise you of your rights but many do not realize that both of those conditions must exist before the police are required to do so. The *Miranda* Court defined custodial interrogation as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his/her freedom of action in any significant way.

Immediately prior to undergoing a custodial interrogation, a suspect must be apprised of his/ her *Miranda*



rights. If the warnings are not given, any statement made during a custodial interrogation cannot be used in the prosecution of your case, subject to certain exceptions. The most effective way to secure your right to remain silent is to ask for a lawyer because police must then terminate any interrogation until your lawyer is present. Note that the remedy for a *Miranda* violation is suppression of the evidence obtained illegally and not automatic dismissal of all charges.

## Search and Seizure

The Fourth Amendment to the United States Constitution prohibits “unreasonable” searches and seizures by the government. With certain exceptions, the police need to apply to a Judge for a warrant (permission) if they want to search your home or personal belongings. This search warrant must be based upon “probable cause” — the probability that evidence of a crime will be located where they intend to search. The warrant cannot be based on speculation or conjecture and it must specifically identify the place to be searched and the possible evidence to be found. A judge must issue the warrant after reviewing the facts submitted by the police.

The police also need a search warrant to search your motor vehicle, unless certain exceptions exist that would allow them to search without a warrant.

If you are arrested, the police will undoubtedly search your person. They do not need a search warrant to do so if they have lawfully arrested you. Any evidence of a crime or illegal contraband that they find during a search incident to your arrest will be used against you in court.

The government cannot normally tap your telephone lines and listen to your conversations because that is considered an unreasonable search and seizure. However, if a law enforcement agency can show probable cause, they can obtain a wiretap order which is issued by a Judge and then proceed within the law.

## Process and Procedure

### Arrest

Arrest is usually the first step in a criminal case and you should be aware of various problems which can begin immediately. A person who is arrested should answer any questions about their identity. You have a right to remain silent and not answer any questions about any criminal activity, but need to answer the questions about your identity, i.e. your name, etc.

### Probable Cause

The law requires that police have “probable cause” before making an arrest or taking a person into custody to face any charge for any crime. Probable cause exists if the officer has reasonably trustworthy information that would lead a reasonable and cautious person to believe that the person to be arrested committed, or is in the process of actually committing a crime.

### Arrest Warrants and Warrantless Arrests

A person can be arrested with or without an arrest warrant under certain circumstances. To get an arrest warrant, the police must apply to the courts and they must support their request with written, sworn affidavits. They are required to obtain warrants to make arrests for most misdemeanors unless the crime is committed in the presence of the police officer. However, under **W.S. 7-20-102(a) and (b) (i)**, if a peace officer has probable cause to believe that certain acts of domestic violence are occurring or have occurred within the preceding 24 hours, or that a valid domestic violence protection order has been violated, he may arrest the violator without a warrant for that violation, regardless of whether the violation was committed in the presence of the peace officer.

Police must have a warrant to arrest a person inside her home, unless emergency circumstances exist that would justify a warrantless arrest. However, the police do not need a warrant to arrest a person if they have probable cause to believe that a seri-



ous crime such as murder, robbery or rape has been committed and that the person to be arrested is the one who committed the crime.

## Booking

After arrest, a criminal suspect is usually taken into police custody and "booked," or "processed." During booking, a police officer typically:

- Takes the criminal suspect's personal information (i.e., name, date of birth, physical characteristics);
- Records information about the suspect's alleged crime;
- Performs a record search of the suspect's criminal background;
- Fingerprints, photographs, and searches the suspect;
- Confiscates any personal property carried by the suspect (i.e., keys, purse), to be returned upon the suspect's release; and
- Places the suspect in a police station holding cell or local jail.

(Note: persons arrested for minor offenses may merely be given a written citation and released, after signing the citation and promising to appear in court at a later date.)

For criminal suspects who are placed in jail, the first priority is usually getting out. Except when very serious crimes are charged, a suspect usually can obtain pre-trial release through bail or "own recognizance" release.

## Bail

Bail is a process through which an arrested criminal suspect is allowed to pay money in exchange for his or her release from police custody, usually after booking. As a condition of release, the suspect promises to appear in court for all scheduled criminal proceedings -- including the arraignment, preliminary hearing, pre-trial motions hearing, and trial.

If an arrestee is not allowed to post bail at the police station immediately after booking, a judge may decide

later, at a separate hearing or the arraignment, whether to allow release on bail. The bail amount may be predetermined, through a "bail schedule," or the judge may set a monetary figure based on:

- The seriousness of the crime;
- The suspect's criminal record;
- The danger that the suspect's release might pose to the community; and
- The suspect's ties to family, community, and employment.

**W.S. 7-10-101**

## Arraignment

An arraignment is a hearing where someone is brought before a court, advised of the charges against her, and asked to plead "guilty" or "not guilty". Unless the case is disposed of at the arraignment (typical only in the least serious cases), it will be adjourned, that is, and continued on a future date.

In cases where harassment or physical violence is alleged the court will usually issue a criminal stay away order which restricts or prohibits contact between the defendant and those named in the order. It is imperative for defendants to abide by the order as additional charges including contempt can be brought for violating the court's order.

## Plea Bargains

The vast majority of criminal cases are resolved through a "plea bargain", usually well before the case reaches trial. In a plea bargain, the defendant agrees to plead guilty, usually to a lesser charge than one for which the defendant could stand trial, in exchange for a more lenient sentence, and/or so that certain related charges are dismissed. For both the government and the defendant, the decision to enter into (or not enter into) a plea bargain may be based on the seriousness of the alleged crime, the strength of the evidence in the case, and the prospects of a guilty verdict at trial. Plea bargains are generally encouraged by the court system, and have become something of a necessity due to overburdened criminal court calendars and overcrowded jails.



## Preliminary Hearing

Usually held soon after arraignment, a preliminary hearing is best described as a "trial before the trial" at which the judge decides, *not* whether the defendant is "guilty" or "not guilty," but whether there is enough evidence to force the defendant to stand trial. In making this determination, the judge uses the "probable cause" legal standard, deciding whether the government has produced enough evidence to convince a reasonable jury that the defendant committed the crime(s) charged. **W.S. 7-8-105.**

## Pre-Trial Motions

After the preliminary hearing and before a criminal case goes to trial, the prosecutor and the defense team usually appear before a criminal court judge and make pre-trial motions -- arguments that certain evidence should be kept out of the trial, that certain persons must or cannot testify, or that the case should be dismissed altogether.

## Trial

In a criminal trial, a jury examines the evidence to decide whether, "beyond a reasonable doubt," the defendant committed the crime in question. A trial is the government's opportunity to argue its case, in the hope of obtaining a "guilty" verdict and a conviction of the defendant. A trial also represents the defense's chance to refute the government's evidence, and to offer its own evidence, in some cases. After both sides have presented their arguments, the jury considers, as a group, whether to find the defendant guilty or not guilty of the crime(s) charged. **W.S. 7-11-201 et seq.**

(Note: Although a trial is the most high-profile phase of the criminal justice process, the vast majority of criminal cases are resolved well before trial -- through guilty or no contest pleas, plea bargains, or dismissal of charges.)

A complete criminal trial typically consists of six main phases:

- Choosing a Jury
- Opening Statements

- Witness Testimony and Cross-Examination
- Closing Arguments
- Jury Instruction
- Jury Deliberation and Verdict

## Sentencing

After a person is convicted of a crime, whether through a guilty plea, plea bargain, or jury verdict, the appropriate legal punishment is determined at the sentencing phase. A number of different kinds of punishment may be imposed on a convicted criminal defendant, including:

- Fines;
- Incarceration in jail (shorter-term);
- Incarceration in prison (longer-term);
- Probation;
- A suspended sentence, which takes effect if conditions such as probation are violated;
- Payment of restitution to the crime victim;
- Community service; and
- Drug and alcohol rehabilitation.

Sentencing usually takes place almost immediately after convictions for infractions and minor misdemeanors, or when a defendant has pled guilty. **W.S.7-13-103.** In more complex criminal cases, such as those involving serious felonies, the sentencing judge usually receives input from the prosecutor, the defense, and the probation department (which prepares recommendations in a "pre-sentence report").

## What is the difference between probation and parole?

- **Probation** is part of the offender's initial sentence, whereas parole comes much later, allowing the offender early release from a prison sentence. Probation is handed down by the judge at trial. It may be instead of jail time or in combination with some jail time. The judge will specify restrictions on the offender's activities during the probationary period. **W.S. 7-13-301 and 302.**
- **Parole** is granted by a parole board, after the offender has served some -- or perhaps a lot of



-- time. The parole board may consider factors - such as the offender's behavior in prison and his/her level of rehabilitation - and let him or her out early. The parole board can also specify restrictions on the person's activities while on parole.

## Appeals

An individual who has been convicted of a crime may "appeal" his or her case, asking a higher court to review certain aspects of the case for legal error, as to either the conviction itself or the sentence imposed. (There are very few grounds for appeal if the defendant pleaded guilty.)

On appeal, the defendant can raise claims that mistakes were made in applying and interpreting the law during the trial. For example, the defendant might claim that the judge erroneously admitted hearsay testimony, gave improper jury instructions, should not have permitted the prosecution to use evidence obtained in violation of the defendant's constitutional rights, or permitted the prosecution to make improper closing arguments. If the appellate court agrees that there were significant errors in the trial, the defendant will get a new trial.

## Expungement

Expungement is a process through which the legal record of a criminal conviction is "sealed," or erased in the eyes of the law, after the passage of a certain amount of time or the fulfillment of certain obligations. **W.S. 7-13-1401.**

When a record is expunged, the record is not destroyed but removed from public access and sealed. Destruction is only authorized in the case of fingerprints and related identifying records of a juvenile not adjudged guilty after being detained on a felonious offense. **W.S. 14-6-240.**

### Expungement of Juvenile Records

**W.S. 14-6-241,** allows expungement under certain circumstances of a juvenile adjudicated delinquent for a crime other than a violent offense. Convic-

tions under municipal ordinances or convictions of misdemeanors in circuit court may be expunged in the same manner. Similarly, **W.S. 14-6-440** allows a juvenile found in need of supervision to petition the court for the expungement upon reaching the age of majority so long as certain provisions exist.

## Wyoming Victim Notification Program

The Wyoming Victim Bill of Rights act allows crime victims and witnesses greater access to and participation in the state's criminal legal system. In addition, the Wyoming Department of Corrections (DOC) also has a Victim Notification Program to keep victims, key-witnesses, prosecutors, victim/witness coordinators and advocates informed and involved while the offender is in the custody of the department.

The program provides eligible participants, who have participated in the criminal prosecution of a specific case, written notification of that offender's status. This notification is only provided about those offenders who are initially sentenced to and incarcerated in an adult penal institution that is under the jurisdiction of the DOC.

The program does not provide notification regarding misdemeanor offenders sentenced to jail or offenders placed on probation.

The following is a list of items for which you may receive notification:

- Department of Corrections (incarceration matters):
- Commencement of sentence and location
- Anticipated release date
- Work release
- Escape/Recapture
- Death of an offender
- Reductions or extensions of sentence
- Change in location(both while incarcerated and on parole)
- Furloughs
- Notice and opportunity to provide input prior to offender's acceptance to a Community Corrections program (allows for the opportunity to provide input into Community Corrections placement, parole



board hearings, and restitution matters. This is afforded only to those individuals who are the actual victims of the crime).

If you are eligible to receive information as outlined above and you wish to receive this information, you must notify the Victim Notification Program.

A "Victim Bill of Rights Notification Request Form" can be obtained either from the Department of Corrections web site or from the prosecuting attorney's office in the county in which the crime took place.

*All information provided on the "Victim Bill of Rights Notification Request" form, including information requests, identity of requestors, addresses, and telephone numbers, is confidential.*

## Wyoming Victim Bill of Rights

1. The right to be treated with compassion, respect and sensitivity within the criminal justice system.
2. The right to know the whereabouts of the defendant and the current status of the case.
3. The right to receive restitution from offenders. **W.S. 7-9-101**
4. The right to know all rights under this law including information about services and victim assistance at the local level.
5. The right to know about victim compensation.
6. The right to reasonable protection and safety and the right to know of legal recourse if threatened.
7. The right to prompt return of property.
8. The right to preservation of employment while participating in the criminal justice system.
9. The right to be informed about the opportunity to make a victim impact statement at sentencing and parole hearings.
10. The right to be present at trial.

## Resources for Victims

Tribal Prosecutor's Office  
P.O. Box 608  
Ft. Washakie, WY 82514  
Phone: 307-332-9255  
Fax: 307-335-7252

US Attorney V/W Program  
P.O. Box 668  
Cheyenne, WY 82003  
Phone: 307-772-2124 or 1-800-836-5810  
Fax: 307-772-2123

Warren AFB V/W Program  
90 MW/JA  
6307 Randall Ave.  
F.E. Warren AFB, WY 82005-3207  
Phone: 307-773-2142  
Fax: 307-773-3262

Division of Victim Services  
Herschler Building - 1st Floor West  
122 West 25 St.  
Cheyenne, WY 82002  
Phone: 307-777-7200  
Toll Free: (888)-996-8816  
e-mail: [vssi@state.wy.us](mailto:vssi@state.wy.us)

Wyoming Coalition Against Domestic Violence & Sexual Assault  
409 South 4th Street  
PO Box 236  
Laramie, WY 82073 307-755-5481 (voice)  
307-755-5482 (FAX)  
307-755-0992 (Legal Project)  
1-800-990-3877 (toll free number for victims)  
<http://www.users.qwest.net/~wyomingcoalition/index.htm>  
e-mail: [Wyomingcoalition@qwest.net](mailto:Wyomingcoalition@qwest.net)

## Wyoming Criminal Code

The Wyoming Criminal Code can be found in the Wyoming Statutes, Title 6.

# Education



## **In this chapter:**

### **Wyoming Department of Education**

#### **Title IX Discrimination**

Athletics

Parental, Family or Marital Status

#### **Title IX Sexual Harassment**

#### **Students with Disabilities**

Individuals with Disabilities Act (IDEA)

Individualized Education Program (IEP)

#### **Suspension or Expulsion**

#### **HIV/AIDS Model Policy**

#### **Equal Protection Clause**

#### **School Records**

#### **Hathaway Scholarships**



# **Education**

Women and girls have rights in schools and other educational institutions as students with disabilities or pregnant and parenting students, as well as rights to be protected from harassment and discrimination.

## **Wyoming Department of Education**

The Wyoming Department of Education does not discriminate on the basis of race, color, national origin, sex, age, or disability in admission or access to, or treatment or employment in its educational programs or activities. Inquiries concerning Title VI, Title IX, Section 504, and the Americans with Disabilities Act may be referred to:

Wyoming Department of Education  
Office for Civil Rights Coordinator  
2300 Capitol Avenue  
Cheyenne, WY 82002-0050  
(307) 777-6252

or the

Office of Civil Rights  
Region VIII  
U. S. Department of Education  
Federal Building, Suite 310  
1244 Speer Boulevard, Denver, CO 80204-3582  
(303) 844-5695 or TDD (303) 844-3417

## **Title IX Discrimination**

Wyoming law states that no child shall be denied the right to attend public schools on account of sex, race, or religion. Students have the right to an education in an environment that is free from discrimination and harassment, whether it be in elementary or secondary schools or in colleges and universities.

Title IX is a federal law prohibiting sex discrimination and harassment in certain educational programs and activities receiving federal financial assistance. Under the terms of the Civil Rights Restoration Act of 1987, Title IX applies to institutions such as government agencies, local educational agencies, colleges, universities, pub-

lic systems of higher education, corporations, and other entities if any part of the institution receives federal financial assistance.

Title IX takes precedence over any state and local laws which restrict students, applicants, or employees on the basis of sex. It covers all levels of education, from pre-school to graduate school, and protects students, professional staff, and support staff from intentional sex discrimination and harassment. Title IX does not cover some activities or programs under certain conditions, including: certain religious, military, and merchant marine educational institutions; the YMCA and YWCA; Boy Scouts, Girl Scouts, and Campfire Girls; voluntary youth service organizations; boy or girl conferences; beauty pageants; mother-daughter and father-son activities; and social fraternities and sororities.

For More Information Contact:

Office for Civil Rights  
Denver Office  
U.S. Department of Education Federal Building,  
Suite 310, 1244 Speer Boulevard  
Denver, CO 80204-3582  
Telephone: (303) 844-5695  
Facsimile: (303) 844-4303  
TDD: (303) 844-3417  
Email: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

## **Athletics**

Title IX forbids discrimination on the basis of sex in interscholastic, intercollegiate, club, or intramural athletics offered by an institution covered by the Act. Schools may have separate teams for male and female students if team members are chosen on the basis of skill or if a bodily contact sport is involved. If no separate teams are offered in a non-contact sport, females must be allowed to try out for the existing team. The school may be required to start a female team. **Title 20 U.S.C. Sections 1681(a).**

Title IX requires a school to provide equal opportunity in athletics in the areas of equipment and supplies, game schedules and practice times, travel and per diem expenses, coaching and academic tutoring, assignment



and salaries of coaches, locker room facilities, practice and competitive facilities, medical care, housing, publicity, and scholarships. This does not necessarily require that equal amounts of funding be spent, except in the area of scholarships, but the amount of funding spent will be considered in determining whether the school meets Title IX requirements.

## **Parental, Family or Marital Status**

A school may not discriminate on the basis of pregnancy, childbirth, termination of pregnancy, or recovery period; however, a school may require a physician's certificate that a student is physically and emotionally able to participate in activities or programs.

If a school has a medical or hospital plan or a leave policy for students or staff, it must treat pregnancy as any other temporary disability. If the school does not have a leave policy, it must treat pregnancy as a justification for a leave of absence. After the leave, a student must be reinstated to her former status. An employee must be returned to a comparable position without loss of pay or opportunities for promotion.

Schools may not penalize students because they are married. Also, schools cannot require married students to use a specific name. Married persons have the same rights as unmarried persons and may not be excluded from activities and full participation in school. Also, Title IX states that a rule may not be established concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. **Title 20 U.S.C. Sections 1681-1688.**

## **Title IX Sexual Harassment**

Title IX defines sexual harassment and standards for schools. Anyone can be a victim of sexual harassment in a school setting - teenagers, children, those who are physically or mentally disabled, regardless of race, sex, sexual orientation, nation of origin, or economic status. A teacher, administrator, coach, staff person or other student can unlawfully harass a student. The gender or sexual orientation of the person harassing and the person being harassed is not the determining factor. (**Title**

**20 U.S.C. Sections 1681-1688, available at <http://www.dol.gov/oasam/regs/statutes/titleix.htm>).**

Sexual harassment can take many forms, including but not limited to:

- Whistling, cat calls or dirty gestures;
- Deliberate bumping or leaning against another person;
- Comments about a person's body;
- Sexual phone calls, notes, messages, graffiti, or gossip;
- Inappropriate touching or grabbing of clothing;
- Demands for dates or sexual acts, or threats for not complying with the demands;
- Gay bashing;
- Harassment through the Internet;
- Sending or leaving another person pornographic material; and
- Exposure of him or herself.

If this conduct is interfering with a student's education, it may be unlawful harassment.

## **Students with Learning Disabilities**

Every child of school age in Wyoming having a mental, physical or psychological disability which impairs learning, shall be entitled to receive free and appropriate education in accordance with their capabilities. School districts will provide for the appropriate diagnosis, evaluation, education or training and necessary services. If a school district is unable to provide appropriate programs and services, it shall contract with another school district or agency to obtain them. **W.S. 21-2-501.**

## **Individuals with Disabilities Act (IDEA)**

IDEA is our nation's special education law. IDEA stands for Individuals with Disabilities Education Act. The IDEA was originally enacted by Congress in 1975 to make sure that children with disabilities had the opportunity to receive a free appropriate public education, just like other children. It was amended as recently as 2004 so, in a sense, is a rather new law though it has been a basis for special education for over thirty years.



**Free and Appropriate Education:** IDEA recognizes that, to the extent possible, children with disabilities are entitled to the same educational experience as their non-disabled peers. IDEA further recognizes that the expenses associated with providing for the special needs of children with disabilities are a public responsibility. Free and appropriate education means that children with disabilities are entitled to a publicly financed education that is appropriate to their age and abilities. Also see **W.S. 21-2-501 et seq.**

**Least Restrictive Environment:** When IDEA was originally enacted in 1975, Congress recognized that many children with disabilities were unnecessarily separated from their peers and educated in alternative environments. Therefore, IDEA requires that states provide a free appropriate public education to children with disabilities in the least restrictive environment. The general goal is to allow children with disabilities to be educated with their peers in the regular classroom to the extent possible.

### **Individualized Education Program (IEP)**

The Individualized Education Program, or IEP, is the key document developed by the parent and his or her child's teachers and related services personnel that lays out how the child receives a free appropriate public education in the least restrictive environment. Among other components, the IEP lays out the child's academic achievement and functional performance, describes how the child will be included in the general education curriculum, establishes annual goals for the child and describes how those goals will be measured, states what special education and related services are needed by the child, describes how the child will be appropriately assessed including through the use of alternate assessments, and determines what accommodations may be appropriate for the child's instruction and assessments.

The IEP Team is responsible for developing the IEP and ensuring its effective implementation so that the child can receive special education and related services. The IEP Team must include the parents of the child with a disability, a regular education teacher (if the child is participating in the regular education environment), a

special education teacher, and a representative of the school district. In addition, the parent and the school district can agree to add other members knowledgeable about related services or with expertise about the child.

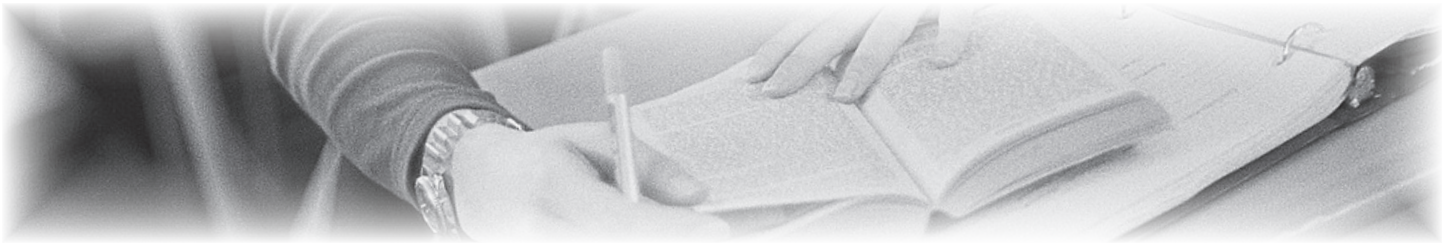
### **Suspension or Expulsion**

Wyoming School Districts are required to expel for one year any student possessing, using, transferring, carrying or selling a weapon within any school bus or the boundaries of school property. The superintendent, with approval of the board of trustees, may modify the period of expulsion on a case-by-case basis. Nothing prohibits a district from providing educational services to the expelled student in an alternative setting. **W.S. 21-4-305(a).**

Suspension or expulsion shall not be imposed as an additional punishment for offenses punishable under the laws of the state unless the offense is committed at a school function, against the property of the school, or is of such a nature that continuation of the child in school would be detrimental to the education, welfare, safety or morals of other pupils. **W.S. 21-4-305(e).**

The following shall be grounds for suspension or expulsion of a child from a public school during the school year:

- (i) Continued willful disobedience or open defiance of the authority of school personnel;
- (ii) Willful destruction or defacing of school property during the school year or any recess or vacation;
- (iii) Any behavior which in the judgment of the local board of trustees is clearly detrimental to the education, welfare, safety or morals of other pupils, including the use of foul, profane or abusive language or habitually disruptive behavior as defined by subsection (b) of this section;
- (iv) Torturing, tormenting, or abusing a pupil or in any way maltreating a pupil or a teacher with physical violence;
- (v) Possession, use, transfer, carrying or selling a deadly weapon as defined under **W.S. 6-1-104(a)(iv)** within any school bus as defined by **W.S. 31-7-102(a)(xl)**



or within the boundaries of real property used by the district primarily for the education of students in grades kindergarten through twelve (12).

See **W.S. 21-4-306(a)**.

## **HIV/AIDS Model Policy**

In an effort to provide guidance to Wyoming public schools dealing with the growing national AIDS epidemic, a Model Policy, endorsed by the State Superintendent of Public Instruction and the Wyoming State Board of Education, has been made available at the Wyoming Department of Education. This is not a mandated policy but is intended to assist districts in developing local policy. All districts do need to have policies in place which address infection control, especially with regard to blood borne pathogens.

The Americans with Disabilities Act of 1990 (ADA) and Individuals with Disabilities Education Act (IDEA) address the specific rights of individuals living with HIV. All districts need to have policies in place which address nondiscrimination of HIV positive students and employees.

For information about the model policy or to request technical assistance, contact the comprehensive School Health Education Consultant, Wyoming Department of Education, 2nd Floor, Hathaway Building, 2300 Capitol Avenue, Cheyenne, WY, 82002-0050, 307-777-5315. (Also see <http://www.k12.wy.us/HS/hivpolicy.pdf>).

## **Equal Protection Clause**

Generally, the Equal Protection Clause of the Fourteenth Amendment prohibits states from denying any person

within its jurisdiction equal protection of the laws. Excluding women from state-sponsored schools is a denial of equal protection. For a public state school to justify gender-based admissions policies, it must show that the discrimination serves an important state objective, and that the exclusion of one sex is substantially related to the achievement of those objectives.

## **School Records**

The Family Educational Rights and Privacy Act of 1974 (FERPA), also known as the Buckley Amendment, states that school health records are confidential school records and, thus, are protected by law. FERPA requires schools to have written and accessible policies about how they restrict the release of student records. (**20 U.S.C. § 1232g; 34 CFR Part 99**).

## **Hathaway Scholarships**

Hathaway scholarships are scholarships designed to provide an incentive for Wyoming students to prepare for and pursue postsecondary education within the State of Wyoming. The program consists of four separate merit scholarships, each with specific eligibility requirements, and a need-based scholarship for eligible students which supplements the merit awards.

Hathaway Merit Scholarships are available for eligible recipients beginning with the class of 2006 for the 2006 fall semester. For more information on the Hathaway Scholarship <http://www.hathawayscholarships.com/> or contact the Wyoming college or University for information specific to that institution.

# Family Law



## In this chapter:

### Marriage

- Affirmation of Marriage
- Children Born During Marriage—Issues of Paternity
- Real and Personal Property Ownership During Marriage
- Legal or Judicial Separation
- Void Marriages

### Annulment

### Divorce

- Alimony During Proceedings
- Temporary Visitation and Custody During Proceedings
- Restraining Orders During Proceedings
- Property Distribution
- Alimony/Spousal Support
- Child Custody
  - Factors the Court Considers
- Domestic Violence and Child Abuse Not in the Child's Best Interest

Visitation

Child Support

Definitions

Relevant Child Support Laws

General Provisions

Medical Support

Paternity and Divorce Decree

Enforcement of Support Orders

Modification of Support Orders

**Modification or Enforcement of a Custody or Visitation Order**

**Child Snatching / Interference with Custody Grandparent's Rights**

**Primary Caretaker Visitation**

**Representing Yourself or Hiring a Lawyer (Resources)**



# **Family Law**

## **Marriage**

**Male and female.** In Wyoming, marriage is defined as a civil contract between a male and a female, both of whom must be capable of entering into a contract. **W.S. 20-1-101.** Wyoming does not recognize same-sex marriage.

**Age requirement.** In order to get a marriage license, the parties must be at least sixteen (16) years of age and the county clerk must have the consent of the minor's father, mother, guardian or person having the care and control of the minor, unless a Wyoming judge approves the marriage and authorizes the county clerk to issue a license. **W.S. 20-1-102.**

**Foreign marriages.** All marriage contracts which are valid by the laws of the country in which contracted are valid in Wyoming. **W.S. 20-1-111.**

**No common law marriage.** Wyoming does not recognize "common law" marriages. The fact that you consider yourself married, or the fact that you have lived together for a certain number of years, does not mean that you will be considered "married" under Wyoming law. But, if the state where you came from recognizes common law marriage and your relationship qualifies there, then Wyoming law will recognize your common law marriage.

**General requirements.** In order to become legally married in Wyoming, you need to:

- Get a marriage license from the County Clerk in the county where you are getting married.
- Have the marriage "solemnized," meaning performed by a district or circuit court judge, district court commissioner, supreme court justice, justice of the peace, magistrate, licensed or ordained minister of the gospel, bishop, priest, or rabbi, or other qualified person acting in accordance with the traditions or rites for the solemnization of marriage of any religion, denomination or religious society. **W.S. 20-1-106.** In the solemnization of marriage


no particular form is required, except that the parties shall solemnly declare in the presence of the person performing the ceremony and at least two (2) attending witnesses that they take each other as husband and wife.

- Get a signed Certificate of Marriage from the authorized person who performs the marriage and signed by your 2 witnesses.
- Record the Certificate of Marriage in the Office of the County Clerk within 1 month after receipt. **W.S. 20-1-107.**

**Requirements for marriage license. W.S. 20-1-103.** In order to get a marriage license from the County Clerk, you need to be:

- At least 16 years of age, and
- If you are a minor, have the consent of your father, mother, guardian or person having care and control of you, and
- Competent to enter into a marriage contract, and
- Single, i.e., you cannot already have a living spouse, and
- Marrying someone who is of the opposite sex, and
- Marrying someone who is not your parent or child, grandparent or grandchild, brother or sister of half or whole blood, uncle or niece, aunt or nephew, or first cousin, regardless of whether either party is illegitimate. **W.S. 20-2-101(a)(iii).**
- The county clerk shall ascertain by the testimony of a competent witness and the applicant, the names, the social security numbers of the parties who have valid social security numbers, residences and ages of the parties and whether there is any legal impediment to the parties entering into the marriage contract according to the laws of the state of their residence.

You may apply to a district court judge for issuance of a license without compliance with one or more of the above requirements. Any marriage that does not meet the above requirements without legal waiver, i.e., the County Clerk did not know you or your intended did not meet these requirements and issued a license, is automatically void without any decree of divorce. In other



words, the marriage would not be considered valid in the first place.

## Affirmation of Marriage

If the validity of your marriage is denied by your spouse, then you may file a petition to affirm the marriage. Upon due proof of the validity thereof, it shall be declared valid by a decree of the court which is conclusive upon all persons concerned. **W.S. 20-2-103.**

## Children Born During Marriage— Issues of Paternity

All children born during a marriage are presumed to be “legitimate,” meaning that a woman’s husband is presumed to be the biological father of a child born during the marriage. **W.S. 14-2-504 and W.S. 20-1-113.**

When a woman becomes pregnant by a man other than her husband, there are very specific laws that apply to establish paternity for the child. A hospital will not allow a man, other than the woman’s husband to be put on the birth certificate as the father unless there is a valid **Acknowledgement of Paternity** (W.S. 14-2-601) from the other man and a valid **Denial of Paternity** (W.S. 14-2-603) from the husband. In the event that something like this happens, it is recommended that the parties seek the advice of lawyers as there are strict time lines in addition to child support and medical support obligations that kick in.

### Husband not father to child born during marriage— Five (5) year challenge limit:

For instance, any action to establish paternity of a child with a **presumed** father shall be commenced within a reasonable time after obtaining knowledge of relevant facts, but in no event later than **five (5) years after the child's birth**. **W.S. 14-2-807(a).**

### Husband not father to child born during marriage— no time limit to challenge:

However, a proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained **at any time** if the court

determines that:

- (i) The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; **and**
- (ii) The presumed father never openly held out the child as his own.

**W.S. 14-2-807(b).**

**Husband not father to child born during marriage—  
Two (2) year time limit for third party challenge to  
acknowledgment or adjudication.** If a child is born to a woman who is married, and the husband signs a denial of paternity and another man signs an affidavit of paternity or if a court makes a finding that someone other than the husband is the actual, biological father, then an individual, other than the child, who is neither a signatory to the acknowledgment of paternity (mother and person claiming to be the biological father at the time) nor a party to the adjudication and who seeks an adjudication of paternity of the child shall commence a proceeding **not later than two (2) years** after the effective date of the acknowledgment or adjudication. **W.S. 14-2-809(b).**

**Disestablishment of Paternity.** Other laws pertaining to disestablishing paternity are beyond the scope of this chapter and can be found at **W.S. 14-2-823**. It is recommended that you seek the advice of an attorney if you have questions about this topic.

## Real and Personal Property Ownership During Marriage

In Wyoming, property is equitably distributed upon divorce. However, **during the marriage**, everything you have when you begin a marriage belongs to you if you do not transfer it somehow to your spouse. Any property you obtain during your marriage which is acquired in good faith from any person by descent or otherwise during your marriage, together with all rents, issues, increases and profits is your sole and separate property during the marriage. You have complete control over your property and you may hold, own, possess and en-



joy the property as though you are a single person. **W.S. 20-1-201.**

Your property is not subject to the disposal, control or interference of a spouse and is exempt from execution or attachment for the debts of a spouse, so long as the property was not conveyed to that person by a spouse in fraud of creditors. **W.S. 20-1-201.**

Necessary expenses of the family and the education of children are chargeable upon the property of both husband and wife, or either of them, for which they may be sued jointly or separately. **W.S. 20-1-201.**

Any married person may transfer his separate property in the same manner and to the same extent as if they were unmarried and they may make contracts and incur obligations and liabilities, all of which may be enforced against them to the same extent and in the same manner as if they were unmarried. **W.S. 20-1-202.**

Any person may, while married, sue and be sued in all matters having relation to property, person or reputation, in the same manner as if that person were single. **W.S. 20-1-202.**

When a married person sues or is sued alone, proceedings shall be had and judgment rendered and enforced as if that person were unmarried. The separate property and estate is liable for any judgment against the person, but the person is entitled to the benefit of all exemptions for heads of families. **W.S. 20-1-202.**

When any person against whom liabilities exist marries and has or acquires lands, judgment on the liability may be rendered against that person, to be levied on the lands only. **W.S. 20-1-202.**

A person is not liable for the debts and liabilities a spouse contracted for *before* marriage, unless there is something in writing that states otherwise. **W.S. 20-1-202.**

## Legal or Judicial Separation

You may ask for a legal separation instead of a divorce when circumstances are such that grounds for a divorce exist. A legal separation is much like a divorce but the

remedy you are seeking is to live separate from each other. The court may make orders it feels necessary for child custody, child support, alimony, restraint of property disposition, and restraint of one or both spouses during the proceeding. The court may impose a time limitation on the order or render a perpetual separation. The parties may, at any time, move the court to be discharged from the order or if the proper grounds exist, to turn the separation into a divorce action. **W.S. 20-2-106.** Since legal separation is not a divorce, you cannot remarry.

While you and your spouse may agree to a separation without court order, a legal separation can provide you with some financial security and provisions for child custody and support that an informal agreement may not.

## Void Marriages

A void marriage is one that *legally* never occurred. To end a void marriage, you do not have to get an annulment or a divorce, because the law does not recognize the marriage in the first place. The situations in which a marriage is void and does not require a decree of divorce are:

- (i) When either party has a husband or wife living at the time of contracting the marriage;
- (ii) When either party is mentally incompetent at the time of contracting the marriage;
- (iii) When the parties stand in the relation to each other of parent and child, grandparent and grandchild, brother and sister of half or whole blood, uncle and niece, aunt and nephew, or first cousins.

**W.S. 20-2-201.**

## Annulment

Legal annulments of marriage are granted under only very limited circumstances, including

**Under age of legal consent.** An action to annul a marriage may be brought

- (i) when either party was under the age of legal consent unless a judge gave consent,



- (ii) if they separated while still a minor and did not live together afterwards, or
- (iii) if the consent of one (1) of the parties was obtained by force or fraud and there was no subsequent voluntary cohabitation of the parties. An action to annul a marriage on the ground that one of the parties was under the age of legal consent may be filed by the parent or guardian entitled to the custody of the minor. The marriage may not be annulled on the application of a party who was of the age of legal consent at the time of the marriage nor did when it appears that the parties, after they had attained the age of consent, had freely lived together as husband and wife.

**Mental incompetency.** An action to annul a marriage on the grounds of mental incompetency may be commenced on behalf of a mentally incompetent person by her guardian or someone else on her behalf. A mentally incompetent person restored to competency may maintain an action of annulment, but no decree may be granted if the parties freely cohabited as husband and wife after restoration of competency.

**Physical incapacity.** An action to annul a marriage on the grounds of physical incapacity may only be maintained by the injured party against the party whose incapacity is alleged and may only be commenced within two (2) years from the solemnization of the marriage.

An action to annul a marriage is filed with the district court. Decrees of annulment issued by the court may include provisions for the custody and support of children and for the division of property. **W.S. 20-2-101.**

## Divorce

**Residency requirement.** In order to file for a divorce in Wyoming, you must be a resident of the state for at least sixty (60) days immediately preceding the time of filing or if you were married in Wyoming and have been married less than 60 days, you must have been a resident of the state since you got married. **W.S. 20-2-107(a).**

**Where to file.** A divorce action may be filed in the county where either party resides. **W.S. 20-2-104.**

**Grounds for divorce.** Wyoming is considered a modified “no fault” divorce state. The only grounds necessary for a divorce are “irreconcilable differences.” The statute also refers to an “aggrieved party” and that person is the person most likely to be granted the divorce in the event both parties ask the court for a divorce. **W.S. 20-2-104.**

A divorce may also be granted when either party has become incurably insane and the insane person has been confined in a mental hospital of this state or another state or territory for at least 2 years immediately preceding the commencement of the action for divorce. **W.S. 20-2-105.**

**Restoration of wife’s previous name in a divorce action.** The wife may resume her previous name in a divorce action. This is the wife’s choice only; the husband cannot demand that his wife’s name be changed or not.

**Divorce Decree.** In Wyoming, a divorce decree may not be entered less than twenty (20) days from the date the complaint is filed. **W.S. 20-2-108.**

## Alimony During Proceedings

**Allowance for prosecution or defense of divorce action.** During the proceedings of a divorce, the court may require either party to pay any sum necessary to enable the other to carry on or defend the action and for support and the support of the children while the case is pending. **W.S. 20-2-111.**

## Temporary Visitation and Custody During Proceedings

Either party may ask the court to award the temporary care and custody of the minor children of the parties and for temporary child support while the case is pending. **W.S. 20-2-112.**

**Required information for child custody proceeding.** In a child custody proceeding each party in its first



pleading or in an attached affidavit shall give information, if reasonably ascertainable, under oath as to:

- the child's present address or whereabouts,
- the places where the child has lived during the last five (5) years and the names and present addresses of the persons with whom the child has lived during that period.

The pleading or affidavit shall state whether the party:

- Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child, and if so, the pleading or affidavit shall identify the court, the case number and the date of the child custody determination, if any;
- Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions, and if so, the pleading or affidavit shall identify the court, the case number and the nature of the proceeding; and
- Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child, and if so, the pleading or affidavit shall list the names and addresses of those persons. **W.S. 20-5-309.**

If the information required above is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

**Confidentiality for safety purposes.** If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice. **W.S. 20-5-309.**

**Must keep the court updated on information.** Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

**Domestic violence and child abuse.** The court shall consider evidence of spouse abuse or child abuse as being contrary to the best interest of the children. If the court finds that family violence has occurred, the court shall make arrangements for visitation during temporary custody that best protect the children and the abused spouse from further harm. **W.S. 20-2-112(b).**

See sections on Custody and Visitation for final disposition of children and visitation rights.

### **Restraining Orders During Proceedings**

If, after filing a complaint for divorce, it appears probable to the court that either party is about to do any act that would defeat or render less effective any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof and such process issued as the court deems necessary or proper. This procedure most often requires the filing of a sworn affidavit setting forth the reasons the court should be concerned that one of the parties may do something to the property or money that would complicate the divorce proceedings (i.e. empty a joint account, sell real or personal property that may be subject to distribution in the divorce, etc.). **W.S. 20-2-109.**

Mutual restraint of property disposition means that both you and your spouse are prevented from doing anything with property that could affect how the court might ultimately order the property divided pursuant to legal separation or divorce.

Restraint applying to you or your spouse means that if you request it, the court may prohibit your spouse from imposing any restraint on your personal liberties during the proceeding. Your spouse may make the same request and some courts make the orders automatically mutual.



## Property Distribution

In granting a divorce, the court shall make such disposition of the property of the parties as appears *just and equitable*, having regard for the respective merits of the parties and the condition in which they will be left by the divorce, the party through whom the property was acquired and the burdens imposed upon the property for the benefit of either party and children. The Wyoming Supreme Court has determined that equitable does not necessarily mean equal.

## Alimony/Spousal Support

The court may decree to either party reasonable alimony having regard for the other's ability to pay and may order so much of the other's real estate or the rents and profits thereof as is necessary be assigned and set out to either party for life, or may decree a specific sum be paid by either party. **W.S. 20-2-114.**

After a decree for alimony is entered, the court may from time to time, on the petition of either of the parties, revise and alter the decree respecting the amount of alimony. This statute does not specify that termination of alimony is automatic upon remarriage. **W.S. 20-2-116.**

A party seeking modification of alimony must establish that there has been a material and substantial change of circumstances which outweighs the interest of society in applying the doctrine of res judicata. The party seeking the termination of alimony must demonstrate that there has been a substantial change of circumstances from the time of the divorce to the time of the peti-

tion to modify. *Maheer v. Maheer*, 2004 WY 62, 90 P.3d 739 (Wyo. 2004).

## Child Custody

*See also* "Required Information in Child Custody Proceeding" above.

"Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue, including a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights or protection from domestic violence in which the issue may appear. "Child custody proceeding" shall not include a proceeding involving juvenile delinquency, contractual emancipation or child support enforcement. **W.S. 20-5-202(a)(iv).**

**Authority to decide a child custody case in Wyoming.** A court of this state has jurisdiction to make an *initial* child custody determination only if:

- (i) This state is the *home state* of the child on the date of the commencement of the proceeding, or was the home state of the child *within six (6) months* before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
- (ii) A court of *another state does not have jurisdiction* under a provision of law from that state that is in substantial conformity with paragraph (i) of this subsection, or a court of the *home state of the child has declined to exercise jurisdiction* on the ground that this state is the more appropriate forum under a
  - (iv) The individual resided in this state and provided prenatal expenses or support for the child;
  - (v) The child resides in this state as a result of the act or directives of the individual;
  - (vi) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
  - (vii) The individual asserted parentage in this state pursuant to W.S. 14 2 401 through 14 2 907;
  - (viii) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

'20 4 142. Basis for jurisdiction over nonresident.

- (a) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
  - (i) The individual is personally served with notice within the state;
  - (ii) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - (iii) The individual resided with the child in this state;



provision of law from that state that is in substantial conformity with **W.S. 20-5-307 or 20-5-308**, *and*:

(A) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a ***significant connection*** with this state other than mere physical presence; and

(B) ***Substantial evidence*** is available in this state concerning the child's care, protection, training and personal relationships.

(iii) All courts of another state having jurisdiction have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child; *or*

(iv) No court of any other state would have jurisdiction under the criteria specified in paragraph (i), (ii) or (iii) of this subsection.

**NOTE:** While a person need only be a resident of this state for sixty (60) days before filing a divorce complaint, if there are children, they must have resided in Wyoming for at least six (6) months immediately preceding the filing of the action for the court to have jurisdiction to make a custody determination and separate requirements apply for the court to make a child support order as part of the divorce.<sup>1</sup> Therefore, absent an emergency situation, if a woman with children of the marriage relocates to Wyoming, she may have to wait at least six (6) months before she may file a complaint for divorce.

**Best Interest of Child Rule.** In granting a divorce, separation, or annulment of a marriage, or upon the establishment of paternity, the court may order any disposition (custody) of the children that appears most expedient and in the ***best interests*** of the children.

Custody may include any combination of joint, shared or sole custody, though when custody is contested, it is highly unlikely a court will order joint or shared custody in Wyoming as the courts recognize that such an arrangement requires the parties to work together. *Gurney v. Gurney*, 899 P.2d 52 (Wyo. 1995).

## Factors the Court Considers


In determining the best interests of the child, the court shall consider, but is not limited to, the following factors:

- The quality of the relationship each child has with each parent.
- The ability of each parent to provide adequate care for each child throughout each period of responsibility, including arranging for each child's care by others as needed.
- The relative competency and fitness of each parent.
- Each parent's willingness to accept all responsibilities of parenting, including a willingness to accept care for each child at specified times and to relinquish care to the other parent at specified times.
- How the parents and each child can best maintain and strengthen a relationship with each other.
- How the parents and each child interact and communicate with each other and how such interaction and communication may be improved.
- The ability and willingness of each parent to allow the other to provide care without intrusion, respect the other parent's rights and responsibilities, including right to privacy.
- Geographic distance between the parents' residences.
- The current physical and mental ability of each parent to care for each child.
- Any other factors the court deems necessary and relevant.

**W.S. 20-2-201(a).**

## Domestic Violence and Child Abuse Not in Child's Best Interest

The court shall consider evidence of domestic violence or child abuse as being contrary to the best interest of the children. If the court finds that family violence has occurred, the court shall make arrangements for visitation that best protects the children and the abused spouse from further harm. **W.S. 20-2-201(c).**



If there is a concern that your child(ren) may be harmed by the other parent physically and/or emotionally, you should seek advice from someone familiar with parenting and child development issues, as well as the dynamics of domestic violence. There may be an organization in your community that can help facilitate visitation between the children and you or the other parent. You can also contact the facilitators of any parenting classes in your community for ideas or additional resources.

**Gender of parent not controlling.** The court cannot prefer one parent as custodian solely on the basis of gender.

**Parenting classes.** The court may also require you or your spouse to attend parenting classes, including, but not limited to, parenting classes to lessen the effects of divorce on children. Some courts have their own orders listing the names of individuals or agencies that conduct parenting classes in your community. Both parents are generally required to attend classes when they are ordered.

**W.S. 20-2-201(f).**

## Visitation

**Specificity required.** Depending on the type of custody order the court issues, visitation may be ordered. The court may order visitation only when it deems it to be in the best interests of the children. Visitation must set out in enough detail to promote understanding and compliance, therefore, stating “reasonable visitation” is not enough.

**Transportation costs.** The court may also provide for the allocation of the costs of transporting each child for purposes of visitation.

**Relocation.** The court may require either parent who plans to change their home city or state of residence, to give written notice thirty (30) days prior to the move, both to the other parent and to the clerk of district court stating the date and destination of the move. There may be other issues surrounding the relocation of a parent, including the necessity of modifying the terms of visitation.

**W.S. 20-202(a)(iii).** Each party is required to notify the Clerk of Court in writing within fifteen (15) days of any change in address or employment. **W.S. 20-2-309(c).**

The Wyoming Supreme Court has held that courts should look “closely at balancing the continued rights of the parties with the best interests of the children as established at the time of divorce” in relocation cases. So long as the court is satisfied with the motives of the custodial parent in seeking the move and reasonable visitation is available to the remaining parent, removal should be granted. *Love v. Love*, 851 P.2d 1283 (Wyo. 1993).

**Third party visitation.** Non-custodial parents, grandparents, and primary caregivers may all be awarded visitation rights to a child. Visitation rights may be raised during a custody proceeding, (see Custody section above) or an original action may be brought to court against the custodial parent in order to obtain visitation rights. **W.S. 20-7-101 and 20-7-102.**

## Child Support

**Presumptive child support guidelines.** Child support orders are issued by the court in actions for divorce, annulment, paternity, support, out-of-home placement and any other action requiring the maintenance or support of children. The court must determine the specific dollar amount that is the monthly obligation of each parent. The court determines the total child support obligation based on the combined income of both parents; each parent’s obligation is calculated by multiplying the total child support obligation by the same proportion each parent’s income is to the total combined income of both parents. **W.S. 20-2-304.** Wyoming’s child support tables are also available on line at <http://legisweb.state.wy.us/statutes/titles/title20/c02a03.htm>.

## Definitions

- a. **"Obligor"** means a person who owes a duty of support for a child;
- b. **"Payor"** means any employer or other person who pays income to an obligor and who has or provides health care coverage to employees;
- c. **"Arrearage"** means past due child support, past due medical support, past due spousal support,



attorneys fees, guardian *ad litem* fees, costs, interest and penalties, but, does not include property settlements.

- d. **"Income"** means *any* form of payment or return in money or in kind to an individual, regardless of source. Income includes, but is not limited to wages, earnings, salary, commission, compensation as an independent contractor, temporary total disability, permanent partial disability, permanent total disability, worker's compensation payments, unemployment compensation, disability, annuity and retirement benefits and any other payments made by any payor.
- e. **The following is not "income":** Means tested sources of income such as Pell Grants, aid under the personal opportunities with employment responsibilities (POWER) program, food stamps and supplemental security income (SSI) shall not be considered as income.
- f. **"Net" income** is the gross income minus total mandatory deductions. **Mandatory deductions:** federal income tax withheld, social security tax (FICA) withheld, state income tax withheld, and other deductions required by law, such as required disability contributions and/or required retirement contributions.
- g. **"Imputed income"** can be used when either parent is voluntarily unemployed or underemployed. In such case the child support shall be computed based upon the potential earning capacity (imputed income) of the unemployed or underemployed parent. In making that determination the court shall consider:
  - 1) Prior employment experience and history;
  - 2) Educational level and whether additional education would make the parent more self sufficient or significantly increase the parent's income;
  - 3) The presence of children of the marriage in the parent's home and its impact on the earnings of that parent;
  - 4) Availability of employment for which the parent is qualified;
  - 5) Prevailing wage rates in the local area;
  - 6) Special skills or training; and

7) Whether the parent is realistically able to earn imputed income.

- h. **"Age of majority"** means a person eighteen (18) years of age, *except* for purposes of child support obligations, a parent's legal obligation for the support of his or her children, whether natural or adopted, continues past the age of majority in cases where the children are: (i) mentally or physically disabled and thereby incapable of self support; or (ii) between the age of majority and twenty (20) years and attending high school or an equivalent program as full time participants.

### Relevant Child Support Laws

- a. **Recipients of certain public benefits.** Those recipients of aid under the personal opportunities with employment responsibilities (POWER) program who, as a condition of eligibility under federal law, are required to assign their rights to support to, and cooperate with, the department of family services in the establishment of parentage and the establishment, enforcement and modification of support obligations. If you or your children receive public benefits, contact your Department of Family Services Caseworker or local child support enforcement office as receipt of or modification of child support may have an impact on your benefits. **W.S. 20-6-105.**
- b. **Military Personnel:** Military regulations specify that military duty will not be used as a basis for avoiding family support obligations, but setting the level of support is a civilian matter. It is most common to set the support obligation based on basic military pay. You can go to **[www.dfas.mil](http://www.dfas.mil)** for updates on military pay and many other issues. If military pay and benefits are an issue in your child support case, you may want to contact an attorney for assistance. The following is also a helpful website: <http://www.acf.hhs.gov/programs/cse/fct/militaryguide2000.htm#determine>.
- c. **Overtime compensation:** Overtime compensation is not counted in the "net income" unless the court, after considering all overtime earnings derived in



the preceding twenty-four (24) month period, determines the overtime earnings can reasonably be expected to continue on a consistent basis. **W.S. 20-2-303(a)(iii).**

- d. **Entry of income withholding order.** An income withholding order (IWO) enables an employer to take child support out of the pay of the parent obligated to pay. The court always enters an IWO which takes effect immediately, unless the parties agree otherwise, or unless one (1) of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding. When the parties agree to an alternative arrangement, the arrangement shall be in writing, signed by the parties and reviewed and entered in the record by the court. The court shall include in the record its findings of good cause, including a statement explaining why implementation of immediate income withholding would not be in the best interests of the child and, in cases involving modification of child support, proof of timely payments.
- e. **Limits on amounts withheld:** The total amount that can be withheld from any employee's paycheck is limited by the Consumer Credit Protection Act (CCPA). The limits provided in the CCPA are fifty percent (50%) of disposable earnings if the parent who pays child support has a second family and sixty percent (60%) if there is no second family. These limits are each increased by five percent (5%) if payments are in arrears for a period equal to twelve (12) weeks or more.
- f. **Social security or veteran's benefits.** If your children receive part of a parent's social security or veteran benefits, you might want to contact an attorney or legal services program for assistance with child support calculation. If a proportion of a support obligor's (person who is supposed to pay child support) social security or veteran's benefit is paid directly to the custodian (parent or guardian with custody of the children) of the obligor's children who are the subject of the child support order, the total amount of the social security or veteran's benefit, including the amounts paid to the obligor and custodian under the child support order, shall be counted as gross income to the obligor (count the amount the children receive as income to the parent who has to pay support). Figure out child support and subtract the amount of the social security or veteran's benefit sent directly to the custodial parent from the noncustodial (obligor's) parent's share of presumptive support. If the subtraction of the social security or veteran's benefit sent directly to the custodian results in a negative dollar amount, the support amount shall be set at zero. The child support obligation shall be offset by the amount of the social security or veteran's benefit sent directly to the custodian, beginning from the time the custodian began receiving the social security or veteran's benefit. **W.S. 20-2-304(e).**
- g. **When income withholding order becomes effective.** An income withholding order which did not become effective immediately upon entry, becomes effective upon the earliest of the following: (i) The date the parent paying requests withholding commence; or (ii) child support becomes delinquent in payment of an amount equal to one (1) month's support obligation under the support order.
- h. **Date new amount of child support begins.** An order for child support is not subject to retroactive modification except: (i) Upon agreement of the parties; or (ii) The order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was served on the respondent. **W.S. 20-2-311(d).**
- i. **When the child support obligation ends.** An on-going child support obligation terminates when the:
  - (i) Parents marry or remarry *each other* (After the remarriage of the parents to each other, the court may eliminate all child support arrearage existing between the parents except those assigned to the state of Wyoming);
  - (ii) Child dies;
  - (iii) Child is legally emancipated; or
  - (iv) Child attains the age of majority. (See definition above)



## General Provisions

**Confidential Financial Affidavits required.** The court will not establish a child support order until confidential financial affidavits, on a form approved by the Wyoming Supreme Court, are received which fully disclose the financial status of both parents or the court has held a hearing and testimony has been received or an affidavit of imputed income filed. **W.S. 20-2-308.**

**Required documentation.** Financial affidavits must be supported with documentation of both current and past earnings. Suitable documentation of current earnings includes, but is not limited to, pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period.

The court may require the parents to exchange financial information, at most once per year, for the purpose of analyzing the propriety of the established child support.

**Presumptive amount.** The child support guidelines are presumed to be the correct amount and must be followed except in limited circumstances. The court will use the presumed child support amounts to review the adequacy of child support agreements negotiated by the parties. If the agreed amount departs from the presumed child support, the parties shall furnish statements of explanation which shall be included with the forms and shall be filed with the court. The court shall review the agreement and inform the parties whether or not additional or corrected information is needed, or that the agreement is approved or disapproved.

Deviations from presumptive child support guidelines. Deviations from the presumptive amounts may be approved by the court and have to be made on a specific finding that the application of the presumptive child support would be unjust or inappropriate in that particular case. In determining whether to deviate from the presumptive child support established by statute, the court must consider the following factors:

- The age of the child;
- The cost of necessary child day care;

- Any special health care and educational needs of the child;
- The responsibility of either parent for the support of other children, whether court ordered or otherwise;
- The value of services contributed by either parent;
- Any expenses reasonably related to the mother's pregnancy and confinement for that child, if the parents were never married or if the parents were divorced prior to the birth of the child;
- The cost of transportation of the child to and from visitation;
- The ability of either or both parents to furnish health, dental and vision insurance through employment benefits;
- The amount of time the child spends with each parent;
- Any other necessary expenses for the benefit of the child;
- Whether either parent is voluntarily unemployed or underemployed. In such case the child support shall be computed based upon the potential earning capacity (imputed income) of the unemployed or underemployed parent.

In making that determination the court shall consider:

- Prior employment experience and history;
- Educational level and whether additional education would make the parent more self-sufficient or significantly increase the parent's income;
- The presence of children of the marriage in the parent's home and its impact on the earnings of that parent;
- Availability of employment for which the parent is qualified;
- Prevailing wage rates in the local area;
- Special skills or training; and
- Whether the parent is realistically able to earn imputed income.
- Whether or not either parent has violated any provisions of the divorce decree, including visitation provisions, if deemed relevant by the court; and
- Other factors deemed relevant by the court.

The party seeking to deviate from the presumptive child support amount may be required to pay reason-



able attorney fees and court costs to the other party, if the party seeking to deviate fails in its argument to the court. **W.S. 20-2-307(c).**

There are NO DEVIATIONS from the presumed support allowed UNLESS the court CHOOSES to deviate from the set amount because the amount was unjust or inappropriate in the particular case.

The Court must include the specific reasons for deviation in the Decree of Divorce. **W.S. 20-2-307(b).**

**NO AGREEMENTS FOR LESS THAN THE PRESUMED SUPPORT CAN BE APPROVED IF GOVERNMENT OR STATE BENEFITS (SUCH AS TITLE 19) ARE BEING PROVIDED ON BEHALF OF ANY CHILD. W.S. 20-2-307(d).**

**You CANNOT agree that no support will be paid.** The statutes allow for a reduced amount of support when you agree on shared physical custody.

**Minimum amount of child support.** Where the combined *net monthly* income of *both* parents is less than eight hundred and thirty three dollars (\$833.00), the non-custodial parent has to pay twenty-five percent (25%) of his/her net income, but the minimum amount of child support a person has to pay can not be less than fifty dollars (\$50.00) per month for each family unit in which there are children to whom the noncustodial parent owes a duty of support.

A parent cannot get out of paying child support by relinquishing parental rights in a divorce. Termination of parental rights cannot be accomplished in a divorce case.

**Contents of court order.** The court order for support must:

- Include the names, addresses, dates of birth and places of birth of the parties.
- Name and address of each party's employer.
- Be accompanied by a confidential statement containing social security numbers of each party and each child.
- Be expressed in a specific dollar amount.
- Be based on combined income of both parents.

There is a "presumptive" support obligation resulting from the tables in the Wyoming statutes that is divided between the parents in proportion to the net income of each. If the support amount deviates from the presumptive amount, the court must make findings in the decree presumptive child support would be unjust or inappropriate in that particular case. **W.S. 20-2-307.**

**Payments to Clerk of District Court.** The non-custodial parent's share is paid to the custodial parent through the Clerk of District Court or the State Distribution Unit (SDU).

**Child support abatements.** If a non-custodial parent has physical custody of a child for 15 or more consecutive days, the support payments may be reduced by one-half for each day the non custodial parent has physical custody, unless otherwise ordered by the court. A claim must be filed with the clerk of court within 30 days. The custodial parent may object within 30 days of being notified.

Both request and objection must be accompanied by a \$10.00 fee to the clerk of court. The clerk of court must mail a copy of the objection. **W.S. 20-2-305.**

### **Medical Support**

The law requires that medical support for the child(ren) be included as part of any child support order. The court shall order either or both of the parents to provide medical support, if insurance can be obtained through an employer or other group carrier, or if it is otherwise reasonably available. This may include dental, optical or other health care needs for the child(ren). In addition, the court will order that any medical expenses not covered by insurance and any deductible amount on the required insurance coverage be paid by one or both parents. If both parents are ordered to pay for expenses not covered by insurance, the court will specify the proportion for which each parent is responsible (for example 50 percent to mother and 50 percent to father). **W.S. 20-2-401.**

When provided through an employer, the employer must permit the parent to enroll the child, without re-



gard to any enrollment restrictions, or permit the other parent, Department of Health or Department of Family Services to enroll the child if the responsible parent fails to do so.

The employer is also required to withhold from the employee's compensation the employee's share, if any, of premiums and not to drop the child from the rolls, unless:

- The employee is no longer insured by the employer's plan, or
- The employer is presented with written evidence that the support order is no longer in effect, or
- The child is to be covered by a different plan, with no lapse in coverage, or
- The employer has eliminated family coverage for all employees, or
- The employee is no longer working for the employer.

### **Paternity and Divorce Decree**

A valid divorce decree that expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the husband is the father of the child; **or** provides for support of the child by the husband is considered to be an enforceable adjudication that the husband is the biological father, **unless** paternity is specifically disclaimed in the divorce decree. **W.S. 14-2-823(c).**

### **Enforcement of Child Support Orders**


Child Support Enforcement (CSE) is a division of the Department of Family Services and is responsible for enforcing child support orders in cooperation with the federal government pursuant to Title IV-D and other federal regulations. CSE administers the DFS child support enforcement program. **W.S. 20-4-109 et seq.** The DFS program must provide the following services in both intrastate and interstate situations:

- The establishment, enforcement and modification of an obligor's obligation to support dependent children;

- The establishment, enforcement and modification of an obligor's obligation to provide medical support in all cases and medical insurance coverage for dependent children when available at a reasonable cost;
- The location of an obligor or putative parent, obligee or child for purposes of establishing, enforcing or modifying the child support and medical support obligations and enforcing the Parental Kidnapping Prevention Act;
- The monitoring and process of an obligor's child support payments;
- Providing applications, information and intake services to all eligible persons pursuant to law or upon request;
- The location of persons, upon request of the non-custodial parent, in cases of denial or interference with court ordered visitation or in cases in which the custodial parent has removed the child from the state and failed to give notice of change of address in violation of a court order;
- When an obligor is required to provide medical insurance coverage through the employer's health plan pursuant to a court order, the notification to an employer unless the obligor contests the notification and establishes good cause why the notice should not be provided; and
- The establishment of paternity for out of wedlock children.

The Department of Family Services (DFS) provides child enforcement services to people who meet standards established by the Department. A reasonable fee may be charged as well as reimbursement of reasonable expenses. The Department may waive or defer any fee upon a showing of necessity.

Agreements between obligees and obligors purporting to relieve the obligor of any duty of support or to settle past, present or future support or obligations either as settlement or prepayment is invalid unless the department has consented to the agreement in writing or unless it has been approved by the court with notice to DFS.



**Paying the State back.** The Department shall be paid back for money spent on behalf of a child. The amount that may be ordered to be paid back extends to the amounts paid by the Department in public assistance, including medical support provided by other state entities.

**Professional, occupational or hunting or fishing license.** Wyoming law does allow for DFS to petition a court for an order to withhold, suspend or restrict any professional, occupational or hunting or fishing license, certificate or permit issued to an obligor who is in arrears in a child support obligation. **W.S. 20-6-112.**

## Modification of Child Support Order

**Sufficient change of circumstances to modify/adjust child support** **W.S. 20-2-311.**

**Time requirements.** [Must fit one of the following categories]

1. **Twenty (20%) percent change in support amount/six (6) months.** Any child support order that was entered more than six (6) months prior to the petition or which has not been adjusted within *six (6) months* from the date of filing of the petition may be reviewed and adjusted if the court finds that the support amount would *change by twenty percent (20%) or more* per month from the amount of the existing order.
2. **Substantial change of circumstances.** A modification based on a *substantial change of circumstances* may be brought at *any time*. The commencement of aid under the personal opportunities with employment responsibilities (POWER) program, medical benefits under Title XIX of the Social Security Act, food stamps and supplemental security income (SSI) shall be considered a substantial change of circumstances requiring modification of child support. Other changes, including custody modifications, may also be sufficient.
3. **Every three (3) years,** upon request, the court shall review and, if appropriate, adjust the order in accordance with the guidelines established

pursuant to this article. There is no need for a showing of a change of circumstances if it has been at least three years since the previous order.

**Family Violence Option:** If the Child Support Enforcement Agency is seeking to establish a support order on your child(ren)'s behalf, and you or your child(ren) are victims of domestic violence, request information regarding the Family Violence Option as a possible way to keep certain information confidential.

## Modification or Enforcement of a Custody or Visitation Order

If you need to modify or enforce a custody or visitation order, the court where the original action was entered maintains continuing, exclusive jurisdiction to modify and enforce it. You may apply to the court that issued the original order, subject to the Uniform Child Custody Enforcement Jurisdiction Act. **W.S. 20-5-201 et seq. (updated in 2005).** If neither you nor your child's other parent resides in the county of the district court that issued the custody or visitation order, you may apply in the office of the clerk of district court of any county in the state in which either you or the other parent of your children resides. If neither you, your child nor the other parent resides in the state that entered the initial custody determination, and action may be filed in the child's *home state*. See also "Child Custody" section above.

**Material change in circumstances:** A court may modify an order concerning the care, custody and visitation of the children if there is a showing by either parent of a material change in circumstances since the entry of the order in question and that the modification would be in the best interests of the children pursuant to Wyoming law. (**W.S. 20-2-201(a)**). A condition which existed when the custody order was entered is not a substantial or material change of circumstances.

**Burden of proof:** It is up to the person trying to modify or change the custody arrangement of the earlier order/decreed to establish that a material and



substantial change in circumstances has occurred, following the entry of the initial order.

**Relocation:** moving away, by itself, is not a substantial or material change in circumstances sufficient to justify a change in custody order. *Gurney v. Gurney*, 899 P.2d 52, 55 (Wyo. 1995) (citing *Love*, 851 P.2d at 1288-89). The court will consider the attributes and characteristics of the parents and children and how the children have fared under the original custody and visitation arrangement. The court will also consider whether the relocating parent's motives for proposing the move are legitimate, sincere, in good faith, and whether reasonable visitation is possible for the remaining parent. *Watt v. Watt*, 1999 WY 4, 971 P.2d 608 (Wyo. 1999).

The court should not refuse to support the efforts of the custodial parent to maintain and enhance their standard of living, even if it means moving away. So long as the court is satisfied with the motives of the custodial parent in seeking the move and reasonable visitation is available to the remaining parent, the courts have held that being able to move away with the children is allowable.

**Judges have broad decision-making authority:** Custody, visitation, child support, and alimony are all committed to the sound discretion of the district court. The welfare and needs of the children are to be given paramount consideration. The determination of the best interests of the child is a question for the judge. A judge's decision is very hard to overturn.

**Joint custody:** because parents must work closely together in joint custody arrangements, it may be easier to reopen an order which contains a joint custody provision and change it so that one person has primary custody and the other parent has visitation.

## Child Snatching / Interference with Custody

Wyoming will decline to exercise jurisdiction if petitioner has wrongfully taken the child from another state.

The court will not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the custodial parent, has improperly removed the child from physical custody.

Interference with custody is a felony punishable by imprisonment. **W.S. 6-2-204.**

A person is guilty of interference with custody if, having no privilege to do so, they knowingly:

- Take or entice a minor from the custody of the minor's parent, guardian or other lawful custodian; or
- Fail or refuse to return a minor to the person entitled to custody.

## Grandparents' Rights

Grandparents' rights generally apply to two issues: visitation privileges and custody of a grandchild.

### Grandparents' Visitation

A grandparent may obtain visitation rights to a minor grandchild, under certain circumstances. Because an adoption completely terminates the legal relationship between the child and the birth parents, no action to establish visitation rights may be brought by a grandparent if the minor grandchild has been adopted and neither adopting parent is a natural parent of the child. **W.S. 20-7-101(c).**

The court may grant visitation rights if it finds that visitation would be in the best interest of the child, and that the rights of the child's parents are not substantially impaired. The court will not grant grandparent visitation if it will endanger the child's physical health or impair the child's emotional development.

Once visitation rights have been granted, however, the custodial parent or guardian may petition the court to revoke or amend the visitation rights granted to the grandparent, for good cause. **W.S. 20-7-101.**

If a guardian ad litem is appointed to represent the child's best interests, the grandparent shall be responsible for all fees and expenses associated with the appointment.



For more information, you can contact:

**The Grandparent Information Center**

AARP 601 E Street, N.W.  
Washington, D.C. 20049

For information on grandparent's rights in Wyoming, see

**AARP's website**

<http://www.aarp.org/states/wy/wy-grandparent/Articles/a2004-05-24-wy-grandparents-directory.html>

**Wyoming Kinship Advocacy**

Email: [terrykenny@casalc.org](mailto:terrykenny@casalc.org)

Phone: (307) 638-1151 ext. 104

## Primary Caregiver's Visitation

Visitation rights may be awarded to any person who has been the primary caregiver for a child for at least 6 months within the previous 18 months prior to a custody proceeding. The primary caregiver may obtain visitation rights, except when the child has been adopted and neither parent is a natural parent of the child. When bringing an original court action, the primary caregiver needs to notify, or make a reasonable effort to notify, the non-custodial parent of the child regarding the action to gain visitation rights. **W.S. 20-7-102.**

The court may grant visitation if the court finds that visitation would be in the best interest of the child, and that the rights of the child's parents are not substantially impaired. Once visitation rights have been granted, however, the custodial parent or guardian may petition the court to revoke or amend for good cause the visitation rights granted.

## Representing Yourself or Hiring a Lawyer

If you are thinking of a divorce, one of the first questions you will have to decide is whether or not to hire a lawyer. Representing yourself is an alternative if the divorce decision is mutual and you and your spouse are able to communicate well and can work out such things as the division of property, who will pay the outstanding bills, and whether any spousal maintenance (alimony)

will be paid. You might want to hire a mediator to help you and your spouse resolve any disputes or conflicts before you decide you must hire a lawyer in order to get your disagreements resolved.

**Pro Se divorce packets.** The District Court Clerks in all Wyoming counties have "*pro-se*" divorce packets to help people negotiate a divorce without retaining a lawyer. The packets are also expected to be available on the Wyoming Supreme Court website.

You should seriously consider hiring a lawyer to help you through the process if:

- You have children;
- You and your spouse have too many disagreements about the terms of the divorce (e.g., custody of the children, distribution of property, responsibility for debts, etc.);
- Your spouse has hired a lawyer or is a lawyer;
- There are substantial assets to be divided; or
- There has been physical or emotional abuse in the relationship.

If you decide to hire a lawyer, you may talk to several until you find one you like. Choosing a lawyer is highly personal. If there are serious disputes in the divorce, you should make sure that you are hiring a lawyer who understands you and your needs. You should discuss how much the lawyer will charge you (fees) and how you will be billed. Most lawyers charge an hourly rate, require a down payment (a retainer), and are not able to give you an estimate of how much the whole divorce process will cost. However, it is important to learn what the charge will be based on, to put the agreement in writing and to work out a payment schedule, if necessary.

## Resources

Wyoming State Bar Pro Bono Coordinator  
Attorney Referral Services  
500 Randall Avenue, PO Box 109  
Cheyenne, WY 82003-0109  
(307) 632-9061



Wyoming Coalition Against Domestic Violence  
and Sexual Assault, Legal Assistance to Victims  
PO Box 236  
Laramie, WY 82073  
(307) 755- 0992  
Casper Office: (307) 265-6260

University of Wyoming DV Legal Assistance  
Project  
1000 East University Avenue, Dept. 3010  
College of Law  
Laramie, WY 82071  
(307) 766-3747

University of Wyoming Legal Services Program  
1000 East University Avenue, Dept. 3010  
College of Law  
Laramie, WY 82071  
(307) 766-2104

University of Wyoming ASUW Student Legal  
Services  
1000 East University Avenue, Dept. 3010  
College of Law  
Laramie, WY 82071  
(307) 766-4360

Lawyers and Advocates for Wyoming  
PO Box 548  
Jackson, WY 83001  
(307) 733-7290

Wyoming Legal Services, Inc.  
PO Box 1160  
Lander, WY 82520  
(307) 332-6626  
(800) 442-6170

*Casper Office*  
152 N. Durbin St., Suite 220  
Casper, WY 82601  
(307) 237-5266  
(888) 737-5266

*Cheyenne Office*  
1603 Capitol Ave., Suite 405  
Cheyenne, WY 82001  
(307) 634-1566  
(888) 634-1566

*Wind River Indian Reservation Office*  
PO Box 247  
Fort Washakie, WY 82514

# Governmental Benefits



## **In this chapter:**

\*\*\*Please see the insurance chapter for all government benefits relating to health insurance.

### **Social Security**

- Social Security Supplemental Income (SSI)
- Social Security Disability Insurance (SSDI)
- Delayed Retirement
- Retirement Benefits for Widow(er)s
- Family Benefits
- Spouse Benefits
- Maximum Family Benefits
- Benefits for a Divorced Spouse
- What You Need to Know When You Are Eligible for Retirement Benefits
- Veterans' Benefits

### **Personal Opportunities With Employment Responsibilities (POWER)**

#### **Food Stamps**

#### **WIC (Women, Infant, Children) Special Supplemental Nutrition Program**

#### **Head Start**

#### **Child Care Subsidies**

#### **HIV/AIDS Assistance**

#### **Low Income Energy Assistance Program (LIEAP)**

#### **School Breakfast and Lunch Program**

#### **Special Milk Program**

#### **Summer Food Service**

#### **Unemployment Benefits**

#### **Wyoming Health Council**

#### **Additional Programs**



## **Governmental Benefits**

You may be eligible for a variety of governmental benefits, regardless of your marital status or whether you have children.

\*\*\*Please see the insurance chapter for all government benefits relating to health insurance.

### **Social Security**

***Old-Age (retirement), Survivors, and Disability Insurance (OASDI)***—popularly referred to as Social Security—provides monthly benefits to workers and their families when earnings stop or are reduced because the worker retires, dies, or becomes disabled. The amount of benefits received is based on the worker's level of earnings in employment or self-employment covered by the Social Security program. (For Congressional Statistics in Wyoming, see [http://www.socialsecurity.gov/policy/docs/factsheets/cong\\_stats/2003/wy.pdf](http://www.socialsecurity.gov/policy/docs/factsheets/cong_stats/2003/wy.pdf))

Social Security benefits are part of a social insurance program and its benefits are distinct from employer-provided pensions, Individual Retirement Accounts (IRAs), or other forms of savings. Retired workers are guaranteed an inflation-indexed payment for their entire lifetime. Other forms of saving have much more risk. For example, an employer pension program may go bankrupt, private investments face substantial risk if there is a market downturn, and workers' savings may run out. The disability insurance provided by Social Security protects workers and their families against a physical or mental disability that renders someone unable to work; the survivors' insurance provides benefits to the families of deceased workers. [http://www.epinet.org/content.cfm/issueguide\\_socialsecurity](http://www.epinet.org/content.cfm/issueguide_socialsecurity)

#### **Women rely on Social Security more than men do.**

- In Wyoming, 20% of adults receive Social Security benefits, including 21% of women and 19% of men. About 39,000 women, 34,000 men and 5,000 children rely on Social Security benefits in the state.

(Social Security Administration and U.S. Census Bureau)

- Women represent 55% of all people 65 and older in Wyoming who rely on Social Security benefits. (Social Security Administration)

#### **Social Security is important for the economic security of elderly women.**

Without Social Security, 54% of elderly women in the United States would be poor. (Center on Budget and Policy Priorities; sample size too small to obtain reliable estimate for Wyoming)

#### **Social Security is particularly important to women.<sup>1</sup>**

Women have fewer earnings to rely on in retirement. Less than half of all workers (46%) had a private pension through their employer in 2002, women are less likely than men: 44% of women have pensions compared to 47% of men. Women of color are even less likely to have a pension than are white women. Furthermore, a woman's pension is typically smaller than a man's because women earn less per hour, and often work part time or spend time out of the labor force. Because they earn less, women have fewer savings than men to depend upon in retirement—thus they rely more heavily on Social Security.

Since women live in retirement an average of three and a half years more than men, they need more retirement income over the course of their lives, not less. They need a retirement program - like Social Security - that provides more income to people who live longer.

Given their longer life spans, it is especially important for women that Social Security benefits be adjusted each year for inflation. If inflation were 3% per year but benefits were not adjusted accordingly, benefits would buy 25% less after 10 years and 45% less after 20 years.

A woman who never worked but stayed home to care for family is still entitled to a Social Security benefit equal to half that of her working husband.

<sup>1</sup>Id.

<sup>2</sup>[http://www.epinet.org/content.cfm/issueguide\\_socialsecurityfacts](http://www.epinet.org/content.cfm/issueguide_socialsecurityfacts)



Widows and divorced women (after a marriage of at least 10 years) are entitled to Social Security benefits even if they never worked, so long as their husbands were eligible for benefits.

### **Social Security offers mainly retirement benefits.<sup>2</sup>**

Workers can receive four different types of benefits under Social Security: retirement, early retirement, disability, and survivorship benefits.

Workers are entitled to retirement benefits if they have contributed to Social Security for at least 10 years, and if they have reached the normal retirement age, which is currently 65 (and is set to increase to 67 for workers born after 1959).

Early retirement benefits are available to workers if they have contributed to Social Security for at least 10 years, and if they have reached the earliest age at which benefits can be paid, currently 62. Benefits, however, are reduced by 20% compared to what the retiree would have received at age 65.

Both full and early retirement benefits were paid to 29.2 million retired workers in 2002. Of these, 71% or 20.8 million retirees received a reduced benefit payment because they chose the early retirement option. Average monthly retirement benefits for all workers receiving retirement benefits were \$895 in 2002, or about \$10,700 per year. In comparison, workers who had retired early received on average \$830 per month.

### **Social Security is more than a worker retirement program.**

Many Social Security recipients in Wyoming are not retired workers. They receive benefits either as the widow or widower, spouse or child of a worker, or as a disabled worker. The overwhelming majority of these 27,000 beneficiaries are women and children. (Social Security Administration)

### **Workers are also insured in case they become disabled.<sup>3</sup>**

Social Security provides insurance to workers in case they become disabled and can no longer work. The dis-

ability need not be related to an accident at the worker's job. The number of years that are required to receive disability benefits varies with the age of a worker. Younger workers need fewer years to qualify for disability benefits. In 2002, Social Security paid an average monthly disability benefit of \$834 to 5.5 million beneficiaries.

### **Social Security offers life-insurance type benefits to workers.<sup>4</sup>**

If a worker dies, her family receives benefits from Social Security. Survivorship benefits are paid if the deceased worker has, on average, worked at least one quarter for each year after he or she attained the age of 21. In 2002, Social Security paid an average monthly survivorship benefit of \$861.

### **Social Security Income (SSI)**

Supplemental Security Income (SSI) pays benefits based on financial need.

SSI is a monthly benefits program for adults with limited income and resources who are blind or who are age 65 or older. Blind or disabled children can also receive SSI benefits. People who receive SSI can also get Medicaid, Social Security benefits, food stamps, and other social services.

Although the Social Security Administration (SSA) administers the program, eligibility for SSI benefits is based on financial need alone, not on how long you have worked or how much you have paid into the Social Security system. However, the financial eligibility rules are quite stringent. If you are seeking SSI benefits because you are disabled, the program's criteria for determining disability are the same as those outlined in the Social Security disability section.

SSI for disabled adults, like Social Security disability benefits, requires proof of inability to perform substantial gainful activity. The disability has to be one (physical or mental) that is expected to last 12 continuous months or to result in death. The definition of disability for SSI for children is different from the standards for disability in the Social Security programs. For children

<sup>3</sup>Id., <sup>4</sup>Id.



to receive SSI because of a disability, the child must have a physical or mental condition that can be medically proven and which results in marked and severe functional limitations. Like the adult disability standard, the child's disability must have lasted or be expected to last at least 12 continuous months or to result in death. Children with minor behavioral problems will not qualify for SSI.

Contact your local Social Security Administration office to apply for SSI for yourself or for your children.

## **Social Security Disability Insurance (SSDI)**

Social Security Disability Insurance (SSDI) pays benefits to you and certain members of your family if you are "insured," meaning that you worked long enough and paid Social Security taxes.

### **What Is a Qualifying Disability?**

The definition of disability under Social Security is different than other programs. Social Security pays only for total disability. No benefits are payable for partial disability or for short-term disability.

Disability under Social Security is based on your inability to work. The SSA considers you disabled under Social Security rules if you cannot do work that you did before and they decide that you cannot adjust to other work because of your medical condition(s). Your disability must also last or be expected to last for at least one year or to result in death.

This is a strict definition of disability. Social Security program rules assume that working families have access to other resources to provide support during periods of short-term disabilities, including workers' compensation, insurance, savings and investments.

The first step is to go to the local Social Security office nearest to you. You can look this information up on at [http://www.socialsecurity.gov/denver/st\\_wy.htm](http://www.socialsecurity.gov/denver/st_wy.htm) or call Social Security's toll-free number, 1-800-772-1213 Monday through Friday between 7 a.m. and 7 p.m.

If you have a touch-tone phone, you can get recorded information and some services 24 hours a day (includ-

ing weekends and holidays).

If you are deaf or hard of hearing, call the toll-free TTY number, 1-800-325-0778, between 7 a.m. and 7 p.m. Monday through Friday.

The lines are busiest early in the week and early in the month so it's best to call at other times. Whenever you call, have your Social Security number handy.

## **Delayed Retirement**

Not everyone retires at full retirement age. You may decide to continue working full time beyond that time. In that case you can increase your Social Security benefit in two ways:

- Each additional year you work adds another year of earnings to your Social Security record. Higher lifetime earnings may result in higher benefits when you retire.
- In addition, your benefit will be increased by a certain percentage if you delay retirement.

These increases will be added in automatically from the time you reach your full retirement age until you start taking your benefits, or you reach age 70. The percentage varies depending on your year of birth. For example, if you were born in 1943 or later, 8% per year will be added to your benefit for each year you delay signing up for Social Security beyond your full retirement age.

**Important Point:** If you decide to delay your retirement, be sure to sign up for Medicare at age 65. In some circumstances, medical insurance costs more if you delay applying for it.

If you plan to start your retirement benefits after age 62, it is a good idea to contact Social Security in advance to see which month is best to claim benefits. In some cases, your choice of a retirement month could mean additional benefits for you and your family.

It may be to your advantage to have your Social Security benefits start in January, even if you don't plan to retire until later in the year. Depending on your earnings and your benefit amount, it may be possible for you to start collecting benefits even though you continue to work.



Under current rules, many people can receive the most benefits possible with an application that is effective in January.

Because the rules are complicated, you are urged to discuss your plans with a Social Security claims representative in the year before the year you plan to retire.

## **Retirement Benefits for Widow(er)s**

Widow(er)s can begin receiving benefits at age 60 or age 50 if disabled. If you are receiving widow or widower benefits (including divorced widows or widowers), you can switch to your own retirement benefits - assuming you're eligible and your retirement rate is higher than your widow(er)'s rate - as early as age 62. In many cases, a widow(er) can begin receiving one benefit at a reduced rate and then switch to the other benefit at an unreduced rate at full retirement age. The rules vary depending on the situation, so you should talk to a Social Security representative about the options available to you.

## **Family Benefits**

If you're receiving retirement benefits, some members of your family also can receive benefits.

Those who can include:

- Your wife or husband age 62 or older;
- Your wife or husband under age 62, if she or he is taking care of your child who is under age 16 or disabled;
- Your former wife or husband age 62 or older;
- Children up to age 18;
- Children age 18-19 if they are full-time students through grade 12; and
- Children over age 18, if they are disabled.

## **Spouse Benefits**

A spouse receives one-half of the retired worker's full benefit unless the spouse begins collecting benefits before age 65. In that case, the amount of the spouse's benefit is permanently reduced by a percentage based on the number of months before she or he reaches 65.

For example, if your spouse begins collecting benefits at 64, the benefit amount would be about 46 percent of your full benefit. At age 63, it would be about 42 percent and 37.5 percent at age 62.

If you're eligible for both your own retirement benefits and for benefits as a spouse, your own benefit will be paid first. If your benefit as a spouse is higher than your retirement benefit, you will get a combination of benefits equaling the higher spouse benefit.

## **Maximum Family Benefits**

If you have children eligible for Social Security, each will receive up to one-half of your full benefit.

But there is a limit to the amount of money that can be paid to a family. If the total benefits due your spouse and children exceed this limit, their benefits will be reduced proportionately. Your benefit will not be affected.

## **Benefits For A Divorced Spouse**

A divorced spouse can get benefits on a former husband's or wife's Social Security record if the marriage lasted at least 10 years. The divorced spouse must be 62 or older and unmarried. If the spouse has been divorced at least two years, he or she can get benefits, even if the worker is not retired. However, the worker must have enough credits to qualify for benefits and be age 62 or older. The amount of benefits a divorced spouse gets has no effect on the amount of benefits a current spouse can get.

## **What You Need To Know When You Are Eligible for Retirement Benefits**

Call the toll-free number, 1-800-772-1213, to apply for benefits or to make an appointment to visit any Social Security Office to apply in person.

### **Information You Will Need:**

- Your Social Security number;
- Your birth certificate;
- Your W-2 forms or self-employment tax return for last year;



- Your military discharge papers if you had military service;
- Your spouse's birth certificate and social Security number if he or she is applying for benefits;
- Children's birth certificates and Social Security numbers, if applying for children's benefits;
- Proof of U.S. citizenship or lawful alien status if you (or a spouse or child is applying for benefits) were not born in the U.S.; and
- The name of your bank and your account number so your benefits can be directly deposited into your account.

You will need to submit original documents or copies certified by the issuing office.

## **Veterans' Benefits**

These benefits are available to disabled, blind or older veterans and their children, wives or husbands, widows or widowers. Benefits may be available even if the disability is partial or is not connected to time in the service. Veteran's benefits can include cash benefits as well as health care coverage. Apply for benefits at the Veteran's Administration Center, 1-800-827-1000.

## **Personal Opportunities With Employment Responsibilities (POWER)**

Following welfare reform at the national level, the State of Wyoming implemented the Personal Opportunities With Employment Responsibility (POWER) program effective January 1, 1997. This new program replaced the Aid to Families With Dependent Children (AFDC) program and the waivers Wyoming had in place until that time.

This program provides "welfare to work" services to low-income families with children. A person's family may be eligible if the person is a single parent, if one parent is disabled or if the total income and assets of the family are low enough to entitle them to POWER benefits. In Wyoming, this program is under the TANF (Temporary Assistance to Needy Families) program. TANF regulations limit an individual's receipt of cash assistance to 60 months in a lifetime.

With Wyoming's small caseload each case is reviewed by DFS to assure adequate services were offered so the family could become self-sufficient or that it is not possible for the family to do so. Hardship extensions are granted when necessary.

Applications are made through the local Department of Social Welfare offices. Be aware that even though your family may not qualify for TANF benefits, you or members of your family may be eligible for Food Stamps, Medicaid or other programs.

Everyone who is found eligible for TANF can receive benefits under the following conditions:

- In a 2-parent household where 1 parent is unemployed or underemployed, that parent must find work after receiving benefits for 15 months. (Benefits might possibly continue, depending on how much is earned from employment.)
- Single parents and spouses of disabled parents must work after receiving benefits for 30 months, but:
  - o if a single parent has a child under the age of 13 years, the parent only needs to find half-time work after 30 months expire
  - o if a single parent has a child over the age of 13 years, the parent must find full-time work after 30 months expire.

In 1996, the U.S. Congress also passed a "welfare reform" act. Since those new requirements only affect those portions of a welfare grant that is funded by the federal government, it is possible for states to have different programs as long as they are paid by state funds.

## **Food Stamps**

Did you know that for every 5 people that are eligible for the Food Stamp program in Wyoming, only 3 are receiving benefits? The Wyoming Food Stamp program is taking the necessary steps to reach all people that meet the 130% poverty level, by reaching out to all potential individuals and families. The Food Stamp program, under the Department of Family Services (DFS), provides crucial support to needy households and to those making the transition from welfare to work. Their mission is to raise the levels of nutrition among



low-income households, and provide them more nutritious foods for a better diet. The Food Stamp program follows regulations and rules established by the Federal government and the Food Stamp Act of 1977 as the basis for the present day program.

If you think you are eligible for Food Stamps in Wyoming or if you need some help in applying, or need help managing your food budget, you can find out more about the Food Stamp program by contacting your local Department of Family Services office. They will be able to assist you through this process. If you want to proceed through the process, the first step is to fill out an application, or you can also call the office and ask them to send you one. Benefits/Applications can be obtained in each of the 23 counties and are made available to people in outlying communities and the tribal reservations.

In order to qualify for this benefit program, you must be a resident of the State of Wyoming and fall into one of two groups: (1) those with a current bank balance (savings and checking combined) under \$2,001, or (2) those with a current bank balance (savings and checking combined) under \$3,001 who share their household with a person or persons age 60 and over, or with a person with a disability (a child, your spouse, a parent, or yourself).

For either group, you must also have an annual household income of less than \$11,677 if one person lives in the household; \$15,757 if two people live in the household; \$19,849 if three people live in the household; \$23,929 if four people live in the household; \$28,009, if five people live in the household; \$32,089 if six people live in the household; \$36,169 if seven people live in the household; or \$40,249 if more than seven people live in the household. These annual household limits change yearly, contact the DFS office for current requirements.

To download an application for benefits, go to: <http://dfsweb.state.wy.us/pdf/FoodStampDFS100.pdf>

Any questions that you might have as you complete this application please contact your local DFS office

for assistance. The address and phone numbers for local DFS offices are listed at <http://dfsweb.state.wy.us/districts/base2.htm>

For more information about the Wyoming Food Stamp Program, go to <http://dfsweb.state.wy.us/foodstamp-info.html>

## **WIC (Women, Infant, Children)**

WIC is a Special Supplemental Nutrition Program for Women, Infants, and Children, which serves to safeguard the health of low-income women, infants, & children up to age 5 who are at nutritional risk by providing nutritious supplemental foods, health and nutrition, breastfeeding education and support, and referrals to health care. The WIC program of Wyoming is administered by the Wyoming Department of Health.

In order to qualify for this benefit program, you must be a resident of the State of Wyoming, pregnant, breastfeeding and postpartum woman, infant or child up to 5 years of age and: (1) are individually determined by a health professional to be at nutrition risk; and, (2) meet an income standard, or are determined automatically income eligible. A person who participates or has family members who participate in certain other benefit programs, such as the Food Stamp Program, Medicaid or Temporary Assistance for Needy Families, automatically meets the income eligibility requirement.

Please see the following Web Site for the income standard or maximum income limit for WIC eligibility: <http://www.fns.usda.gov/wic/howtoapply/incomeguidelines03-04.htm>

## **Head Start**

The Head Start program (for children ages 3-5) and Early Head Start program (for pregnant women, infants, and toddlers) promote school readiness for children in low-income families by providing comprehensive educational, health, nutritional, and social services. Parents play a large role in the programs, both as primary educators of their children and as participants in administering the programs locally. Both programs provide pre-literacy and literacy experiences in a multi-cultural



environment. Parents are also provided social services, including assistance with childcare. Services are also available to migrant and seasonal farm worker families.

In order to qualify for this benefit program, you must be a resident of the State of Wyoming, you must be a parent or primary caregiver responsible for a child who is too young for public school and you must meet household annual income guidelines.

If you do not meet these criteria, you may still qualify if you are a U.S. national, citizen or permanent resident whose financial status is low income or very low income, who is under-employed, unemployed or about to become unemployed, facing pregnancy, less than 19 years of age yourself, or the parent or primary caregiver for children under the age of 19 years. Other qualifications may apply.

For more information on Wyoming Head Start, please visit <http://wind.uwyo.edu/headstart/>

If you would like to speak with a State representative regarding the program, you can also call the Wyoming Head Start-State Collaboration Office at: 307-766-2452.

For further information on the program or to locate a Head Start provider in your area, please visit: <http://www.acf.dhhs.gov/programs/hsb/hsweb/index.jsp>

## Child Care Subsidies

Some people can receive financial assistance or subsidies for childcare. The available governmental programs include:

- **Parent Fee Scale Program** - This program provides financial assistance for employed parents and parents enrolled in approved training programs through a sliding fee scale which relates to family size and gross income.
- **Self-Employment Child Care** - This subsidy is offered to parents who are starting or who have started a business within the last year.

<sup>5</sup><http://dfsweb.state.wy.us/fieldop/briefing5b.htm>

- **Seeking Employment Child Care** – This program provides a subsidy for child care in order to allow parents to obtain employment, retain employment, or to obtain training leading to employment.
- **Reach Up Child Care** - Parents who receive TANF and are engaged in an approved Reach Up program plan receive financial assistance for childcare necessary to carry out their Reach Up activities.
- **Incapacity Child Care** - This subsidy is available to parents determined to be physically or emotionally unable to care for their children on a full-time basis.

## HIV/AIDS Assistance

The Wyoming Department of Health's HIV/AIDS Care and ADAP Program provide persons living with HIV/AIDS access to comprehensive health and support services. This program serves as the payer of last resort for persons who are uninsured, under-insured, or otherwise unable to access care and treatment. Funding for this program is provided in part by a grant from the United States Department of Health and Human Services, Health Resources Services Administration. Services provided by the program include:

- Primary medical care
- Laboratory and diagnostic services
- Case management services
- Prescription medications

## PROGRAM ELIGIBILITY REQUIREMENTS:

In order to be eligible for assistance, an individual must meet **all three** of the following requirements:

1. Must be HIV-positive or have a diagnosis of AIDS. A health care provider must verify this by completing the Provider's Medical Certification Form.
2. Must be a resident of, and have a permanent address in, the state of Wyoming. A copy of a valid Wyoming driver's license or state-issued ID card must be submitted along with the Application for Assistance. There are no other acceptable forms of identification. Persons needing to obtain a driver's



license or state ID card can obtain more information from the WYDOT Driver Services website <http://www.dot.state.wy.us/Default.jsp?sCode=drv>.

3. Must have total annual household income at or below 200% of the federal poverty level. You may view the current income guidelines here [http://wdh.state.wy.us/AIDS/income\\_guidelines.htm](http://wdh.state.wy.us/AIDS/income_guidelines.htm).

The current Application for Assistance form is available from any county public health office or you may download it at <http://wdh.state.wy.us/AIDS/ryan.htm>.

If you or someone you know is living with HIV/AIDS, would like to enroll in this program or simply need more information, please feel free to contact any public health nursing office in Wyoming. You may also contact the Program directly by telephone at (307) 777-5800 or toll free at (800) 438-1282.

## Low Income Energy Assistance Program (LIEAP)

The Wyoming Department of Family Services (DFS) administers the Heating Assistance or Low Income Energy Assistance Program (LIEAP). Benefits are based on household size, household income and the type of fuel used as the primary heating source. Payments are made directly to the fuel provider.

Crisis Assistance payments are available to eligible clients who are facing an emergency situation: A life or health threatening situation, deposit funds for a fuel hook-up or to avoid a shut-off, or a heating system failure during winter months are considered crisis situations. LIEAP is a Federal emergency assistance block grant funded by the U.S. Department of Health and Human Services.

In order to qualify for this benefit program, you must be a resident of the State of Wyoming, you must need financial assistance for home energy costs and you must meet household annual income guidelines.

LIEAP is paid for the months of November through May. Applications are accepted beginning the first

working day in October through the last working day of February of the program year. To apply for Crisis Assistance you must FIRST complete the LIEAP Application and then complete the additional Crisis Application.

For more information on the Wyoming LIEAP program or to download an application, go to: [http://pathways.state.wy.us/html/LIEAP\\_main.html](http://pathways.state.wy.us/html/LIEAP_main.html).

## Weatherization<sup>5</sup>

Weatherization is a federal program for eligible low income individuals designed to lower monthly fuel cost by making a home more fuel efficient, lowering fuel usage and make the home more comfortable at **no cost** to the client.

Measures addressed by the Weatherization program are:

1. **Health and Safety** – monitoring for unsafe conditions: Carbon Monoxide emissions, poor ventilation and wiring
2. **Heating System Efficiency and Safety** - Tuning and adjusting heating system
3. **Hot Water Systems** – Wrapping pipes and water heaters
4. **Drafts and Air Leaks** – Sealing off major air leaks – caulking
5. **Insulation** – Attics, floors and walls; also ceilings and bellies of mobile homes

## Cooling Assistance<sup>6</sup>

Wyoming received funds for a cooling assistance program in 2006. (<http://www.liheap.ncat.org/stplans/WY2006.doc>). For more information, contact the Wyoming Department of Family Services, 2300 Capitol Avenue, Hathaway Building, 3rd Floor, Cheyenne, Wyoming 82002-0490.

## School Breakfast and Lunch Program

The School Breakfast Program provides funding that makes it possible for schools to offer a nutritious break-

<sup>6</sup>Id.



fast to students each day. Similarly, the goal of the National School Lunch Program (NSLP) is to protect the health and well-being of the nation's children by providing nutritious school meals every day. NSLP provides funding that makes it possible for schools to offer a nutritious school lunch. Schools receive Federal funds for each breakfast and lunch served, provided that the meal meets established nutrition standards.

In order to qualify for this benefit program, you must be a resident of the State of Wyoming and a parent or primary caregiver responsible for a child(ren) who attends school (high school or under). Those who qualify must also meet an annual household income guideline.

For additional information on the Wyoming School Breakfast and Lunch program, please visit the Wyoming Health, Safety, and Transportation Division at: <http://www.k12.wy.us/health.asp>

If you have questions about the programs, please call the Wyoming Health, Safety, and Transportation Division at 307-777-6281.

You can also contact your child's school to find out what meals are served and how to apply for free or reduced price school meals. Wyoming offers a search engine for residents to locate their local school at: [https://www.sodexhoeducation.com/segment\\_0200/district\\_7501/ENM/Entry8/](https://www.sodexhoeducation.com/segment_0200/district_7501/ENM/Entry8/)

## Special Milk Program

The Special Milk Program provides milk to children in schools, childcare institutions and eligible camps that do not participate in other Federal child nutrition meal service programs. Schools that participate in the National School Lunch or School Breakfast Programs, can participate in the Special Milk Program for half-day kindergarten and pre-kindergarten children who do not have access to a school meals program. The program reimburses schools and institutions for the milk they serve.

Any child in a school or institution that participates in the Special Milk Program can get milk. Schools may elect to offer free milk to low-income children. In or-

der to qualify for this benefit program, you must be a resident of the State of Wyoming, and you must meet household annual income guidelines.

Go to <http://www.k12.wy.us/HS/milk.pdf>

You can also contact your local school district to learn more about Wyoming SMP.

## Summer Food Service

The Summer Food Service Program (SFSP) provides free meals to low-income children during school vacations. More than 26 million children eat school lunch every day when school is in session, and about half of them receive their meals free or at a reduced price due to low household income. The Wyoming summer program offers those children nutritious food when school is not in session.

In order to qualify for this benefit program, you must be a resident of the State of Wyoming and your household's annual income must meet their guidelines. To learn more about Wyoming SFSP, please contact the Health, Safety, and Transportation office of the Department of Education at: 307-777-6281. You can also contact your local school district to learn how to receive Wyoming SFSP benefits.

## Unemployment Benefits

Unemployment insurance benefits provide temporary financial assistance to workers unemployed through no fault of their own that meet Wyoming's eligibility requirements. In order to qualify for this benefit program, you must have worked in Wyoming during the past 12 to 18 months and have earned at least a minimum amount of wages as determined by our guidelines. You must also be able to work and available for work each week that you are collecting benefits.

In order to establish your unemployment insurance claim, you may do so online at: [http://159.238.225.75/Ui/WYPilotasp/Claims/Website/En\\_index.stm](http://159.238.225.75/Ui/WYPilotasp/Claims/Website/En_index.stm). If you have questions, please call the Wyoming Claims Center at: 307-473-3789.



If you live outside Wyoming, you can file a claim by calling the Claims Center at: 866-729-7799. For more information, go to: <http://doe.state.wy.us/>.

*For more, see Workplace Issues Chapter.*

## Wyoming Health Council

WHC is dedicated to community-based services. The Council sub-contracts with the local community health organizations which in turn, operate the clinics and provide the services. These agencies receive public funds to provide services. Annual services provided are: gynecological exams & pap smears; breast and cervical cancer screening; testing and treatment for sexually transmitted infections (STIs or STDs); hypertension screening and anemia screening.

Other services: Pregnancy tests and options counseling; genetic screening; infertility education; how to involve parents in teens' decision to become sexually active; resisting sexual coercion, STD and AIDS/HIV information. Some sites also provide HIV testing. Education and counseling on all contraceptive (birth control) methods, including abstinence, are provided so each client can discuss options, risks, and benefits of each method and choose the best method for him/her.

If a client has a medical counseling need beyond the capacity of the family planning program, referrals are made to other providers and/or agencies in the community. Services provided may vary from clinic to clinic. The above services are available at all Title X funded Clinics. Please check with other clinics to be sure the services you need are available.

Clinics provide services to persons of all economic strata based on a sliding fee scale (costs may differ from clinic to clinic - please check with the clinic when making an appointment).

Staff members are available to give presentations to community groups, schools, etc. Audio-visual materials and pamphlets are also available. Information is also available to help parents provide sexuality education for their children and to encourage positive communication within families.

For your information, WHC and providers seek to prevent abortions through prevention of unintended pregnancies. Wyoming Family Planning clinics do not pay for or perform abortions as public funds may not be used to provide abortion services. But, clients requesting information on pregnancy options are to be informed of all their legal options, including pre-natal care, adoption, and abortion.

Exams are provided by nurse practitioners, physician assistants, or physicians. Each clinic has a physician available for consultation. For more information about the family planning program in Wyoming please contact:

Wyoming Health Council  
2120 O'Neil Avenue.  
Cheyenne, WY 82001  
Phone (307) 632-3640  
Fax (307) 632-3611

**For more on Health Care Services, see chapter on Health & Reproductive Services**

## Additional Programs

The Wyoming Department of Health has many programs addressing Wyoming health needs. These programs can be found at <http://wdh.state.wy.us/main/programs.asp> or you can contact them at 307-777-7656.

You can find more information on these Wyoming benefits and many more federal benefits at [www.GovBenefits.gov](http://www.GovBenefits.gov).

# Health and Reproductive Rights



## **In this chapter:**

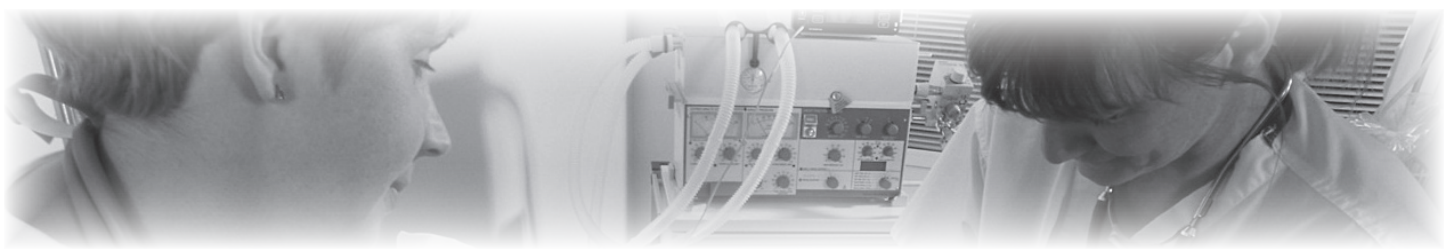
**Birth Control and Emergency Contraception Abortion**

**Methamphetamines**

**Minors' Rights to Consent to Healthcare and Make Other Important Decisions**

**Wyoming Health Department Programs**

**Other Resources**



# **Health and** **Reproductive Rights**

## **Birth Control and Emergency Contraception**

Bills related to emergency contraception (the "morning after pill")<sup>1</sup> have been debated all over the country and increased significantly in 2005 and 2006. Although emergency contraception is already available through many clinics and hospitals throughout the country, on August 24, 2006, the FDA approved a specific brand of emergency contraception called Plan B as an over-the-counter (OTC) option for women aged 18 and over. Birth control devices, designed to prevent pregnancy, are legal and readily available in Wyoming.

## **Abortion**

In the 1973 *Roe v. Wade* decision, the U.S. Supreme Court ruled that a woman, in consultation with her physician, has a constitutionally protected right to choose abortion in the early stages of pregnancy—that is, before viability. In 1992, the Court upheld the basic right to abortion in *Planned Parenthood v. Casey*. However, it also expanded the ability of the states to enact all but the most extreme restrictions on women's access to abortion. The Court held that although a woman continues to have a constitutional right to an abortion, states may impose restrictions like consent procedures or waiting periods on all abortions, including those performed in the first trimester, as long as the restrictions do not constitute an "undue burden" on the woman. Thus, the laws regulating abortions can, and do, differ in individual states.

### **Wyoming Laws**

<sup>1</sup>Emergency contraception is used to prevent pregnancy, not terminate a pregnancy. "Emergency contraception" is a general term used to describe several different types of birth control pills that are used in increased doses within 72 hours of unprotected intercourse. It is not the same thing as Mifeprex or RU-486. Mifeprex is the brand name of mifepristone in the United States and is sometimes referred to as non-surgical abortion, medical abortion, or RU-486. Mifeprex was approved in 2000 by the Food and Drug Administration (FDA) for termination of early pregnancy, which is defined by forty-nine days or less. It is usually administered in pill form but there is also an injection and liquid form (methotrexate).

- Wyoming bans most post-viability abortions, except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment. **W.S. 35-6-102.**
- Wyoming also has a law that prevents a minor from obtaining an abortion without parental consent or notice unless the minor is granted the right to self consent to an abortion by court order. **W.S. 35-6-118.**
- Wyoming has a law that permits certain medical personnel, private hospitals, clinics, institutions or other private health facilities, to refuse to participate in abortions.

### **Minors' Rights**

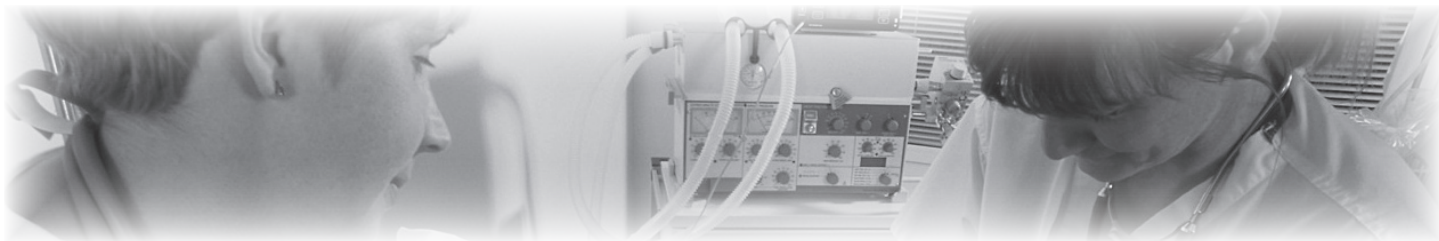
- Not all doctors, hospitals, or clinics in Wyoming will provide confidential health and birth control services to minors. If this is a concern for you, before choosing your health care provider, be sure to ask whether or not you will be seen confidentially and if your medical records will be provided to your parents or guardian. For more on minors' rights to consent to certain medical procedures, see below.

### **Insurance Coverage for Abortion**

- While women do have access to abortions, this does not mean that all health insurance policies will pay for the cost of having an abortion.
- Public funding is available for abortion only in cases of life endangerment, rape or incest.

### **Medicaid Coverage of Abortions**

State and federal laws limit the use of Medicaid funds for abortions. Under Wyoming law, no state funds can be used to pay for abortions unless the pregnancy is the result of incest or sexual assault and the assault is reported to a law enforcement



agency within 5 days after the assault or within 5 days after the time the victim is capable of reporting the assault, or when the life of the mother is endangered if the pregnancy goes to full term.

The Federal Budget Act passed in 1996 took away all federal employees' ability to choose a health insurance plan that covers abortions. This affects all women who work for federal agencies or serve as Peace Corps volunteers. Current law allows exceptions only in cases of rape, incest, and life endangerment of the mother. The federal law was also amended so that United States military servicewomen and female dependents of United States military servicemen can no longer obtain abortions in United States hospitals or overseas, even if they pay for them with their own money.

If you have health care insurance and are not a federal employee, you should check with your provider to find out if the cost of abortion, as well as contraceptives, is covered by your policy. Some policies provide coverage while others do not.

## Methamphetamines

**Child Endangerment.** According to Wyoming law, any person that allows a child to absorb, inhale or otherwise ingest any amount of methamphetamine or to be in a room, dwelling or vehicle where the person knows methamphetamine is being manufactured or sold or a place the person knows is being used to manufacture or store methamphetamines, or the hazardous waste created by the manufacture of methamphetamines is guilty of child endangerment, which is punishable by imprisonment for not more than five (5) years, a fine of not more than five thousand dollars (\$5,000.00), or both. **W.S. 6-4-405.**

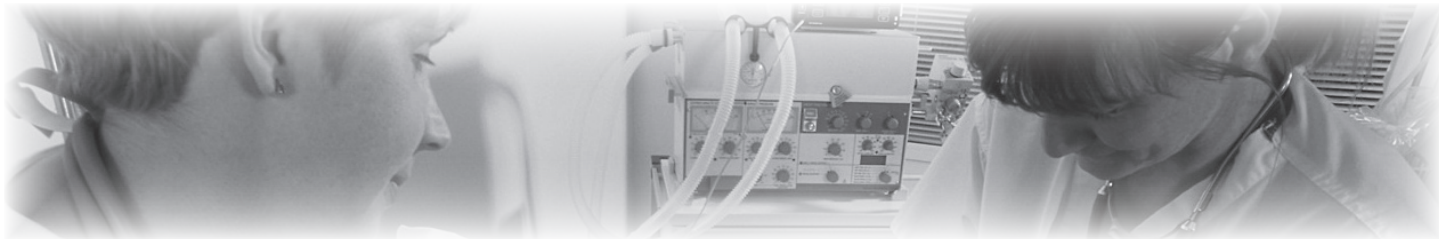
## Minors' Rights to Consent to Health Care and to Make Other Important Decisions<sup>2</sup>

At the federal level, the focal point of debate over minors' access to confidential services has been the Title

X family planning program. Since its inception in 1970, services supported by Title X have been available to anyone who needs them without regard to age. As a result, Title X-supported clinics provide contraceptive services and other reproductive health care to minors on a confidential basis, although they encourage minors to involve their parents in their decision to seek services.

- In Wyoming, a minor may give legal consent for examination and treatment for any sexually transmitted disease infection. **W.S. 35-4-131(a).**
- Wyoming officially classifies HIV/AIDS as an STD or infectious disease, for which minors may consent to testing and treatment.
- **Abortion.** For purposes of obtaining an abortion, Wyoming law defines a minor as a woman under the age of 18 years unless that woman is legally married, or is in active military service, or has not lived with her parents or guardian and has been financially independent for at least six (6) months prior to a proposed abortion. **W.S. 35-6-101(x).** A minor cannot receive an abortion unless at least 1 of her parents or her guardian is notified in writing at least 48 hours before the abortion. The attending physician must obtain the written consent of both the minor and at least 1 parent or guardian. Some exceptions to this are available to the minor through the court system, including if the minor receives a court order allowing the minor to consent to the procedure without her parent's permission, or if the minor's doctor determines that an abortion is necessary to preserve the minor from an imminent peril that substantially endangers her life, and so certifies in the minor's medical record. A minor should obtain legal advice before pursuing the exceptions. **W.S. 35-6-118.** Additionally, no parent, guardian or spouse shall require a minor to submit to an abortion against her wishes. **W.S. 35-6-118(e).**
- A minor is authorized to consent to placing a child for adoption. **W.S. 1-22-109(d).**
- A minor needs parental consent in order to legally marry and, if under sixteen (16), she also needs a court order allowing the marriage. **W.S. 20-1-102.**

<sup>2</sup>The Guttmacher Report on Public Policy, August 2000. <http://www.guttmacher.org/pubs/tgr/03/4/gr030404.pdf>



- Certain family planning and other health clinics do not require parental consent for a minor to receive contraceptive (birth control) services. You should check with your health care provider regarding their policies before seeking services.
- Wyoming requires minors to attend school until at least 16 years of age and completion of 10th grade, with only a few very limited exceptions. **W.S. 21-4-102.**

## Other Resources

NARAL Reproductive Freedom & Choice  
P. O. Box 96877  
Washington, DC 20077-7407  
Internet: [www.naral.org](http://www.naral.org)

U.S. Dept. of Health & Human Services  
1961 Stout St., Room, 498  
Denver, CO, 80294-3538  
303-844-7856  
Fax: 308-844-2019

Wyoming NARAL  
P.O. Box 271  
Laramie, WY 82073  
307-742-9189  
Fax: 307-742-9189

Wyoming Migrant Health Program  
307-754-5252 or 877-754-5252  
146 S. Absaroka  
Powell, WY

### Wyoming Title X Clinics:

Afton, WY 82110  
800-789-9520  
Western WY Family Planning  
453 Washington St.

Casper, WY 82601  
307-235-9340  
Natrona County Public Health  
475 S. Spruce

Cheyenne, WY 82007  
307-633-4040  
City County Health Dept. Family Planning  
100 Central Ave.

Cody, WY 82414  
307-527-5174  
Northwest WY Family Planning  
1231 Rumsey Ave.

Evanston, WY 82930  
307-789-9520  
Western WY Family Planning  
350 City View Drive, #102

Gillette, WY 82716  
307-682-8110  
Health Services of Campbell County  
201 West Lakeway, Suite 414

Greybull, WY 82426  
800-870-2249  
Washakie Family Planning Services

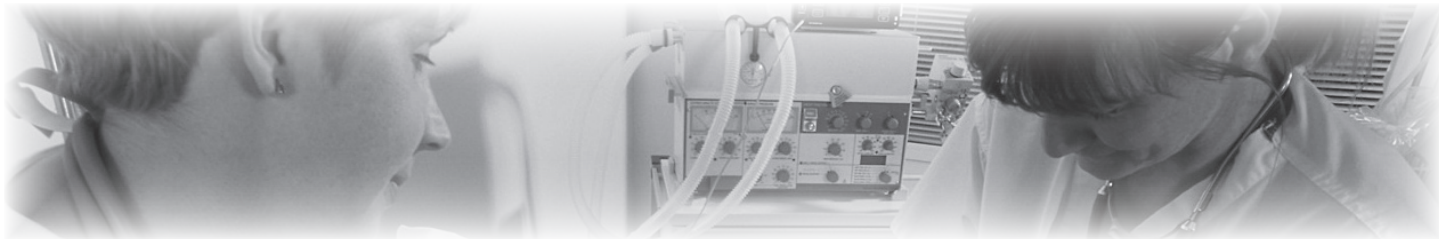
Jackson, WY 83001  
307-732-1964  
Western WY Family Planning  
460 East Pearl

Kemmerer, WY 83101  
800-789-9520  
Western WY Family Planning  
925 Sage Ave (Courthouse)

Lander, WY 82520  
800-856-7211  
Western WY Family Planning  
450 N. 2nd St., Room 350

Laramie, WY 28072  
307-745-5364  
Albany County Family Planning  
450 N. 4th St.

Lyman, WY 82937  
800-789-9520  
Western WY Family Planning  
128 E. Owen



Pine Bluffs, WY 82082  
307-245-3252  
Tri County Medical Center  
117 E. 4th

Powell, WY 82435  
307-754-5023  
NW WY Family Planning  
246 N. Hamilton

Pinedale, WY 82941  
307-367-4133  
Pinedale Medical  
P.O. Box 627

Rawlins, WY 82301  
307-324-9395  
Western WY Family Planning  
617 W. Pine

Riverton, WY 82501  
307-856-7212  
Western WY Family Planning  
325 W. Main St., Suite D

Rock Springs, WY 82901  
307-362-6813 or 800-479-9937  
Western WY Family Planning  
809 Thompson

Sheridan, WY 82801  
307-672-7054  
Family Planning of the Big Horns  
128 S. Thurmond

Thermopolis, WY 82443  
800-870-2249  
Washakie Family Planning Services  
141 Pioneer Dr., Room 57

Worland, WY 82401  
800-870-2249  
Washakie Family Planning Services  
1007 Robertson

### **Wyoming Non-Title X Clinics**

Buffalo, WY 82834  
307-684-2564  
Johnson County Public Health Family Planning  
210 North DeSmet

Casper, WY 82601  
307-235-9340  
Natrona County Public Health  
475 S. Spruce

Casper WY, 82604  
Planned Parenthood of WY  
1945 Westwood Hill  
[www.pprm.org](http://www.pprm.org)

Kaycee, WY 82639  
307-738-2404  
Kaycee Medical Clinic  
268 Nolan Ave.

Lusk, WY 82225  
307-334-2609  
Niobrara County Public Health  
611 E. 6th

Newcastle, WY 82701  
307-746-4775  
Weston County Public Health  
1 West Main

Sundance, WY 82729  
307-283-1142  
Crook County Family Planning  
420 East Main

Torrington, WY 82240  
307-532-4069  
Goshen County Public Health  
2025 Campbell Dr.

Wheatland, WY 82201  
307-322-2540  
Platte County Family Planning  
718 9th St.

# Housing and Property Rights



## **In this chapter:**

### **Marital Property Rights**

#### **Rental of a Residence**

- Owner's/Landlord's Duties
- Renter's Duties
- Prohibited Acts by Renter
- Remedies Available to Landlords and Tenants
- Security and Utility Deposits
- Evictions/Forcible Entry and Detainer

#### **Fair Housing Act**

For information on property distribution upon death, see Wills and Health Care Directives Chapter.  
Housing and Property Rights



# **Housing and Property Rights**

Property rights concern the ownership, possession, use, enjoyment, and disposal of property. The two forms of property are real and personal. Real property includes land, buildings, structures attached to the land, and improvements to the land. Personal property consists of all other property, such as furniture, cars, jewelry, clothes, cash, and stock.

## **Marital Property Rights**

Property owned by a woman or man before or during marriage does not automatically become the other spouse's property because of the marriage. Property owned by a woman before marriage or inherited by her during marriage is hers alone. The same is true for her husband. **W.S. 20-1-201.**

Neither the husband nor the wife is responsible for debts acquired by the other spouse before the marriage; however, a supporting spouse can sometimes be required to provide support to a dependent spouse.

A married woman may give or receive gifts of real or personal property to or from her husband or anyone else. Her husband has the same right to give and receive gifts. **W.S. 20-1-202.**

**See also Family Law chapter of handbook.**

## **Rental of a Residence**

Wyoming has laws that apply to all rented housing, including trailers, houses, apartments, and public housing. Wyoming law establishes rights and responsibilities of landlords and tenants. **W.S. 1-21-1201 et seq.**

### **Owner's/Landlord's Duties**

To protect the physical health and safety of the renter, each owner shall:

- (i) Not rent the residential rental unit unless it is reasonably safe, sanitary and fit for human oc-

cupancy;

- (ii) Maintain common areas of the residential rental unit in a sanitary and reasonably safe condition;
- (iii) Maintain electrical systems, plumbing, heating and hot and cold water; and
- (iv) Maintain other appliances and facilities as specifically contracted in the rental agreement.

**W.S. 1-21-1203.**

Seasonal rental units, such as summer cabins, that are not intended to have the above amenities are specifically excluded from these requirements. **W.S. 1-21-1202(a).**

Landlords are responsible for maintaining common areas of residential rental units in a sanitary and reasonably safe condition. These requirements do not apply to breaks, malfunctions or other conditions, which do not materially affect the physical health or safety of the ordinary renter. **W.S. 1-21-1201(a)(iv).**

### **Renter's Duties**

Each renter shall:

- (i) Maintain the residential rental unit occupied in a clean and safe condition and not unreasonably burden any common area;
- (ii) Dispose of all garbage and other waste in a clean and safe manner;
- (iii) Maintain all plumbing fixtures in a condition as sanitary as the fixtures permit;
- (iv) Use all electrical, plumbing, sanitary, heating and other facilities and appliances in a reasonable manner;
- (v) Occupy the residential rental unit in the manner for which it was designed and shall not increase the number of occupants above that specified in the rental agreement without written permission of the owner;
- (vi) Be current on all payments required by the rental agreement;
- (vii) Comply with all lawful requirements of the rental agreement between the owner and the renter; and
- (viii) Remove all property and garbage either owned or placed within the residential rental unit by



the renter or his guests prior to termination of the rental agreement and clean the rental unit to the condition at the beginning of the rental agreement.

**W.S. 1-21-1204.**

## Prohibited Acts by Renter

No renter shall:

- (i) Intentionally or negligently destroy, deface, damage, impair or remove any part of the residential rental unit or knowingly permit any person to do so;
- (ii) Interfere with another person's peaceful enjoyment of the residential property; or
- (iii) Unreasonably deny access to, refuse entry to or withhold consent to enter the residential rental unit to the owner, agent or manager for the purpose of making repairs to or inspecting the unit, and showing the unit for rent or sale.

**W.S. 1-21-1205.**

## Remedies Available to Landlords and Tenants

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*Tenants may not refuse to pay their rent if the landlord does not fulfill his duties unless authorized by court order. To invoke the landlord's duty to repair the premises, tenants must make repair requests in writing.*

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If you believe your rented house, apartment or mobile home does not meet the safe and sanitary conditions, as described above, **and** you are current on all payment required by the rental agreement, you have to notify your landlord, **in writing**, of any problem and specify what you want your landlord to do about it. **W.S. 1-21-2106(b).**

Once notified in writing, your landlord must respond within a **reasonable period of time** and may elect to:

- Correct the problem, or
- Refuse to correct the problem and terminate the

rental agreement, or

- Notify you that the claim is disputed.

Your landlord may terminate the rental agreement if the costs of repairs exceed an amount which would be reasonable in light of the rent charged, the nature of the rental property or rental agreement. **W.S. 1-21-1203.**

Your landlord must give you at least 10 days to find substitute housing, but is required to give you no more than 20 days from the date of the notice to terminate. Any rent must be prorated to the date you vacate the unit and any balance remaining from what you have already paid must be refunded, less any deductions-which must be itemized-within 30 days or within 15 days after receipt of your new mailing address, whichever is later.

If there is damage to the residential unit, then your landlord may take up to 60 days to refund any prepaid rent and any deposits (see following section on Security and Utility Deposits).

If your landlord disputes your claim, your landlord must notify you in writing, by certified mail or by leaving the notice at your home or workplace. Your landlord is not required to correct or remedy any condition caused by you or your guests by inappropriate use or misuse of the property.

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*Tenants may not refuse to pay their rent if the landlord does not fulfill his duties unless authorized by court order.*

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If your landlord does not respond, or fails to correct the problem, within a reasonable period of time, then you may have a "Notice to Repair or Correct Condition" prepared and served on your landlord by certified mail. You may also be able to deliver the notice to your landlord's home or workplace but certified mail allows you to have evidence that you mailed it in the event the notice is lost or the landlord disputes your claim.

The Notice must:

- Recite the previous notice served, and



- State the number of days that have elapsed since the notice was served and that under the circumstances the period of time constitutes the reasonable time allowed under **W.S. 1-21-1203(b)**, and
- State the conditions included in the previous notice which have not been corrected, and
- Demand that the uncorrected conditions be corrected, and
- State that if the landlord fails to commence reasonable corrective action within 3 days, redress will be sought in the courts.

After serving this Notice, if your landlord has not corrected, or used due diligence to correct the conditions cited, then you may commence a civil action in county or justice of the peace court.

## Security and Utility Deposits

**Non-refundable deposits.** Under Wyoming law, a rental agreement must state whether any portion of a deposit is non-refundable and written notice of this fact must also be provided to you, as the renter, at the time the deposit is taken. **W.S. 1-21-1207.**

**Security deposits.** Upon termination of the rental agreement, property or money held as a deposit may be applied by the owner or his agent to the payment of accrued rent, damages to the residential rental unit beyond reasonable wear and tear, the cost to clean the unit to the condition at the beginning of the rental agreement and to other costs provided by any contract.

**Written itemization of deductions required.** The balance of any deposit and prepaid rent and a written itemization of any deductions from the deposit together with reasons therefore, shall be delivered or mailed without interest to the renter within thirty (30) days after termination of the rental agreement or within fifteen (15) days after receipt of the renter's new mailing address, whichever is later. If there is damage to the residential rental unit, this period shall be extended by thirty (30) days. The renter shall within thirty (30) days of termination of the rental agreement, notify the owner or designated agent of the location where payment and notice may be made or mailed. **W.S. 1-21-1208.**

**Utilities deposit.** After termination of the rental agreement, property or money held and *separately identified as a utilities deposit* shall be refunded by the owner to the renter within ten (10) days of a satisfactory showing that all utility charges incurred by the renter have been paid. Absent such showing within forty-five (45) days of termination, the owner shall within fifteen (15) days thereafter, apply the utilities deposit to the outstanding utility debt incurred by the renter. Any refund due to the renter shall be paid within seven (7) days after the utility deposit has been applied to the renter's utility debt, or within fifteen (15) days after receipt of the renter's new mailing address, whichever is later.

**Failure of landlord to comply.** If the owner of a residential rental unit or his agent unreasonably fails to comply with the laws surrounding refunding deposits, the renter may recover the full deposit and court costs.

**Landlord's attorney fees.** If the owner is the prevailing party and the court finds the renter acted *unreasonably* in bringing the action, the owner may be awarded court costs in addition to any other relief available.

## Evictions/Forcible Entry and Detainer

Eviction is the process a landlord uses to remove a tenant from the residence. Wyoming law does specify a "forcible entry and detainer" procedure to accomplish an eviction when:

- The tenant fails to pay rent for three (3) days after it is due;
- The tenant fails to perform renter's duties which generally relate to maintaining the rental in a clean and safe condition, disposing of all garbage properly, and using all facilities and appliances in a reasonable manner; or
- The tenant engages in any acts which generally relate to intentionally or negligently destroying or damaging any part of the rental unit, interfering with another person's peaceful enjoyment of the residential property or unreasonably denying access to the rental unit by the landlord. (See "**Renter's Duties**" and "**Prohibited Acts by Renter**" above).



**Forcible Entry and Detainer** means your landlord intends to get an order from the court to make you leave your rental unit. But first, your landlord must notify you that you are required to leave the premises, this is also known as a “Notice to Quit.”

This “**Notice to Quit Premises**” must be given to you at least three (3) days prior to your landlord’s commencing any action with the courts, by leaving a written copy with you or leaving it at your home or workplace. **W.S. 1-21-1003.**

The notice (Summons) must state the cause for the complaint and state the time and place of trial. The served notice must be received by you no less than 3 days prior, nor more than 12 days before the day of trial. **W.S. 1-21-1004.**

#### **Proceedings when tenant (defendant) fails to appear.**

If the defendant does not appear in accordance with a properly served summons the circuit court shall try the action as though she were present. Before proceeding, the landlord (plaintiff) shall file a complaint in which he relies in order to recover the premises. The complaint must be sustained by proof or the action dismissed. **W.S. 1-21-1005.**

#### **Tenant should reply to or answer the complaint.**

If the defendant appears, a like complaint shall be *admitted or denied* in the answer of the defendant. Both parties may be allowed to amend.

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*If no answer is made by the tenant (defendant), she may not offer evidence at the trial and is limited to cross-examination of the landlord’s (plaintiff’s) witnesses. W.S. 1-21-1006.*

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To preserve a right to object the evidence offered by the landlord, the tenant should answer the complaint by admitting or denying each allegation and filing the answer with the court and mailing or otherwise delivering a copy of the answer to the landlord or his or her attorney, if any.

#### **Judgment.**

If, after a trial, the court finds in favor of the landlord (plaintiff), it shall render a general judgment in favor of the plaintiff for restitution of the premises and costs. If the court finds the complaint true in part, it shall render judgment for restitution of that part only and shall order costs as it deems equitable.

The court will also determine the amount of rent due, if any, and any other charges, i.e. penalties and interest for late payment or non-payment and will enter judgment for those amounts, as well. **W.S. 1-21-1008.**

#### **Giving premises back to landlord.**

At the request of the landlord (plaintiff), his agent or attorney the court shall enter a *Writ of Restitution* allowing an officer to give the landlord possession of the premises within two (2) days, excluding Sundays. This means your landlord will legally have possession of the rental unit within two (2) days and you will be required at that time to pay for all rent and costs due. **W.S. 1-21-1012 and 1-21-1013.**

#### **Appeal.**

A tenant may appeal the court’s decision, which will stay execution of the Writ of Restitution only if, in addition to the bond required by **W.S. 1-21-1014**, the tenant (appellant) deposits with the court the amount of rent specified in the judgment. Unless the deposit is made, the appeal is not perfected and proceedings upon the judgment shall continue. **W.S. 1-21-1015.**

### **Fair Housing Act**

The Federal Fair Housing Act (FHA) prohibits the following actions if they are taken due to a housing applicant’s sex, familial status, race, color, religion, national origin, or handicap:

- Refusing to sell or rent a home or apartment;
- Telling the applicant that a home or apartment is not available for sale or rent when it is, in fact, available;
- Altering the terms and conditions of the sale or lease



of a home or apartment.

**42 U.S.C. §3604, §3605**

The FHA also forbids the printing of advertisements that show a preference for or against any sex, familial status, race, color, religion, national origin, or handicap, and it prohibits home mortgage lenders from denying or discriminating in any terms of a loan (duration, interest rate, etc.) on any of these bases.

If you have experienced a discriminatory housing practice, you can file a written complaint with the Secretary of Housing and Urban Development within a year of the alleged discriminatory practice. You may file this complaint by visiting its web site at [www.hud.gov](http://www.hud.gov),

completing its Housing Discrimination Complaint Form, and submitting the form online. You may also download the form and mail it in or write a letter to: Fair Housing Hub, U.S. Department of Housing and Urban Development, Five Points Plaza, 40 Marietta Street, 16th Floor, Atlanta, GA, 30303-2806. If you have questions about submitting your complaint, call 1-800-440-8091.

Whether or not such a complaint is filed, the person can also begin a civil action no later than two years after the occurrence of the alleged discriminatory housing practice. The court may appoint an attorney for you or may authorize that the action continue without the payment of fees, costs, or security.

# Insurance



## **In this chapter:**

**How Does an Insurance Policy ‘Protect’ Me?**  
**Cancellation Notices Due to Non-Payment or Late Payment**

**General Insurance Law**

**Health Insurance**

- Pregnancy-Related Conditions
- Coverage of Newborns
- Breast Cancer, Cervical Cancer and Diabetes
- Breast Reconstruction Mandate
- Mental Health and Substance Abuse Disorders
- Coverage-Pre-Existing Conditions
- Adopted Children
- HIV/AIDS
- Health Insurance Portability and Accountability Act of 1996 (HIPPA)

**Financial Assistance for Health Insurance**

- Medicaid
- Wyoming Kid Care (CHIP) Program
- Caring Program for Children
- Medicare

Medigap Insurance

Women’s Breast and Cervical Cancer Early Detection Program (Women’s Health Source)

COBRA Continuation Coverage

Wyoming Continuation Coverage

Wyoming Health Insurance Pool (WHIP)

Temporary Assistance for Needy Families (TANF)

Title X Clinics

**Insurance Supplements**

**Coverage of Children: Child Support Orders**

**Life Insurance**

**Disability Insurance**

**Social Security Insurance**

**Social Security Disability Insurance**

**Credit Insurance**

**Title & Mortgage Insurance**

**Automobile Insurance**

**Renter’s Insurance**

**For More Information**

For information on Social Security and Social Security Disability Insurance see Government Benefits Chapter.



# **Insurance**

## **How Does an Insurance Policy 'Protect' Me?**

Insurance policies offer protection against economic loss, that is, loss or damage which can be measured in purely financial terms and compensated by money. For example, an insurance policy can pay for the cost to repair or replace a damaged automobile or to rebuild a building damaged by fire, for the cost of medical treatment for an injury or illness or for the lost income of a person who dies or is unable to work. The purpose is to place the injured party, as nearly as possible, in the same financial position as if the loss had not occurred. There are two types of coverage, first party losses (i.e. insures against property or physical damage to your automobile) and liability for third party losses (i.e. insures damage you cause to other people or property).

There are limitations to insurance and there are many types of losses which can not be compensated by money. For example, insurance can not replace a life or take away the emotional injury or pain which often accompanies an accident or serious illness or compensate for loss of the "sentimental" value of an item of property. When you buy homeowner's property insurance, for example, you are insuring only the economic value of the home, (the cost to repair or rebuild it and third party liability), for example charges incurred if someone slips and falls at your home.

## **Cancellation Notices Due to Non-Payment or Late Payment**

For property and liability insurance, a cancellation notice usually must be sent to the policyholder several days prior to the effective date of cancellation. The notice period will be stated in the policy, and for personal auto, homeowner's and sometimes other types of insurance, state law usually requires at least 10 days advance written notice for nonpayment of premiums and 45 days notice for underwriting reasons. If you make your payment before the cancellation date, you will be able to retain your coverage. For life, health and other

disability insurance, state law often requires insurers to allow a "grace period" of as much as 30 days after a premium payment is due before coverage can be terminated. If payment is not made within the grace period, however, these types of coverage usually will terminate retroactively to the date the premium payment was due without any further cancellation notice from the company.

If your coverage terminates or is canceled because you missed a premium payment, some insurance companies may agree to "reinstate" your coverage if you make all past due payments and you certify that you are not aware of any losses that have occurred since the cancellation date. Reinstatement is discretionary by the insurance company. The law usually does not require that policies be reinstated once they have been legally canceled. **W.S. 26-35-101 through 26-35-204.**

## **General Insurance Law**

Wyoming law prohibits the insurance industry from unfairly discriminating against any individual. **W.S. 26-2-134, 26-13-109, 26-13-112, and 26-34-134.**

## ***Underwriting***

"Underwriting" is the method insurance companies use in deciding whether or not to issue coverage to a particular person, business, home, etc. Wyoming law prohibits insurance companies from offering different terms of insurance to women, or non-married persons than it does to men or married people that are similarly situated.

In addition, a company cannot ask medical history questions labeled for females only in its application for coverage. Underwriting decisions are usually made by looking at physical characteristics of a property (age, condition, etc.), the age and experience of a driver, the past loss history, the health of a person, and more.

## ***Rating***

"Rating" is the method in which an insurance company determines what rates to charge for coverage. Wyoming law, despite prohibiting unfair discriminatory insurance



practices, does allow companies to charge different rates for men and women. Yet, the insurance company must justify these differing rates based on solid data.

Property rates are determined by the construction of the building, adequate water supply and age and condition of the building.

Rates in Wyoming for liability, property and automobiles are not regulated by the Insurance Department.

### ***Complaints***

The insurance regulatory agency of Wyoming (called the "Department of Insurance") has established procedures whereby consumers who believe they have been subjected to unfair claims handling can file a complaint against the offending insurance company. If a company is found to be in violation of the law, this process may also result in a fine or other penalty being imposed on the company by the Department of Insurance.

## **Health Insurance**

Wyoming has adopted some new laws covering health group insurance plans and long-term care. In addition, the federal government has enacted health insurance provisions that set standards across the country. These laws provide important protection for women.

### **Pregnancy-Related Conditions**

Wyoming law provides that no group insurance policy may treat a pregnancy as a pre-existing condition, if the pregnancy existed at the effective date of coverage. Individual policies, as opposed to group policies, can consider pregnancy a pre-existing condition and therefore not cover medical expenses related to it.

Further, under the **Health Insurance Portability and Accountability Act of 1996 ("HIPAA")**, if a woman is pregnant at the time she obtains a health insurance policy, the health insurance provider cannot exclude coverage for it as a pre-existing condition if the employer has more than 15 employees and the pregnant woman is covered under a group plan.

Maternity coverage is not mandated by Wyoming law and can only be included in a health insurance policy at the insurer's option. Individuals should carefully examine their policies and inquire about possible coverage.

If pregnancy is covered, benefits cannot be limited to less than a 48-hour stay for vaginal births and a 96-hour stay for cesarean births. **W.S. 26-18-106(b)**.

### **Coverage of Newborns**

Wyoming law provides for health coverage of newborn children from the moment of birth, when the mother or family is covered by an existing health care policy. This coverage includes any injury, sickness, or treatment of any medically diagnosed congenital defects and birth abnormalities. You usually do not have to pay an additional premium for at least the first 31 days after the child is born, unless the current policy does not cover dependents and then a premium may be required. **W.S. 26-20-101 through 26-20-104**.

### **Breast Cancer, Cervical Cancer and Diabetes**

Wyoming law requires health insurance providers to cover testing and examination of adult policyholders for breast cancer, cervical cancer, and diabetes. The amount of coverage, if any that is provided if these problems are detected depends on the person's individual policy. Individual policies may also require a deductible or a percentage of the bill be paid for further treatment.

Mandatory coverage of breast, colorectal, cervical and prostate cancer screening tests is only required on group policies. It is also limited to a maximum dollar amount of coverage. The diabetes mandate applies to both group and individual plans. **W.S. 26-18-103(b) and 26-19-107(h) & (j)**.

### **Breast Reconstruction Mandate**

Breast Reconstruction Following a Mastectomy. Legislative mandates for insurance and HMO coverage for mastectomies exist at both the state and federal level. In the last year, as increased focus has been placed on women's health issues, it has come to the public's at-



tention that some insurers and HMOs do not provide coverage for reconstructive breast surgery following a mastectomy. Some carriers provide coverage for reconstructive surgery to the diseased breast, but do not cover surgery on the non-diseased breast to achieve symmetry. See the Department of Labor's website on this federal law at [www.dol.gov/ebsa/publications/whcra.html](http://www.dol.gov/ebsa/publications/whcra.html).

## **Mental Health and Substance Abuse Disorders**

Wyoming law does not mandate health insurers cover treatment for mental health conditions or substance abuse disorders. Persons interested in such coverage must inquire with individual insurance companies directly.

## **Coverage for Pre-Existing Conditions**

If you change your health insurance policy from one provider to another, which often occurs when you change employment, you may have the right to have any pre-existing medical conditions covered by your new policy. If there is a gap between coverage, then the company does not have to cover your pre-existing condition.

In Wyoming, an insurance company may impose up to a 12-month waiting period before it will cover pre-existing conditions. This delay period needs to be considered by individuals with pre-existing conditions before switching insurance companies. In certain cases under a group plan, pre-existing conditions can be excluded for up to 18 months (i.e. a late enrollee in a small group plan).

The **Health Insurance Portability and Accountability Act of 1996 ("HIPAA")**, which requires health insurance companies to cover pre-existing conditions under certain circumstances, also provides limited protection for individual policyholders.

## **Adopted Children**

Wyoming law requires that health insurance providers treat adopted children in the same manner as biological

children. Health insurance benefits for the child are automatically payable from the date the petition for adoption is filed or the date of entry of the child into the home, whichever is earlier. **W.S. 26-20-101 through 26-20-104.**

## **HIV/AIDS**

Wyoming law does not offer any specific protection for individuals with regard to HIV or AIDS. Insurance companies can require applicants for insurance to be tested for their HIV status. Wyoming law provides no framework for insurance companies in notifying an applicant of its desire for testing.

## **Health Insurance Portability and Accountability Act of 1996 ("HIPPA")**

The Health Insurance Portability and Accountability Act passed in 1996 to help people buy and keep health insurance, even when they have serious health conditions. The law sets basic requirements that all health plans must meet.

**PATIENT PROTECTIONS.** The new privacy regulations ensure a national floor of privacy protections for patients by limiting the ways that health plans, pharmacies, hospitals and other covered entities can use patients' personal medical information. The regulations protect medical records and other individually identifiable health information, whether it is on paper, in computers or communicated verbally. Key provisions of these new standards include:

- **Access To Medical Records.** Patients generally should be able to see and obtain copies of their medical records and request corrections if they identify errors and mistakes. Health plans, doctors, hospitals, clinics, nursing homes and other covered entities generally should provide access these records within 30 days and may charge patients for the cost of copying and sending the records.
- **Notice of Privacy Practices.** Covered health plans, doctors and other health care providers must provide a notice to their patients of how they may use personal medical information and their rights under



the new privacy regulation. Patients will be asked to sign, initial or otherwise acknowledge that they received this notice. Patients also may ask covered entities to restrict the use or disclosure of their information beyond the practices included in the notice, but the covered entities would not have to agree to the changes.

- **Limits on Use of Personal Medical Information.** The privacy rule sets limits on how health plans and covered providers may use individually identifiable health information. To promote the best quality care for patients, the rule does not restrict the ability of doctors, nurses and other providers to share information needed to treat their patients. In other situations, though, personal health information generally may not be used for purposes not related to health care, and covered entities may use or share only the minimum amount of protected information needed for a particular purpose. In addition, patients would have to sign a specific authorization before a covered entity could release their medical information to a life insurer, a bank, a marketing firm or another outside business for purposes not related to their health care.
- **Confidential communications.** Under the privacy rule, patients can request that their doctors, health plans and other covered entities take reasonable steps to ensure that their communications with the patient are confidential. For example, a patient could ask a doctor to call his or her office rather than home, and the doctor's office should comply with that request if it can be reasonably accommodated.
- **Complaints.** Consumers may file a formal complaint regarding the privacy practices of a covered health plan or provider. Such complaints can be made directly to the covered provider or health plan or to HHS' Office for Civil Rights (OCR), which is charged with investigating complaints and enforcing the privacy regulation. Information about filing complaints should be included in each covered entity's notice of privacy practices. You can find out more information about filing a complaint at [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa) or by calling 866-627-7748.

**HEALTH PLANS AND PROVIDERS.** The privacy rule requires health plans, pharmacies, doctors and other covered entities to establish policies and procedures to protect the confidentiality of protected health information about their patients, including:


- **Written Privacy Procedures.** The rule requires covered entities to have written privacy procedures, including a description of staff that has access to protected information, how it will be used and when it may be disclosed.
- **Employee Training and Privacy Officer.** Covered entities must train their employees in their privacy procedures and must designate an individual to be responsible for ensuring the procedures are followed. If covered entities learn an employee failed to follow these procedures, they must take appropriate disciplinary action.
- **Public Responsibilities.** In limited circumstances, the final rule permits -- but does not require -- covered entities to continue certain existing disclosures of health information for specific public responsibilities. These permitted disclosures include: emergency circumstances; identification of the body of a deceased person, or the cause of death and limited law enforcement activities.

## SPECIAL ENROLLMENT

Group health plans and health insurance issuers are required to provide special enrollment periods during which individuals who previously declined coverage for themselves and their dependents may be allowed to enroll (without having to wait until the plan's next open enrollment period).

A special enrollment opportunity occurs if an individual with other health insurance loses that coverage or if a person becomes a new dependent through marriage, birth, adoption or placement for adoption. However, an individual must notify the plan of their request for special enrollment within 30 days after losing their other coverage or within 30 days of having (or becoming) a new dependent.

There are other rules that cover preexisting condition



exclusion period. You should contact your health insurance provider or human resources director for more information. [www.dol.gov/elaws/ebsa/health/4.asp](http://www.dol.gov/elaws/ebsa/health/4.asp).

## Financial Assistance for Health Insurance

Help is available to certain low-income residents of Wyoming who cannot afford to buy health insurance. (This information is also available on-line at <http://www.healthinsuranceinfo.net/wy05.html>.)

### Medicaid (Title 19)

Medicaid is a program that provides health coverage to some low-income Wyoming residents. Medicaid covers families with children and pregnant women, the elderly, and people with disabilities, if state and federal guidelines are met. Legal residents who are not U.S. citizens may be eligible for Medicaid emergency services however, questions concerning immigration status and eligibility should be directed to the Wyoming Department of Family Services.

- *For certain categories of people, eligibility for Medicaid is based on the amount of their household income.* In Wyoming you may be eligible for Medicaid if you are an individual, a child, a parent of a child, or pregnant, and your family income meets the Medicaid income standards. Your assets and some expenses also may be taken into account, so you should contact the Wyoming Department of Family Services for more information.
- Parents who receive benefits under **TANF** (also known in Wyoming as the **POWER** program) should also know that when you get a job and your TANF benefits end, you generally can stay on Medicaid for a 12-month transitional period. In addition, your children may qualify for Medicaid if your family's income meets certain income standards.
- *Poor elderly or disabled people who get **Supplemental Security Income (SSI)** benefits are automatically eligible for Medicaid.* Disabled individuals should know that if your income

earned from a job increases so that you no longer qualify for SSI, you may be able to continue your Medicaid coverage, at least for a limited time.

- *Retired or disabled people who have low incomes and are enrolled in Medicare may also qualify for help from Medicaid.* Even though your income may be too high to qualify for Medicaid insurance coverage, there may be other ways Medicaid can help you. Contact the Wyoming Department of Family Services for more information about other eligibility requirements.
- *There may be other ways that Medicaid can help.* To find out if you or other members of your family qualify for Medicaid, contact the Wyoming Department of Family Services.

### Wyoming Kid Care (CHIP) Program

The Wyoming Kid Care (CHIP) Program is a state-designated program that provides health insurance to low-income children under the age of 19 who are not eligible for Medicaid and who have no health insurance.

- Effective 7/1/2005, a child whose family has a household income up to 200% of the federal poverty level (FPL) is eligible for the Wyoming Kid Care (CHIP) Program. Financial eligibility criteria limits are adjusted annually to reflect increases in cost of living.
- *The Wyoming Kid Care (CHIP) Program does not impose a pre-existing condition exclusion period.* If a family meets the eligibility guidelines, a child's pre-existing medical condition does not exclude him from coverage.
- The Wyoming Kid Care (CHIP) Program provides comprehensive coverage to enrollees including doctors' visits, hospital care, prescriptions, mental health, dental, vision and hearing services.
- **New Law for Parents and Guardians of Children on State Insurance.** Effective July 1, 2006, parents or guardians of children enrolled in the child health insurance program or



the medical assistance program may be eligible for participation in the programs under certain conditions. See **W.S. § 35-25-111** or ask a case-worker for further information.

## Medicare

Medicare is the federal health insurance program for persons age 65 and over, certain disabled persons under age 65, and persons with permanent kidney failure. There are three parts of Medicare, A, B and D. Part A of Medicare can be considered hospital insurance. Part A provides benefits for medically necessary services furnished by Medicare-approved hospitals, skilled nursing facilities, home health agencies and hospices. Part B helps pay for physician services and other medical services and supplies that are not covered by Part A. (See <http://insurance.state.wy.us/consumfm/buyguid1/med2006.html> for additional information.)

Part D, Medicare prescription drug coverage, covers both brand-name and generic prescription drugs at participating pharmacies in your area. Medicare prescription drug coverage provides protection for people who have very high drug costs. Everyone with Medicare is eligible for this coverage, regardless of income and resources, health status, or current prescription expenses.

There are very specific enrollment timelines that must be followed.

Like other insurance, if you join, you will pay a monthly premium, which varies by plan, and a yearly deductible (no more than \$250 in 2006). You will also pay a part of the cost of your prescriptions, including a co-payment or coinsurance. Costs will vary depending on which drug plan you choose. Some plans may offer more coverage and additional drugs for a higher monthly premium. If you have limited income and resources, and you qualify for extra help, you may not have to pay a premium or deductible. You can apply or get more information about the extra help by calling Social Security at 1-800-772-1213 (TTY 1-800-325-0778) or visiting [www.socialsecurity.gov](http://www.socialsecurity.gov).

The amounts that you are responsible for are also called the "gaps" in Medicare. Medicare supplement policies,

also called "Medigap" policies, are designed to help relieve some of the financial burden remaining after Medicare has paid its portion of the claim. There are four types of gaps in Medicare: 1) deductibles for both Part A and B, 2) the co-payments, 3) charges exceeding the Medicare allowable charge, and 4) expenses not covered by Medicare.

**You can contact the Insurance Department at 1-800-438-5768 or (307) 777-7401.**

**For information, counseling and assistance on long term care, medicare supplement and other health insurance issues for seniors, contact the Wyoming State Health Insurance Assistance Program (WSHI-IP). Call the Wyoming Senior Citizens, Inc. in Riverton, toll-free at 1-800-856-4398 or visit [www.wyomingseniors.com](http://www.wyomingseniors.com).**

## Medigap Insurance

The Wyoming Buyer's Guide to Medicare Supplement "MEDIGAP" Insurance is now available. This guide provides assistance to Wyoming consumers in selecting an insurance plan to supplement Medicare. The premium rates in this guide are current as of January 2006. **Go to: <http://insurance.state.wy.us/consumer.html>**

## Women's Breast and Cervical Cancer Early Detection Program (Women's Health Source)

The Women's Breast and Cervical Cancer Early Detection program is a program which provides breast and cervical cancer screening and diagnostic services to low income, uninsured women who are at risk for developing breast or cervical cancer. Women who are screened and/or diagnosed with breast or cervical cancer through the Women's Breast and Cervical Cancer Early Detection program and need treatment for breast or cervical cancer are eligible for Medicaid.

In order to be eligible for the Women's Breast and Cervical Early Detection Program you must meet certain income requirements for the program, meet certain age/risk categories, be a Wyoming resident, be uninsured or underinsured, be in need of medical treatment, and



not be eligible or pending eligibility for other Medicaid coverage.

To request an application or for additional questions, you may contact Women's Breast and Cervical Early Detection Program directly at 1-800-246-1296.

## **COBRA Continuation Coverage**

COBRA stands for the Consolidated Omnibus Budget Reconciliation Act, a federal law in effect since 1986. COBRA permits you and your dependents to continue in your employer's group health plan after your job ends. If your employer has 20 or more employees, you may be eligible for COBRA continuation coverage when you retire, quit, are fired, or work reduced hours. Continuation coverage also extends to surviving, divorced or separated spouses; dependent children; and children who lose their dependent status under their parent's plan rules. You may choose to continue in the group health plan for a limited time and pay the full premium (including the share your employer used to pay on your behalf). COBRA continuation coverage generally lasts 18 months, or 36 months for dependents in certain circumstances.

### **Cobra Qualifying Events:**

#### *For employees*

- Voluntary or involuntary termination of employment for reasons other than gross misconduct
- Reduction in numbers of hours worked

#### *For spouses*

- Loss of coverage by the employee because of one of the qualifying events listed above
- Covered employee becomes eligible for Medicare
- Divorce or legal separation of the covered employee
- Death of the covered employee

#### *For dependent children*

- Loss of coverage because of any of the qualifying events listed for spouses

- Loss of status as a dependent child under the plan rules

Once you elect COBRA, coverage will begin retroactive to the qualifying event. You will have to pay premiums dating back to this period.

## **Wyoming Continuation Coverage**

If your employer offers a fully insured group health plan and has fewer than 20 employees, you may also be eligible for up to 12 month continuation coverage under a Wyoming law that is similar to COBRA. However, an eligible person must apply in writing and pay within a 31-day period following termination of the group policy. Ask your former employer or the Wyoming Department of Insurance about state continuation coverage if you think that it applies to you.

## **Wyoming Health Insurance Pool (WHIP)**

This is a state-run program for people with high health risks (called a high risk pool). The Wyoming Health Insurance Pool sells coverage to those who are federally eligible and to others with serious health conditions who cannot buy affordable coverage from private health insurance companies.

To be federally eligible, you must meet all of the following:

- You must have had 18 months of continuous creditable coverage, *at least the last day of which was under a group health plan.*
- You also must have used up any COBRA or state continuation coverage for which you were eligible.
- You must not be eligible for Medicare, Medicaid or a group health plan.
- You must not have health insurance. (Note, however, if you know your group coverage is about to end, you can apply for coverage for which you *will* be federally eligible.)
- You must apply for health insurance for which you are federally eligible within 63 days of losing your prior coverage.



Federal eligibility ends when you enroll in an individual plan, because the last day of your continuous health coverage must have been in a group plan. You can become federally eligible again by maintaining continuous coverage and rejoining a group health plan. WHIP does not offer family coverage. Each member of your family who wants to enroll in WHIP will have to qualify on his or her own.

If you are on Medicare disability and cannot obtain a Medigap policy, or if you obtain one but only at rates exceeding the WHIP rates, then you can purchase a plan through WHIP that provides coverage secondary to Medicare.

## WHAT ABOUT COVERAGE FOR MY PRE-EXISTING CONDITION?

- If you are federally eligible, you will not have a pre-existing condition exclusion when you enroll in WHIP.
- If you are not federally eligible, you may have a 12-month pre-existing condition exclusion period when you first enroll in WHIP. When you enroll, WHIP will look back 6 months to see if you had a condition for which you actually received a diagnosis, medical advice, or treatment- or for which most people would have sought a diagnosis, medical advice, or treatment. Pregnancy can be considered a pre-existing condition.
- WHIP will credit your prior creditable coverage against the pre-existing condition exclusion period, provided that there was not a break in coverage greater than 90 days in a row.

## Temporary Assistance for Needy Families (TANF)

A program that provides cash benefits to low income families with children. When you qualify for TANF, you generally also qualify for Medicaid. In addition, Medicaid coverage often continues for a limited time or longer if you no longer qualify for TANF.

## Title X Clinics

Title X of the Public Health Service Act is the only federal program devoted solely to the provision of family planning services on a nationwide basis. The program serves as the cornerstone of the nation's family planning effort, by providing a dedicated source of revenue that supports the operation of family planning clinics and the delivery of subsidized services to poor and low-income women, many of whom are uninsured, as well as teenagers.

Please see Health and Reproductive Care chapter for more information on Title X/Family Planning Clinics.

## Insurance Supplements

**Prescriptions:** Some companies market drug discount cards that might entitle you to small breaks on prescription prices, but if you're low income you might qualify for assistance programs run by the pharmaceutical companies. Two sites to check: Needy Meds <http://www.needy meds.com> and the Partnership for Prescription Assistance Program <https://www.pparx.org/Intro.php>.

Also, ask your doctor for free samples of any drugs prescribed. Most physicians have closets full of them.

**Vision:** Lions Club International is famous for its charity eye-care campaigns, which provide free screenings and recycled glasses. If you have a low-wage job but no vision coverage, the American Optometric Association may be able to hook you up with a volunteer doctor of optometry for a free exam. If you're 65 or over, the American Academy of Ophthalmology may be able to provide exams and treatment through its EyeCare America foundation at (800) 222-EYES.

**Dental:** But dental schools provide inexpensive and well-supervised treatment. To find the one nearest you, visit the National Institute of Dental and Craniofacial Research. Some of the free clinics provide dental services, and you can check out Toothwoman.net for more links to low-cost dental providers.

**Emergency care:** If you're facing a life-threatening situation, hospital emergency rooms are required to



evaluate and stabilize you before asking about your ability to pay (See “Hurt and broke? Your right to ER care”) <http://moneycentral.msn.com/content/insurance/insureyourhealth/p88660.asp>. A very limited number of hospitals are required to provide such care for free if you are poor, but the vast majority can bill you (and may aggressively try to collect).

If your situation is anything less than critical, you may want to explore alternatives other than emergency room treatment. Many uninsured Americans visit the ER with non-critical situations because they don’t know where else to go. Know what other options you have.

## Coverage of Children - Child Support Orders

Wyoming law provides protection for the health security of children in the event of a divorce or separation between parents. The court order will specify that either or both parents are responsible to provide medical health insurance if insurance can be obtained through an employer or other group carrier, or if it is otherwise reasonably available and the proportion for which each parent will be liable for any medical expenses, which may include dental, optical or other health care expenses incurred by any person or agency on behalf of a child if the expenses are not covered by insurance. See **W.S. Title 20, Chapter 6**.

## Life Insurance

Life insurance rates are not regulated in Wyoming. A wide variety of life insurance products are available to consumers today, many of which combine both insurance and investment features.

- No frills “term” insurance is inexpensive if a person is young and in good health, and provides the maximum death benefit for the least cost.
- Cash accumulation, dividend and loan features, in addition to death benefits are available in other types of policies for a higher premium.
- An “annuity” is a type of insurance policy that provides an annual or monthly income for as long as a

person lives, rather than a lump sum when a person dies.

Whenever a person buys a life insurance policy that provides more than simple term insurance, the insurance company is investing part of the premium for that person. Compare the projected return with similar investment opportunities before buying and take note of any surrender or cancellation charges.

## Disability Insurance

Disability insurance is designed to help replace lost income if a person is sick or injured. It is probably the most difficult type of insurance to obtain. Also, few companies sell disability insurance for homemakers.

- Disability insurance is sold according to a formula which allows for Social Security benefits. Depending on your salary, a disability insurance policy pays benefits equal to between 40% and 60% of your salary. You can buy a policy which pays at a higher rate, but it will be a “short term” disability policy; that is, it will pay benefits for no more than a year even if your disability lasts longer.
- Some companies will not sell to persons making less than \$12,000 to \$16,000 a year.
- Coverage and availability of disability insurance depends on the company, the salary level, and the length of the policy (for example, whether it is long-term or short-term). Coverage and availability can also depend on whether the rate is guaranteed to be renewed from year to year. If it is, the company’s selling guidelines are probably stricter.
- A disability insurance policy will only cover “complication of pregnancy” and is not required to provide regular pregnancy coverage.

Don’t buy life or disability insurance without first obtaining a “benefits estimate” from the Social Security Administration. Depending on the eligibility status, a spouse could be entitled to child-rearing and retirement benefits. If your Social Security benefits are high, you may not need as much life or disability insurance. You can get a “benefits estimate” from the Social Security Administration.



## Credit Insurance

A lender often offers credit insurance when a person borrows money for a major purchase, including a house or a car. Credit insurance will pay off the loan if you die (credit life insurance) or make monthly payments if you are disabled (credit disability insurance).

Wyoming law does not specifically prohibit a lender from requiring credit insurance in certain circumstances, which may include loans to individuals with poor or no credit histories. Credit insurance is generally more expensive than other types of life or disability insurance for younger borrowers. Existing life or disability policies can often cover new loan obligations.

If you are interested in obtaining credit insurance, it is wise to shop around for potential lenders before checking the “yes, I want credit insurance” box on your loan papers. Generally, insurers require three conditions to be met before extending credit insurance. These requirements include:

- good health;
- gainful employment; and
- appropriate age at the time of the loan (under 65 usually).

As with all insurance related documents, consumers must read all material carefully before signing. Insurance companies may deny coverage when a claim is made based upon false statements or incorrect factual conditions.

## Title & Mortgage Insurance

Owner's title insurance will cover you if a problem regarding legal ownership arises that was not discovered during the title search (for example, if an earlier deed was forged, or that side yard you thought you were buying belonged to someone else). The title insurance will pay attorney fees, as well as all other costs in defending the title. Although title problems are infrequent, they could result in the loss of the house. The bank, or lender, will likely also insist on title insurance to protect its investment - at your expense.

Mortgage insurance protects the lender (usually a bank) against the risk of nonpayment by the buyer. Lenders often require mortgage insurance for loans where the down payment is less than 20% of the sales price. The only reason to buy this insurance is if your lender insists upon it; there is no benefit to anyone except the lender.

## Automobile Insurance

Wyoming's mandatory auto liability insurance law requires that anyone driving a motor vehicle must satisfy the state's financial responsibility limits. **W.S. 31-4-103.**

Under the financial responsibility law, "liability policy" means an owner's or an operator's policy of liability insurance, certified as proof of financial responsibility, and issued by an insurance carrier authorized to transact business in this state, to or for the benefit of the person named as insured.

You must show proof of insurance to get your vehicle registered. You can also be cited for driving without proper insurance.

In addition, Uninsured Motorist/Underinsured Motorist Coverage is available on an automobile policy. This coverage will provide medical protection for occupants, including you, in the event you are injured from an uninsured motorist.

Comprehensive and Collision Coverage is also available to cover damage to your automobile. This coverage includes perils such as wind, hail, theft and flood.

## Renter's Insurance

Renters insurance covers damage or loss to the property of those who rent an apartment. Anyone who rents, whether from a house owner, a property manager, or a university (as a student living in a dorm), should consider purchasing renters insurance.

While landlords insure the apartment building against damage, their insurance policy does not cover your belongings. Purchasing renters insurance would protect



your possessions if they are stolen or destroyed in a fire. Remember when you live in an apartment complex with many other tenants, you share the risk of damage—for example, if one unit were to catch fire.

Renters insurance can also protect against liability lawsuits or medical bills of guests injured in your apartment. Some landlords require you to purchase renters insurance. If so, this would be stipulated in your lease or lease riders.

Each company covers different losses and what damage/losses are covered depends on the company from which you purchase your renters insurance. Yet, many companies cover:

- fire
- lightning
- theft
- smoke
- vandalism
- windstorm or hail

Other types of coverage, depending on the company, may include:

- floods
- damage from a burst water pipe
- riots or civil commotion
- aircrafts and vehicles
- freezing of plumbing system
- falling objects

Also, if you have a roommate, each company treats this differently and what you need to do depends on the policy. Some insurance companies offer one policy that covers multiple people. Others require each person to get a separate policy.

## For More Information

As a summary, this guide will not answer every question for every person in every circumstance. In addition, it is not a substitute for legal advice. If you have more questions, contact the agencies listed below or consult an attorney. For questions about:

### Individual Health Insurance Fully Insured Group Health Insurance:

Wyoming Department of Insurance  
(800) 438-5768  
<http://insurance.state.wy.us>

### Self-insured group health plans, COBRA continuation coverage, Family and Medical Leave Act:

U.S. Department of Labor, Kansa City Regional Office  
(866) 275-7922, or contact

U.S. Department of Labor, Division of Technical Assistance and Inquiries, Washington, D.C.  
(202) 219-8776

For Department of Labor publications:  
(866) 444-EBSA (3272)  
<http://www.dol.gov/ebsa/>

### Health Insurance High Risk Pool (WHIP):

Blue Cross and Blue Shield of Wyoming (WHIP administrator)  
(307) 634-1393  
(800) 442-2376  
<http://insurance.state.wy.us/consumer.html>

### Medicaid:

Wyoming Department of Family Services  
(800) 251-1269  
<http://dfsweb.state.wy.us>

### Wyoming Kid Care (CHIP) Program:

Wyoming Kid Care (CHIP) Program  
(877) 543-7669  
<http://kidcare.state.wy.us/>

### Caring Program for Children:

Blue Cross Blue Shield  
(888) 556-8074  
634-1393 (Cheyenne)  
[www.bcbswy.com/wyoming/caringProg.html](http://www.bcbswy.com/wyoming/caringProg.html)



**Federal Health Coverage Tax Credit (HCTC):**

Internal Revenue Service (IRS)

(866) 628-HCTC (4282)

[www.irs.gov/individuals/](http://www.irs.gov/individuals/) (Click on HCTC)

# Name Changes



## **In this chapter:**

**Marriage**

**Divorce**

**Petition District Court for Name Change**

**Name Change of Children**

**Adoption**

**Social Security Administration**



# **Name Changes**

## **Marriage**

Wyoming law does not require a woman to take her husband's surname when she gets married. When a woman marries, she can decide whether to keep her surname, change her surname to that of her husband's or hyphenate her and her husband's surname. Any of these are legal and have to be respected by any entity with which you and your husband do business (for example, credit card companies, car salespeople, governmental entities, etc.).

## **Divorce**

You can ask the court in a divorce petition to change your name as part of your final divorce order. At that time, you can resume your maiden/non-marital name or your previous last name (i.e. the name of a former husband).

## **Petition District Court for Name Change**

### **Residence requirement.**

A person petitioning for a change of name shall have been a bona fide resident of the county in which the petition is filed for at least two (2) years immediately preceding filing the petition. **W.S. 1-25-102.**

The petition shall be verified by affidavit setting forth their full name, the name desired, a concise statement of the reason for the desired change, the place of birth, place of residence and the length of time the person has been an actual resident of the county in which the petition is filed.

### **Publication in newspaper required.**

Public notice of the petition for a change of name must be published in the newspaper. The publication must be made by the Clerk of District Court for four consecutive weeks in a newspaper published in the county

where the petition is filed; or if there is no newspaper published in the county, then in a newspaper published in this state, and of general circulation in such county.

If the court is satisfied that the desired change is proper and not detrimental to the interests of any other person, the court shall order the change to be made, and record the proceedings in the records of the court. **W.S. 1-25-101 through 1-25-104.**

## **Name Change of Children**

Other than by adoption or in a termination of parental rights action, changing the surname of a minor child generally requires the permission and consent of both parents. There are several factors a judge may consider, including the child's age, relationship to parent with shared, desired, or unwanted surname, child's wishes and, of course, the best interests of the child.

## **Adoption**

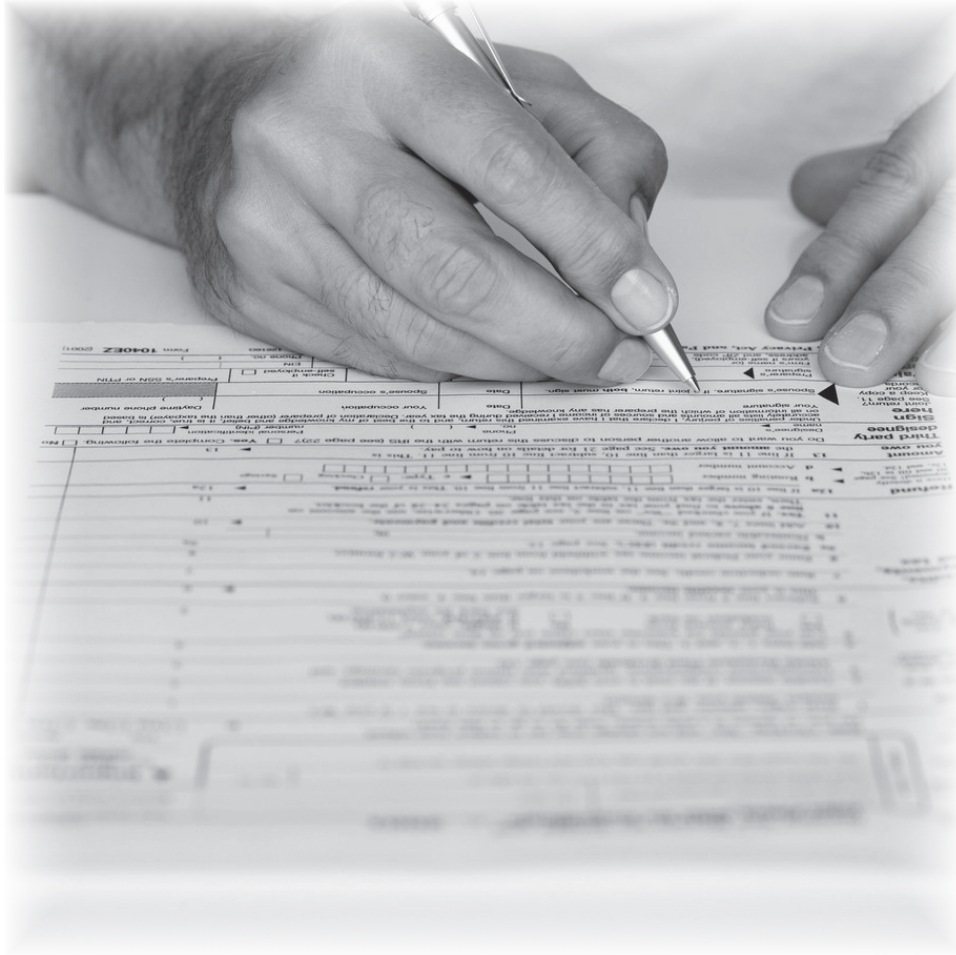
An adopted child may have his or her name changed to that of the parents who have adopted him or her. **W.S. 1-25-104.**

## **Social Security Administration**

To report a name change you must fill out an Application for a Social Security Number Card (Form SS-5). You will have to show proof of identity under both your old name and your new name. If you were born outside the United States, you also may need to show evidence of U.S. citizenship or lawful alien status. You can get the form from any Social Security office or by calling Social Security's toll-free number, 1-800-772-1213, anytime. If you are working, also tell your employer. If you do not tell the Social Security Administration when your name changes, it may:

- Delay your tax refund; and
- Prevent your wages from being posted correctly to your Social Security record, which may lower the amount of your future Social Security benefits.

# Taxes



## **In this chapter:**

**Federal Income Tax**

**Tax Consequences and Divorce**

**Other Tax Issues**

**Social Security and Medicare Taxes**

**Taxes on Residential Property**

**Getting Help With Your Taxes**



# **Taxes**

There are many different types of taxes which you may be required to pay. This section will discuss income tax, Social Security and Medicare tax, tax consequences of divorce and property tax.

## **Federal Income Tax**

Every citizen and resident alien who has a gross income above a certain level must pay a portion of that income in federal taxes. If a citizen or resident alien's income is below this level, he or she does not have to pay income tax and is not required to file a tax return.

Even if you do not have to file, you should file a federal income tax return to get money back if any of the following apply:

1. You had income tax withheld from your pay.
2. You qualify for the earned income credit.
3. You qualify for the additional child tax credit.

To determine whether or not you must pay income tax, you should read the instructions provided by the Internal Revenue Service (IRS).<sup>1</sup> You can obtain tax return forms and instructions at your local library, post office, or online at [www.irs.gov/formspubs/index.html](http://www.irs.gov/formspubs/index.html). There are three different tax return forms: Form 1040EZ, Form 1040A, and Form 1040. Read the instructions to determine which form you should use. If the instructions do not answer your questions, there are toll-free tax help telephone numbers in the instruction booklet.

### **What is a “filing status”?**

For federal income tax, there are five possible filing statuses: Single, Married Filing Joint, Married Filing Single, Head of Household, and Qualifying Widow or Widower with Dependent Child.

Your filing status is determined by a number of factors, and you should read the tax instructions carefully to determine your status. Your filing status is important because it may change the amount of tax that you owe

based on your taxable income and may affect which taxable credits you may claim.

### **What income is taxable?**

Not all income is taxable because you are allowed to deduct and exclude certain amounts. Your “gross income” is the total amount of all income that you received (in the form of money, goods, property, and services) that is not exempt from tax and must be reported. The tax instruction book gives examples of income that you must report and of income that you do not report.

Most income is reportable. Income that is reported to the IRS is called gross income. Gross income includes wages, tips, interest, dividends, pensions, self employment income, unemployment compensation, and other income listed in the instruction book. Welfare benefits and nontaxable

Social Security benefits are not included in gross income. After you calculate your gross income by adding all reportable income, you subtract any deductions (see below) that you are allowed in order to determine your taxable income.

### **What does “deduct” or “deductible” mean?**

If an amount is deductible, this means that the amount is subtracted from your gross income to determine your *taxable* income.

### **What is a “dependent”?**

A dependent is a person, other than the taxpayer or her spouse, who entitles the taxpayer to claim a dependency exemption. A dependency exemption is an amount that the taxpayer is allowed to deduct for each dependent that the taxpayer can “claim.”

Whether or not a person qualifies to be “claimed” as a taxpayer’s dependent is determined by a five-factor test found in the tax instructions. When determining who your dependents may be, consider those people who live with you and whom you support financially (such as your children, grandchildren, nieces, or nephews)

<sup>1</sup><http://www.irs.gov/individuals/article/0,,id=96623,00.html>



and those people who do not live with you but whom you support financially elderly parents, children away at school).

Consult the tax instructions carefully, since some of these people may qualify as your dependents and lower your taxes.

### **What is “itemizing”?**

When you calculate the amount of tax you owe, you can subtract from gross income either the “standard deduction” or “itemized deductions.” When you itemize, you list separately the non-business expenses that the IRS allows you to deduct from your income. The amount of tax you owe will be less if you choose to take the larger of your itemized deductions or the standard deduction.

To figure your itemized deductions, you should fill in Schedule A of Form 1040. The instructions for the Schedule A list the expenses that are deductible. Among other things, Schedule A permits you to deduct certain medical and dental expenses if you were not reimbursed, certain taxes, home mortgage interest, and gifts to charity.

### **What is a “tax credit”?**

A tax credit is an amount that you are entitled to subtract from the tax you owe. In other words, a tax credit is a dollar-for-dollar reduction in the amount of tax that you owe. If you paid someone to care for a child or a dependent so you could work, you may be able to reduce your tax by claiming the credit for child and dependent care expenses on your federal income tax return, according to the IRS. This credit is available to people who, in order to work or to look for work, have to pay for child care services for dependents under age 13. The credit is also available if you paid for care of a spouse or a dependent of any age who is physically or mentally incapable of self-care.

The credit is a percentage, based on your adjusted gross income, of the amount of work-related child and dependent care expenses you paid to a care provider. The credit can range from 20 to 35 percent of your qualifying expenses, depending upon your income.

### **Withholding**

Employers “withhold” money from each employee’s paycheck. Normally, employers withhold money for federal income taxes, Social Security taxes, and state and local income taxes (in locations with such taxes). This money is sent to the appropriate government. The amount withheld for income taxes is credited against the amount of tax the employees owe when they file their returns.

If you worked for an employer, you should have filled out a W-4 form when you were hired. This form tells your employer how much money to withhold from your paycheck. To assist you in determining how many allowances to claim on your W-4, the IRS has an online withholding calculator available at its website. (Visit [www.irs.gov](http://www.irs.gov), click on “Individuals,” and look for the “IRS Withholding Calculator.”)

Sometime in January, you should receive a W-2 form from your employer telling you how much money you earned and how much tax was withheld. If the amount withheld from your paycheck was more than what you owe, you can get a refund. If the amount withheld was not as much as the amount you owe, you must pay the difference to the government.

Your employer is required to send you a W-2 form by January 31 for work performed anytime in the previous calendar year, even if you are no longer employed by that employer. If you do not receive a W-2 form by that date, you can contact the IRS which can request a W-2 form on your behalf. If you cannot get a W-2 form from your employer, you can use a pay stub as long as the pay stub indicates how much money was withheld from your paycheck.

### **What if I receive a 1099-MISC instead of a W-2?**

If you received a 1099-MISC from your employer instead of a W-2, then your employer technically considers you “an independent contractor” rather than an “employee.” As a result, your employer has not withheld any money from your paycheck. In addition, your employer has not withheld money towards Social Security or Medicare. To maintain eligibility for Social



Security benefits, you will need to make a payment for Social Security in addition to your income tax. See the tax instructions for further information on how to calculate and pay this amount.

## Tax Consequences and Divorce

### Should my spouse and I file a joint return?

If you are married, you may choose to file jointly with your spouse or separately. Normally, a married couple will pay lower taxes by filing Married Filing Joint.

A Married Filing Joint return requires the signature of **both** spouses (or requires a power of attorney for one spouse to sign for the other). If you do not have such a power of attorney and your spouse is not available (for whatever reason) to sign the tax return, you cannot file Married Filing Joint. It is also important to note that if you and your spouse have been separated since June 31 of the tax year, then you may be able to file as Head of Household and only you would need to sign the return. Consult the tax instruction booklet under “Filing Status” for more information on this topic.

Various credits and deductions will change depending on which way you file. You should fill out the tax forms both as Married Filing Joint and Married Filing Separately to determine which method results in lower taxes.

### Are alimony payments, child support, and property settlements taxable income?

The general rule is that alimony is counted as part of the income of the spouse who receives it, and it is deductible from the income of the paying spouse. (The paying spouse will need the receiving spouse’s Social Security number for the tax form.) However, child support payments and property settlements are not included in the receiving spouse’s taxable income and cannot be deducted by the paying spouse.

The IRS has specific rules which define alimony, and you should read the instructions to determine if your payments qualify as alimony under these rules. The terms of the separation agreement or the divorce may

prevent part of a payment from qualifying as alimony. For example, if the agreement includes a reduction in alimony which takes effect when a particular event in the life of a child occurs (when the child turns 18, graduates from high school, etc.), then the amount of the reduction may be considered child support for tax purposes.

The ability to deduct alimony from income and thereby reduce the amount of federal income tax owed often helps keep alimony payments coming to the receiving spouse; therefore, it is very important that the arrangements for alimony be in writing and that the tax consequences be discussed ahead of time with an attorney or accountant to avoid problems later. The IRS may compare the receiving spouse’s tax return to the return filed by the paying spouse to ensure the payments match.

Occasionally a dispute will arise as to how much alimony was paid/received. Sometime the IRS will question the alimony amounts. For that reason it is very important to keep good records. If you fail to keep adequate records you may lose the alimony tax deduction.

If you pay alimony you should keep the following records for at least three years:

1. Original checks. Be sure to show on each check the month the payment represents.
2. A list that shows the date, check number, amount and address where payment was sent.
3. If you give cash obtain and retain a receipt signed by both the payer and the recipient.

If you receive alimony you should keep the following for at least three years:

1. A photocopy of the check or money order received.
2. A list that shows the date, check number, amount of payment, bank account the funds are drawn on, account number against which the check is drawn on.
3. A copy signed receipt with signatures of both payer and recipient for any cash payment received.



## Exemptions

You may claim a child that does not live with you only if it is stated in your divorce or separation agreement or if mutually agreed upon. This would not apply if you and your spouse are filing a Married Joint Return (see above).

## Deductions

Under certain circumstances, the amount of your legal and accounting fees paid which can be attributed to maintaining or preserving income (not child support) may be tax deductible.

## Child Support

Is not taxable nor is it deductible.

## Child Care Credit

You may be able to take this credit if you paid someone to care for your child who is under age 13.

## Child Tax Credit

This credit is in addition to the child care credit and the earned income credit. With this credit you can get a refund even if you do not owe any tax. The credit can be up to \$600 per child (check IRS publications for accurate figure to date). To qualify for the credit you must have at least one qualifying child. According to the IRS a qualifying child for the purposes of the child tax credit is a child who:

1. is claimed as your dependent *and*
2. was under age 17 at the end of the tax year *and*
3. is your son, daughter, adopted child, stepchild, grandchild or foster child *and*
4. is a US citizen or resident alien.

## Income Tax Evasion by Spouse

If your spouse knowingly cheated on your joint return to evade taxes, you might not be held responsible. Effective July 22, 1998 a new tax rule went into effect whereby if you are divorced, legally separated or have been living apart from your spouse for at least 12

months, and you were unaware that your spouse lied on your joint tax return, you can file papers that would compute your tax liability separately. If you have been audited and you believe this rule applies to you contact a tax specialist who has experience with this type of matter.

## Other Tax Issues

### Earned Income Tax Credit (EITC)<sup>2</sup>

To qualify, you must meet certain requirements and file a U.S. Individual Income Tax Return. Some EITC rules apply to everyone. There are also special rules for people who have children and for those who do not.

Individuals and families must meet certain general requirements:

- You must have earned income.
- You must have a valid Social Security Number for yourself, your spouse (if filing jointly) and your qualifying child.
- Investment income is limited to a certain amount (for example, \$2,700 but you should seek confirmation from a tax specialist or instructions).
- Your filing status cannot be “married filing separately.”
- Generally, you must be a U.S. citizen or resident alien all year.
- You cannot be a qualifying child of another person.
- You cannot file Form 2555 or Form 2555-EZ (related to foreign earned income.)

If you claim a child, he or she must meet three eligibility tests:

- Residency Test – The child must have lived with you in the United States for more than half of the tax year.
- Relationship Test – The child must be your son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them. Your child includes:

<sup>2</sup><http://www.irs.gov/newsroom/article/0,,id=153996,00.html>



- o A foster child who was placed with you by an authorized placement agency, or by judgment, decree, or other order of any court of competent jurisdiction.
- o A legally adopted child or a child lawfully placed with you for legal adoption
- Age test – At the end of the year, the child must have been under age 19, a full-time student under age 24 or any age if permanently and totally disabled at anytime during the tax year.

Your qualifying child cannot be used by more than one person to claim EITC. If a child meets the rules to be a qualifying child of more than one person, only one person can treat that child as a qualifying child and claim EITC.

If you don't have a child, you must meet three additional tests:

- At the end of the year, you must have been at least age 25, but under age 65.
- You cannot qualify as the dependent of another person.
- You must have lived in the United States for more than half of the tax year.

### **Credit Limits**

Income and family size determine the amount of the EITC. The Earned Income Credit Table, which shows the credit amounts, is included in the Instruction booklet for Form 1040 and in Publication 596, Earned Income Credit.

### **Avoid Common Errors**

You are responsible for the accuracy of your tax return. The rules for EITC can be complicated, so you should seek assistance if you are unsure of your eligibility.

#### **Some common EITC errors are:**

- Claiming a child who is not a qualifying child.
- Filing as “single” or “head of household” when the taxpayer actually is married.
- Reporting incorrect income amounts.

- Missing or Incorrect Social Security numbers – for both taxpayers and qualifying children.

The IRS continues to work on ways to reduce this error rate. If you receive a letter from the IRS requesting additional information about your EITC, please reply immediately to avoid delaying your EITC refund. If you need assistance or who have questions, you should call the number included in the IRS letter.

## **Social Security and Medicare Taxes**

Social Security and Medicare taxes, also known as FICA taxes, must be withheld from employees' wages. Employers must also pay a matching amount of FICA taxes for their employees.

As of March 2005, the Social Security tax rate is 6.2%. Employers withhold 6.2% of an employee's wages for Social Security taxes and pay a matching amount in Social Security taxes until the employee reaches the maximum limit for the year.

The Medicare tax rate is 2.9% for both the employee and the employer together. Employers withhold 1.45% of an employee's wages and pay a matching amount for Medicare tax. There is no limit on Medicare tax as there is with Social Security tax.

## **Taxes on Residential Property**

Property taxes are one of the primary sources of funds for local governments, counties, school districts, cities, towns and special agencies such as water and sewer districts. The state has not levied a property tax for a long time. The federal government does not receive any revenue from your property tax. Property taxes are based upon the market value of your property. Market value reflects the worth of your property as of January 1 of each tax year.

### **Annual Reappraisal**

The legislature requires that County Assessors annually update property values. Assessors are also required to



complete a detailed review of property characteristics for each property at least once every four years.

### **What is Taxed?**

The residence and any additional structures and land are valued. Property taxes are not charged on home furnishings or furniture except where they are part of a furnished rental property.

### **Market vs. Taxable Value**

Market value is the price your property would sell for if it were offered for a reasonable amount of time. This assumes that both the buyer and seller are unrelated, well-informed and under no pressure to buy or sell the property. Taxable value is the value used to calculate taxes due on your property. A residence (both land and buildings) receives a certain percentage (i.e. 90 ½ percent) reduction from market value.

### **Veteran's Exemption**

Disabled veterans and their surviving spouses are eligible for this exemption. Filing date is on or before the fourth Monday in May with the County Assessor.

### **Property "Tax Relief" Program**

The program is available to elderly, disabled, and low income home owners or if the home was purchased prior to December 31, 1987. This program may allow up to one half of the annual property taxes to remain unpaid. All unpaid taxes become a lien against the property. Filing date is on or before the second Monday in May with the County Treasurer.

### **Appeals**

The person assessed may object to the assessment and valuation within thirty (30) days of the date of post-mark on the schedule, at the County Assessor's Office. Your appeal must address the issue of market value, not the rate of tax. Evidence supporting your estimation of the market value must be included in the appeal. If you do not agree with the County Board of Equalization's decision, you may appeal to the State Board of Equalization. Appeals to the State Board of Equaliza-

tion must be filed within 30 days after the final action of the County Board of Equalization.

### **For More Information**

Contact your County Assessor if you have questions regarding:

- property value
- ownership
- mailing address
- legal descriptions
- residential exemptions
- tax relief programs
- tax rates
- valuation appeals

Contact your County Clerk if you have questions regarding:

- ownership
- legal descriptions

Contact your County Treasurer if you have questions regarding:

- delinquent taxes
- tax payments

## **Getting Help With Your Taxes**

If you need help filing your income taxes or have other questions, there are a number of resources available.

**Income Tax Assistance Centers** – These centers are run by the IRS. They are open every business day, and no appointment is necessary. The centers specialize in helping spouses who believe they are not responsible for their spouse's share of a joint tax liability, making installment agreements to pay taxes, preparing an offer to the IRS to compromise to settle an unpaid tax debt, and resolving IRS issues. The center will also assist you in preparing your federal return if your annual income is less than \$35,000. Multilingual assistance is available in every office. For more information, go to the IRS website at [www.irs.gov/contact](http://www.irs.gov/contact) and click on "Contact My Local Office." In Wyoming, there is an



income tax assistance center in Cheyenne, Casper and Sheridan.

### **ADDITIONAL RESOURCES**

IRS toll-free number 1-800-829-1040

IRS website [www.irs.gov/individuals](http://www.irs.gov/individuals)

IRS website (en Español) [www.irs.gov/espagnol/index.html](http://www.irs.gov/espagnol/index.html)

# Violence Against Women



## **In this chapter:**

**Domestic Violence Protection Orders (DVPOs)**

**Stalking Laws in Wyoming**

**Stalking Protection Orders**

**Elder Abuse**

**Wyoming's Criminal Sexual Assault Statutes**

**Resources**



# **Violence Against Women**

## **Domestic Violence Protection Orders (DVPOs)**

**Civil domestic violence protection orders.** When properly used and enforced, protection orders can help prevent specific behaviors such as harassment or threats which could lead to future violence. They also can help provide a safe location for the victim, if necessary, by barring or evicting an offender from the household, and by establishing safe conditions for any future interactions, for example, supervised child visitation, exchanges or other court proceedings.

**Definition of "domestic abuse" for a Domestic Violence Protection Order (DVPO).** Though the patterns of behavior and dynamics of domestic abuse are broad, for purposes of obtaining a civil domestic violence protection order in Wyoming, domestic abuse means the occurrence of one (1) or more of the following acts by a household member but *does not include acts of self defense*:

- Physically abusing, threatening to physically abuse, attempting to cause or causing physical harm or acts which unreasonably restrain the personal liberty of any household member
- Placing a household member in reasonable fear of imminent physical harm
- Causing a household member to engage involuntarily in sexual activity by force, threat of force or duress

**W.S. 5-21-102(a)(iii).**

**Eligible petitioners.** A victim of domestic abuse may petition the court under Wyoming's Domestic Violence Protection Act by filing a petition with the circuit court for an order of protection. The victim is then known as the "Petitioner." **W.S. 35-21-103(a).**

**Potential respondents (person against whom a protection order is sought).** A petition may be filed against

any of the following categories of persons, defined as "**household members**": persons married to each other; persons living with each other as if married; persons formerly married to each other; persons formerly living with each other as if married; parents and their adult children; other adults sharing common living quarters; persons who are the parents of a child but who are not living with each other; and persons who are in, or have been in, a dating relationship. **W.S. 35-21-102(a)(iv).**

**Definition of Adult.** Under Wyoming's Domestic Violence Protection Act an "adult" means a person who is sixteen (16) years of age or older, or legally married. This definition of adult applies where adult is referred to in the "household member" definition above. **W.S. 35-21-102(a)(i).**

### **• Initial Procedures**

**Jurisdiction and venue.** There is no residency requirement for a petitioner to be eligible for a DVPO and no requirement the activities which put the victim in fear occur in the State of Wyoming. ***Venue is proper in any circuit court where an alleged victim of domestic abuse resides or is found.*** **W.S. 35-21-105(a)(ii).**

**Standard Wyoming forms.** The Wyoming Supreme Court formally adopted certain forms and instructions for statewide use in all DVPO cases. **W.S. 35-21-103(e).** The forms are available at no charge from the circuit court clerk's office in each county.

**Petition.** The petition shall set forth an allegation that the respondent engaged in an act of domestic abuse against a household member. The petitioner must swear that the allegations are true and sign the form in front of a notary or a clerk of circuit court. A person must include specific facts showing the alleged domestic abuse. **W.S. 35-21-103(b).** Under the Wyoming Domestic Violence Protection Act, the petitioner and the respondent must be "household members." (See definition above)

**Petitioner's address to be kept confidential.** If the petitioner requests, the court shall order the ad-



dress of the petitioner and any children of the petitioner and respondent be kept confidential. **W.S. 35-21-105(e).**

**No filing or service fees.** Wyoming law prohibits charging a petitioner a fee for filing a petition for a protection order. **W.S. 35-21-103(d).**

**Victim advocates.** In Wyoming, there is a domestic violence and sexual assault advocacy agency in every county and on the Wind River Indian Reservation. The role of the victim advocate is not to give legal advice or representation, but to provide support and assistance to victims, including alternatives to seeking protection orders when appropriate. It is common for trained victim advocates to accompany victims to court in order to provide support, though it is not a requirement.

**Unrepresented parties.** Even with a simplified petitioning procedure and energetic assistance from advocates to victims, those victims who are not represented by an attorney are less likely to get orders that contain all appropriate provisions regarding exclusion from the residence, temporary custody of children, child support, and protective limitations on visitation rights. An attorney for the petitioner is especially important if the respondent appears with an attorney. There is no right to a court-appointed attorney for respondents, as domestic violence orders of protection are civil in nature, not criminal. There are legal services that provide assistance to qualifying petitioners (persons seeking the protection) in protection order hearings. *While Wyoming law allows the court to appoint an attorney to assist and advise the petitioner, most courts do not have procedures or resources in place to do so.* **W.S. 35-21-103(e).**

- **Ex Parte Temporary Restraining Orders**

**No hearing is required for an *ex parte* order.** An *ex parte* order is one that is issued before the respondent has an opportunity to tell the judge his or her version of the facts. If it appears from the specific facts shown by the affidavit or by the peti-

tion that there exists a danger of further domestic abuse, the court shall immediately grant an *ex parte* temporary order of protection to the petitioner. **W.S. 35-21-104(a)(i).**

**When temporary order not issued.** When the judge determines after reviewing the petition that there is not sufficient evidence to grant an *ex parte* temporary order of protection, the court shall give notice to the parties that a hearing will be held on the petition for order of protection within seventy-two (72) hours after the filing of the petition or as soon thereafter as the petition may be heard by the court. **W.S. 35-21-104(a)(iv).**

**Custody in *ex parte* orders.** It is important to ask the court to consider custody of children in *ex parte* orders since the time of separation is often critical for victims.

- **Full Hearing on Domestic Violence Protection Order**

**Scheduling a protection order hearing.** A hearing to decide whether to grant an order of protection is scheduled to take place within seventy-two (72) hours after the granting of the temporary order of protection or as soon thereafter as the petition may be heard by the court. **W.S. 35-21-104(a)(iii).**

**Continuance of full hearing.** The court may continue the full hearing if the respondent has not yet been served, or in order for either party to obtain counsel or for other good cause.

**Request for counsel.** To promote fairness between the parties and give both the opportunity to have their legal interests represented, most courts will approve a continuance request by an un-represented party when the other party appears at a hearing with a lawyer.

**Default for respondent failing to appear.** If the respondent fails to appear at the full hearing after proper service, the judge will likely issue the order as requested by the petitioner so long as the petitioner appears at the hearing. If the petitioner does



not appear at the hearing, the court will most likely dismiss the case.

**Service of DVPO.** An order of protection must be filed with the clerk of circuit court who will then forward a copy to the sheriff for service and entry in a statewide registry. **W.S. 35-21-106(a).**

- **Authority for grounds for civil domestic violence protection orders**

**Criminal acts.** Evidence of domestic abuse can include any action against a household member which would be a crime if committed against a stranger. Such evidence may be grounds for issuance of a civil protective order whether or not an arrest is made or the case is prosecuted.

**Commonly observed criminal acts.** Commonly observed criminal acts in domestic violence cases include: assault, battery, homicide, rape, kidnapping, or restriction of the victim's movement, child abuse, destruction of property, threats, stalking, reckless endangerment, and disorderly conduct. Also, sexual assaults and marital rape are explicitly included in the protective order statute. **W.S. 35-21-102(a)(iii).**

**Interference/unreasonable restraint of personal liberty.** Domestic violence includes kidnapping, forceful detention, moving a person a substantial distance from the vicinity where that person was found, compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage. **W.S. 35-21-102(a)(iii)(A).**

**Threats.** Threats to cause physical abuse or placing a household member in reasonable fear of imminent physical harm are sufficient to support the issuance of a protective order. **W.S. 35-21-102(a)(iii)(A), (B) and (C).**

**Damage to property.** Damage to property is not specifically provided for in Wyoming's Domestic Violence Protection Act.

- **Insufficient reasons to deny issuance of protection order.** A judge should not deny a petitioner relief because a separate criminal or civil order has been entered against the respondent. **W.S. 35-21-103(g)(i).** In the criminal case, deals can be made or charges dropped even though the petitioner still requires protection from the respondent. The fact that the same petitioner has received DVPOs in the past or has asked that one be dismissed is also not sufficient reason for denial of an order of protection. **W.S. 35-21-103(g)(ii).** A DVPO should not be denied based on an allegation that the petitioner has committed acts of domestic abuse. ***The Domestic Violence Protection Acts allows for separate DVPOs when there is evidence that both parties have committed acts of domestic abuse and when both follow the proper procedures.*** **W.S. 35-21-105(h) et seq.**

- **Order of Protection.** Upon finding that an act of domestic abuse has occurred, the court shall enter an order of protection ordering the respondent household member to refrain from abusing the petitioner or any other household member. **W.S. 35-21-105(a).**

**No specific statute of limitations.** The court shall not deny a petitioner relief requested solely because of a lapse of time between an act of domestic abuse and the filing of the petition for an order of protection. **W.S. 35-21-103 (f).**

**Reasons for lapse in time.** There are many reasons petitioners may delay filing, including not being aware of the availability of protection orders, needing additional safety planning time or if they are too frightened to file closer in proximity to the abuse. A perpetrator of domestic violence may pose a risk of violence long after the last act or episode of violence.

**Purpose of order is to protect victims of domestic abuse.** An "Order of Protection" under Wyoming's Domestic Violence Protection Act means a court order granted for the protection of victims of domestic abuse. **W.S. 35-21-102(a)(v).**



- **Relief available through a Protective Order**

**Extensive court power.** As part of a valid protection order, the court may order other injunctive relief as the court deems necessary for the protection of the petitioner. **W.S. 35-21-105(a)(vi).**

**Available relief.** A DVPO, including *ex parte* orders, should address the following relief as appropriate. Each of these options is itemized in the standard forms.

- **No Abuse Clause.** Direct the respondent to refrain from abusing the petitioner or any other household member. **W.S. 35-21-105(a).**
- **No Contact Clause.** Orders the respondent not to initiate contact with petitioner anywhere either directly or indirectly, including, but not limited to, communication verbally in person, communication by telephone or other electronic means, written communication in any form, communication through third persons, and non-verbal communication and gestures. A petitioner may want to consider asking the court to include that there be no telephone calls to the petitioner's home, work or other location.
- **Invitation by petitioner does not void order.** The order controls/proscribes the respondent's behavior, not the petitioner's. **W.S. 35-21-105(g).**
- **Order to vacate.** Order the respondent to vacate or remain away from the residence. Additional relief a petitioner may want to consider asking for includes ordering respondent to: (1) continue to pay rent or mortgage payments; (2) surrender keys; (3) not damage petitioner's belongings; and (4) not shut off utilities or mail delivery to the petitioner.
- **Grant exclusive possession of the residence to the petitioner** or order the respondent to provide temporary suitable alternative housing for petitioner and any children to whom the respondent owes a legal obligation of support. **W.S.**

**35-21-105(a)(i).**

- **Temporary possession of property.** A protection order may not in any manner affect title to any real property but the court can determine parties' rights to temporary possession of property. **W.S. 35-21-105(d).**
- **Personal property.** Restrain the respondent from transferring, concealing, encumbering or otherwise disposing of petitioner's property or the joint property of the parties. **W.S. 35-21-105(a)(v).**
- **Attorney's fees.** The court may order the respondent to pay petitioner's reasonable attorneys fees in bringing an action for a DVPO. **W.S. 35-21-103(h).**
- **Child custody in protection orders.** Temporary custodial rights and responsibilities may be allocated in a protection order. When the court finds it to be in the best interests of the children, the court shall award temporary custody of any children involved to the petitioner. **W.S. 35-21-105(b)(i).**

**Visitation in protection orders.** Nowhere is the potential for renewed violence greater than during visitation. To reduce the potential for renewed violence, a victim should consider asking for the following:

- An order that eliminate the need for any contact between the parties
- Specific and detailed orders regarding visitation. Ordering "reasonable rights of visitation" or an order that visitation "will be arranged later" may place the petitioner in constant contact with the respondent and subject the petitioner to the respondent's control and harassment
- Order that visitation be supervised
- Order that communication regarding the children and/or exchanges for visitation are conducted through a third party

<sup>1</sup>For further information about firearms prohibitions or section 922(g)(8), contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855.

<sup>2</sup>Wyoming Domestic Violence Order of Protection forms updated in 2006.



- Order the respondent to attend and complete to the court's satisfaction a program of intervention or other designated counseling as a condition of visitation
- Where the respondent has a history of alcohol or other drug abuse, order that a treatment program for both alcohol and/or drugs and violence be completed prior to any visitation
- Whether treatment is ordered and completed, order that the respondent not consume alcohol or other drugs before or during the visit **W.S. 35-21-0105(b)(i)(D).**
- Require the respondent to post a bond to secure the return and safety of any children **W.S. 35-21-0105(b)(i)(G).**
- **Support for child and petitioner.** The court may order the respondent to provide child support and spousal support. **W.S. 35-21-105(b)(ii).**
- **Counseling.** Order respondent to attend and complete to the court's satisfaction a program of intervention or other designated counseling as a condition of visitation. **W.S. 35-21-105(b)(i)(C).** The court may *refer* an adult petitioner to attend counseling relating to the petitioner's status or behavior as a victim but shall not order or make as a condition of receiving protection that an adult petitioner attend such counseling. **W.S. 35-21-105(f).**
- **Abstention of alcohol and drugs.** Perpetrators with substance abuse problems should be ordered to attend separate alcohol and/or other drug treatment and testing prior to batterer's treatment.
- **Firearms and other weapons. Protection Orders and Federal Firearm Regulations:**<sup>1</sup> Under 18 USC §922(g)(8), persons who are subject to orders restraining them from abusing an "intimate partner" may not purchase or possess firearms or ammunition. The court may order the surrender of the perpetrator's firearms and other weapons, order weapons removed and prohibit weapons possession by the respondent.<sup>2</sup>
- **Official use exemption for protection orders:** A limited exception to sections 922(g)(8) and 922(d)(8) exists for law enforcement officers, armed forces personnel, and other local, state, and federal employees who are required to use weapons as part of their official duties. Under 18 U.S.C. section 925(a)(1), sometimes referred to as the "official-use exemption," the prohibitions in sections 922(g)(8) and 922(d)(8) do not apply to firearms that are received or possessed by such individuals for use in performing official duties on behalf of a federal, state, or local agency. Personal weapons, however, are not covered by the exemption.
- **Other relief.** The court may grant other relief as equitable and fair. For example, it may award the temporary use of a motor vehicle by the petitioner and the apportionment of personal property. **W.S. 35-21-105(f).**
- **Notices to Respondent**

**Federal firearm regulations.** The firearm prohibition does not require a specific finding of domestic violence only that the:

  - Order includes a finding that respondent represents a credible threat to the physical safety of petitioner or child; *or*
  - Order explicitly prohibits the use or threatened use of physical force that would reasonably be expected to cause bodily injury. **18 U.S.C. 922(g)(8) (1994).**

**Firearm provisions are non-discretionary.** It is not an option that the victim may request. The federal prohibitions are absolute.

**Firearms used for hunting are included within the federal prohibitions.** A defendant may not seek temporary access of hunting rifles, for example, during hunting season, whether it is for food or sport.

<sup>3</sup>W.S. §35-21-109.

<sup>4</sup>W.S. §35-21-106(b) (LexisNexis 2003).



**Misdemeanor domestic violence.** Furthermore, respondents should be informed that if they are convicted of a qualifying domestic violence misdemeanor, they are prevented from owning, possessing, or using a firearm (except in very limited circumstances where that right may be restored). **18 U.S.C. 922(g)(9) (1996).**

**There is no official use exemption** for persons convicted of qualifying domestic violence misdemeanors.

**Restoration of firearm rights.** Wyoming has a law allowing persons pleading guilty or nolo contendere or who have been convicted of a misdemeanor to petition a court for an expungement of the records of conviction for the purposes of restoring any firearm rights lost, subject to certain limitations, including (1) At least one (1) year has passed since the expiration of the terms of sentence imposed by the court, including any periods of probation or the completion of any program ordered by the court; (2) Other than convictions arising out of the same occurrence or related course of events, the petitioner has not previously pleaded guilty or nolo contendere to or been convicted of a misdemeanor for which firearm rights have been lost; (3) The misdemeanor or misdemeanors for which the person is seeking expungement shall not have involved the use or attempted use of a firearm. **W.S. 7-13-1501.**

**Certified copies of order.** Victims should always obtain a certified copy of the protection order and to keep a copy in her possession at all times. Identifying information, including the court's name, address and phone should be on the order in case someone has questions and needs to contact the court. This information is very useful for law enforcement when attempting to enforce the order.<sup>3</sup>

<sup>3</sup>W.S. §35-21-106(b) (LexisNexis 2003).

<sup>6</sup>SEAN THUESON, CIVIL DOMESTIC VIOLENCE PROTECTION ORDERS IN WYOMING: DO THEY PROTECT VICTIMS OF DOMESTIC VIOLENCE?, 4 Wyo. L. Rev. 1, p. 287 (2004).

**Duration of Order of Protection.** The duration of any order of protection should be based solely on consideration of petitioner's safety. Effective July 1, 2006, Wyoming's statute allows for the initial order to be "effective for a fixed period of time not to exceed one (1) year."<sup>4</sup> Either party may move to modify, terminate or extend the order.

**Extension authority.** Any protection order issued may be renewed in the same manner as the original order or agreement was issued or approved. A DVPO may be renewed for up to one (1) year.<sup>5</sup> The court only requires "good cause" which is not defined in the statute or case law.<sup>6</sup>

**No Modification by Conduct.** Reconciliation is common after the legal system intervention has abated the violence. However, only the court issuing the DVPO may modify or dismiss it. Parties cannot do so by their out-of-court agreement or conduct. **W.S. 35-21-105(g).**

Police are entitled to enforce violations of DVPOs by arrest of the respondent, even if the parties have apparently reconciled by mutual agreement. All mandatory protection order forms in Wyoming provide a notice required by statute that a DVPO cannot be waived or nullified by consent or invitation.

**District court orders have priority.** "Any order entered in a district court in this state in a proceeding where the petitioner and respondent are parties shall supersede any inconsistent language in any other order entered under this act or in any other court proceeding in this state." **W.S. 35-21-108(a).** The Wyoming domestic relations statutes require parties to inform the court whether either party has participated in any capacity in any other litigation concerning the custody of the same child in this or any other state; whether either party has information of any custody proceeding concerning the child pending in a court of this or any other state; and



whether either of them knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child. **W.S. 20-5-110.** This duty continues as the information becomes available. It is important that the parties notify the district court if an order of protection or other court order regarding the parties has been issued or is pending.

**Criminal or contempt enforcement.** Any person who willfully violates a protection order, including a temporary protection order, or valid foreign protection “is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.” **W.S. 6-4-404(a).**

A criminal prosecution may be commenced in any county in which the respondent commits an act in violation of the order of protection. **W.S. 35-21-106(c).**

A perpetrator may be arrested for violations when probable cause exists to believe a violation of a protective order has occurred. **W.S. § 7-20-102(b)(i).**

**Warrantless arrests.** Law enforcement officers may arrest any offender they witness violating a protection order, and may arrest the offender based on probable cause without having seen the violation. **W.S. 7-20-102.** Warrantless arrests may also be made for simple assault, battery, aggravated assault and battery, and reckless endangering against a household member. **W.S. 7-20-102.**

- **Separate orders allowed.** Separate orders of protection are allowed provided each party has filed a separate written petition for an order of protection; and the court makes specific findings on the record that both parties have committed acts of domestic

abuse and that each party is entitled to a separate order of protection. **W.S. 35-21-105(h).**

- **Filing and Registration of Foreign Order of Protection.** **W.S. 35-21-111.**

**Process.** The Petitioner may file a certified copy of foreign order with the clerk of district court where enforcement may be necessary; there is no filing fee or cost; and the district court clerk forwards the foreign order to the local sheriff’s office and chief of police for entry in the state-wide registry.

**Registration of protection order not required.** **18 U.S.C. 2265 (d)(2) (2000).** Registration of the foreign protection order is not required or even implied by the Violence Against Women Act.<sup>7</sup> While registration, when safe, ensures awareness by police and courts, registration may not be practicable, especially for victims who need protection immediately across state lines. If notice was required to file a foreign protection order, it would defeat the purpose of fleeing to a “refuge” state.

**Tipping off the abuser.** The U.S. Constitution requires due process for the original protection order from the issuing state and does not require another notice and opportunity to be heard when registered in another jurisdiction. Temporary *ex-parte* orders do not require notice; however, the opportunity to be heard must be given as soon as possible after the order was issued, consistent with due process. **W.S. 35-21-109(a)(iii).** Final orders do require actual notice, however.

## Stalking Laws in Wyoming

- **Definition: W.S. 7-3-506 et seq.** There are numerous elements to the crime of stalking and stalking requires that specific intent accompany the stalking

<sup>7</sup>18 U.S.C. 2265(d)(1) (2000), “Notification: A State or Indian tribe according full faith and credit to an order by a court of another State or Indian tribe shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed.”



activities. With that in mind, police officers, attorneys/prosecutors and advocates should be knowledgeable of these elements in order to educate and inform potential victims.

A person commits the crime of stalking if, with intent to harass another person, the person engages in a course of conduct reasonably likely to harass that person, including but not limited to any combination of the following:

- (i) Communicating, anonymously or otherwise, or causing a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses;
- (ii) Following a person, other than within the residence of the defendant;
- (iii) Placing a person under surveillance by remaining present outside his or her school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; or
- (iv) Otherwise engaging in a course of conduct that harasses another person. **W.S. 6-2-506(b).**

**Course of conduct.** "Course of conduct" means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose. **W.S. 6-2-506(a)(i).** Wyoming requires that the alleged stalker engage in a course of conduct. The crime is not an isolated incident, but rather a series of acts taken together.

**Definition of Harass.** "Harass" means to engage in a course of conduct, including but not limited to verbal threats, written threats, vandalism or nonconsensual physical contact, directed at a specific person or the family of a specific

person, which the defendant knew or should have known would cause a reasonable person to suffer substantial emotional distress, and which does in fact seriously alarm the person toward whom it is directed. **W.S. 6-2-506(a)(ii).**

- **Statutory Protections.** In Wyoming, police officers are authorized to assist victims before any legal action has been taken against the stalker. A law enforcement officer or agency responding to the request for assistance may take whatever steps are reasonably necessary to protect the victim, including advising the victim of the civil protection order remedies and the availability of shelter, medical care, counseling and other services. Law enforcement may also advise the victim about criminal proceedings and the importance of preserving evidence; and may provide or arrange for transportation of the victim to a medical facility or place of shelter. **W.S. 7-3-511(b).**
- **Court-appointed attorneys.** The statute contains a provision for the court to appoint an attorney to represent an indigent petitioner when the petition is not filed by the district attorney. **W.S. 7-2-507(d).** However, there are neither procedures nor resources in most Wyoming circuit courts to allow for this. In any case, petitioners may hire their own attorney or appear pro se. **W.S. 7-2-507(d).**
- **Victim advocates.** Victim advocates do not provide legal advice but do provide victims with valuable support and assistance.
- **Lethality Factors.** Stalking most commonly occurs between people who have been involved in an intimate relationship, particularly where victims attempt to flee from the abusive relationship. Because the period of the parties' separation is the most likely time for a domestic violence victim to be killed, many law enforcement agencies have begun to regard protection orders as an early warn-

<sup>8</sup>MIKE BRIGNER, THE OHIO DOMESTIC VIOLENCE BENCHMARK, A PRACTICAL GUIDE TO COMPETENCE FOR JUDGES & MAGISTRATES, FAMILY VIOLENCE PREVENTION CENTER, OHIO OFFICE OF CRIMINAL SERVICES, P. 38 (2001). See also Wyo. Stat. Ann. §7-3-510(a) (LexisNexis 2003).

<sup>9</sup>Violence Against Women Act of 1994 § 40231, 18 U.S.C. §§ 2261, 2262. These provisions also prohibit causing a spouse or intimate partner to cross State or tribal lines by force, coercion, duress, or fraud and, in the course of or as a result of such conduct, committing domestic violence or violating a protection order.

<sup>10</sup>Violence Against Women Act of 1996, 18 U.S.C. § 2261A, (1996).



ing system. Upon filing, courts should immediately fax copies of protection orders to law enforcement agencies where petitioners live or work. Faxing copies of dismissal entries is also advisable.<sup>8</sup>

- **Federal interstate stalking.** The Violence Against Women Act of 1994 (VAWA) made it a Federal offense to cross State or tribal lines to commit domestic violence or to violate a protection order.<sup>9</sup> A Federal interstate stalking law<sup>10</sup> prohibits individuals from traveling across a state line with the intent to injure or harass another person and, in the course of or as a result of that travel, placing that person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family.

**Penalties.** Courts may sentence offenders to 10 years if the offense results in serious bodily injury to the victim or if the offender uses a dangerous weapon, 20 years if permanent disfigurement or life-threatening bodily injury results, and a life sentence if death of the victim results.

- **What Is Cyberstalking?** Although there is no universally accepted definition of cyberstalking, the term is used . . . to refer to the use of the Internet, e-mail, and other electronic communication devices to stalk another person. Stalking generally involves harassing and threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person's home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person's property. While some conduct involving annoying or menacing behavior might fall short of illegal stalking, such behavior may be a precursor of stalking and violence and should be treated seriously.

### **Preventing cyberstalking.**

**To strengthen stalking prosecution tools, Section 113 of the Violence Against Women Act of 2005 amends the Communications Act of 1934 (47 U.S.C. 223(h) (1)) to expand the definition of a telecommunications device—in regard to the current prohibition against**

**anonymous communications with the intent to annoy, abuse, threaten, or harass the recipient—to include any device or software that uses the Internet and possible Internet technologies such as voice over internet services. This amendment will allow federal prosecutors more options in charging stalkers.**

### **Stalking Protection Orders**

In Wyoming, a victim of stalking may petition the court for a Stalking Protection Order. The process is very similar to that of obtaining a Domestic Violence Protection Order, discussed more fully above. **W.S. 7-3-506 through 511.**

**Ex parte orders.** If the court finds there exists a clear and present danger of further stalking or of serious adverse consequences to any person, the court may grant ex parte a temporary order of protection pending the hearing. **W.S. 7-3-508(b).**

**Final Order of Protection.** As a part of any order of protection, the court may direct that the respondent:

- (i) Stay away from the home, school, business or place of employment of the victim or any other locations the court may describe in the order; and
- (ii) Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged offense and any other persons, including but not limited to members of the family or household of the victim, as the court may describe in the order.

**W.S. 7-3-509.**

**Duration of Order of Protection.** The duration of any order of protection should be based solely on consideration of petitioner's safety. Effective July 1, 2006, Wyoming's statute allows for the initial order to be "effective for a fixed period of time not to exceed one (1) year." **W.S. 7-3-510(b).** Either party may move to modify, terminate or extend the order.

### **Elder Abuse**

It is the legal responsibility of the Adult Protective Services Agency to respond to and investigate report of al-



leged abuse, neglect, exploitation or abandonment of vulnerable adults, including the elderly. **W.S. 35-21-101 (a)(xii).**

## Wyoming's Criminal Sexual Assault Statutes

### Sexual assault in the first degree.

(a) Any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if:

- (i) The actor causes submission of the victim through the actual application, reasonably calculated to cause submission of the victim, of physical force or forcible confinement;
- (ii) The actor causes submission of the victim by threat of death, serious bodily injury, extreme physical pain or kidnapping to be inflicted on anyone and the victim reasonably believes that the actor has the present ability to execute these threats;
- (iii) The victim is physically helpless, and the actor knows or reasonably should know that the victim is physically helpless and that the victim has not consented; or
- (iv) The actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct.

**W.S. 6-2-302.**

### Sexual assault in the second degree.

(a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree:

- (i) The actor causes submission of the victim by threatening to retaliate in the future against the victim or the victim's spouse, parents, brothers, sisters or children, and the victim reasonably believes the actor will execute this threat. "To retaliate" includes threats of kidnapping, death, serious bodily injury or extreme physical pain;

- (ii) The actor causes submission of the victim by any means that would prevent resistance by a victim of ordinary resolution;
- (iii) The actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct;
- (iv) The actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse;
- (v) At the time of the commission of the act the victim is less than twelve (12) years of age and the actor is at least four (4) years older than the victim;
- (vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit; or
- (vii) The actor inflicts sexual intrusion in treatment or examination of a victim for purposes or in a manner substantially inconsistent with reasonable medical practices.

(b) A person is guilty of sexual assault in the second degree if he subjects another person to sexual contact and causes serious bodily injury to the victim under any of the circumstances listed in **W.S. 6-2-302(a)(i)** through (iv) or paragraphs (a)(i) through (vi) of this section.

**W.S. 6-2-303.**

### Sexual assault in the third degree.

(a) An actor commits sexual assault in the third degree if, under circumstances not constituting sexual assault in the first or second degree:

- (i) The actor is at least four (4) years older than the victim and inflicts sexual intrusion on a victim under the age of sixteen (16) years; or
- (ii) The actor is an adult and subjects a victim under the age of fourteen (14) years to sexual contact without inflicting sexual intrusion on the victim and without causing serious bodily injury to the victim;
- (iii) The actor subjects a victim to sexual contact under any of the circumstances of **W.S. 6-2-302(a)**



(i) through (iv) or 6-2-303(a)(i) through (vi) without inflicting sexual intrusion on the victim and without causing serious bodily injury to the victim.

**W.S. 6-2-304.**

**Marriage is not a defense.** The fact that a person rapes their spouse, is not a defense to the crime of sexual assault. **W.S. 6-2-307.**

**Not knowing the victim's age is not a defense.** For certain sexual assault crime that depend upon a victim being under twelve (12) years or under fourteen (14) years, it is no defense that the actor did not know the victim's age, or that he reasonably believed that the victim was twelve (12) years or fourteen (14) years of age or older, as applicable. **W.S. 6-2-308.**

**Corroboration unnecessary.** Corroboration of a victim's testimony is not necessary to obtain a conviction for sexual assault. **W.S. 6-2-311.**

**Sexual Assault Examinations.** In 2006, the Wyoming Legislatures amended the laws for sexual assault examinations as follows:

- The new law provides that a sexual assault examination may be made by a licensed health care provider acting within the scope of his practice.
- The sexual assault examination may include a medical examination and treatment, evidence collection and evaluation and appropriate referrals for follow up treatment and services.
- Results of the examination and the evidence may be released to a law enforcement agency with consent of the victim.
- The new law allows a minor victim to consent to an examination if the minor's parents cannot be located. It also provides that if a report of sexual assault involves a minor and the alleged perpetrator is the parent or guardian of the minor, the parent shall not be notified.
- The law further requires the examiner to send the bill for specific examination costs to the law enforcement agency investigating the crime.
- The law also specifies that the victim shall be in-

formed of her rights as a victim and her right to informed consent.

- It provides that the sexual assault examination shall remain confidential healthcare information unless the victim or the victim's parent or legal guardian signs a release of the information for prosecution purposes.

**W.S. 6-2-309**

## Resources

There are local domestic violence and sexual assault programs in every county and on the Wind River Indian Reservation. For more information, contact the Coalition above, or look in the Yellow Pages under "Crisis Intervention Services"

### Albany County

#### \*SAFE Project

PO Box 665, 312 Steele Street

Laramie, WY 82073

Office: 307-742-7273

Toll Free Crisis Line: 800-230-3556

Crisis Line: 307-745-3556

Fax: 307-745-4510

E-Mail: [safeproject@qwest.net](mailto:safeproject@qwest.net)

Website: <http://www.safeproject.org>

### Big Horn County

#### C.A.R.E.S.

PO Box 288, 420 West "C" St.

Basin, WY 82410

Office: 307-568-3334

Toll Free Crisis Line: 888-372-3334

Crisis Line: 307-568-3334

Fax: (Call First) 307-568-3377 Or

E-Mail: [cares@tctwest.net](mailto:cares@tctwest.net)

#### Lovell Office

355 E. 5th St.

Lovell, WY 82431

Office: 307-548-2330

Fax: 307-548-7291

E-Mail: [cares2lovell@yahoo.com](mailto:cares2lovell@yahoo.com)



## **Campbell County**

### \*Gillette Abuse Refuge Foundation (GARF)

PO Box 3110, 910 E. 3rd St., Ste I.

Gillette, WY 82717

Office: 307-686-8071

Crisis Line: 307-686-8070

Fax: 307-686-8076

E-Mail: [garfdirector@vcn.com](mailto:garfdirector@vcn.com)

Website: [www.garf.vcn.com](http://www.garf.vcn.com)

## **Carbon County**

### \*Carbon County Citizens Organized to See Violence End (COVE)

PO Box 713, 1101 W. Spruce

Rawlins, WY 82301

Office: 307-324-7071

Toll Free Crisis Line: 866-889-COVE  
(866-889-2683)

Fax: 307-324-7075

E-Mail: [cove711@yahoo.com](mailto:cove711@yahoo.com)

## **Converse County**

### \*Converse County Coalition

126 N. 5th St., Douglas, WY 82633

Office: 307-358-6148

Toll Free Crisis Line: 800-252-3575

Crisis Line: 307-358-4800

Fax: 307-358-2706

E-Mail: [cccafvc@communicomm.com](mailto:cccafvc@communicomm.com)

[chesie@netcommander.com](mailto:chesie@netcommander.com)

### Glenrock Office

PO Box 95, 213 W. Birch #2

Glenrock, WY 82637

Crisis Line: 307-436-8732

Fax: 307-436-5410

## **Crook County**

### Crook County FV & SA Services

PO Box 128, 369 West Hwy 14

Sundance, WY 82729

Office: 307-283-2415

Toll Free Crisis Line: 800-815-2299

Crisis Line: 307-283-2415

Fax: 307-283-2455

E-Mail: [ccfv@collinscom.net](mailto:ccfv@collinscom.net)

## **Fremont County**

### \*Fremont Alliance

PO Box 1127, 510 E. Washington

Riverton, WY 82501

Office: 307-856-0942

Crisis Line: 307-856-4734

Office: 307-856-0942

Fax: 307-856-0945

E-Mail: [fcafvo@wyoming.com](mailto:fcafvo@wyoming.com)

[klinker@wyoming.com](mailto:klinker@wyoming.com)

## **Goshen County**

### \*Goshen County Task Force

PO Box 561, 1933 Main

Torrington, WY 82240

Office: 307-532-5050

Crisis Line: 307-532-2118

Fax: (Call First) 307-532-3136

E-Mail: [gctaskforce@yahoo.com](mailto:gctaskforce@yahoo.com)

## **Hot Springs County**

### H.O.P.E. Agency/Crisis Line

PO Box 824, 426 Big Horn

Thermopolis, WY 82443

Office: 307-864-4673

Crisis Line: 307-864-4673

Fax: 307-864-2132

E-Mail: [hopeagency@rtconnect.net](mailto:hopeagency@rtconnect.net)

## **Johnson County**

### Family Crisis Center

PO Box 1001, 255 E. Fetterman,

Buffalo, WY 82834

Office: 307-684-2233

Toll Free Crisis Line: 800-684-2030

Fax: 307-684-0878

E-Mail: [jcfcc@vcn.com](mailto:jcfcc@vcn.com)

[maxwellmk@hotmail.com](mailto:maxwellmk@hotmail.com)

Website: [www.jcfcc.vcn.com](http://www.jcfcc.vcn.com)



## **Laramie County**

### \*Safe House/Sexual Assault Services, Inc.

PO Box 1885, 1813 Carey Avenue  
Cheyenne, WY 82001

Office: 307-634-4220

Crisis Line: 307-637-7233

Fax: 307-634-8657

E-Mail: [help@WyomingSafehouse.org](mailto:help@WyomingSafehouse.org)

Website: [www.WyomingSafehouse.org](http://www.WyomingSafehouse.org)

### Pine Bluffs

PO Box 24, Pine Bluffs, WY 82083

Phone/Fax: 307-245-3165

## **Lincoln County**

### \*Turning Point

PO Box 64, 1809 Holland Drive  
Kemmerer, WY 83101

Office: 307-877-6834

Crisis Line: 307-877-9209

Fax: 307-877-4602

E-Mail: [thepoint@hamsfork.net](mailto:thepoint@hamsfork.net)

### Afton

Office: 307-885-9072

Crisis Line: 307-885-9491

Fax: 307-855-0754

E-Mail: [tpshc@silverstar.com](mailto:tpshc@silverstar.com)

## **Natrona County**

### \*Self Help Center

441 S. Center Street, Ste 300  
Casper, WY 82601

Office: 307-235-2814

Crisis Line: 307-235-2814

Fax: 307-472-4307

Shelter: 307-265-3059

E-Mail: [SHC300@hotmail.com](mailto:SHC300@hotmail.com)

## **Niobrara County**

### Helpmate Crisis Center

PO Box 89, 300 S. Main

Lusk, WY 82225

Office: 307-334-3416

Crisis Line: 307-334-2608

Fax: 307-334-5516

E-Mail: [luhelpmt@coffey.com](mailto:luhelpmt@coffey.com)

## **Park County**

### \*Crisis Intervention Services (CIS)

PO Box 1324, 1220 13th Street  
Cody, WY 82414

Office: 307-587-3545

Toll Free Crisis Line: 877-864-9688

Fax: 307-527-7801

E-Mail: [lvelker@wyoming.com](mailto:lvelker@wyoming.com)

Website: [www.cispark.org](http://www.cispark.org)

### \*Powell Office

335 N. Gilbert, Powell WY 82435

Office: 307-754-7959

## **Platte County**

### \*Project SAFE

PO Box 8, 1207 9th Street  
Wheatland, WY 82201

Office: 307-322-4794

Toll Free Crisis Line: 877-211-1251

Fax: 307-322-4797

E-Mail: [projectsafe@qwestoffice.net](mailto:projectsafe@qwestoffice.net)

Website: [www.projectsafewyo.com](http://www.projectsafewyo.com)

## **Sheridan County**

### Advocacy & Resource Center

PO Box 581, 136 Coffeen  
Sheridan, WY 82801

Office: 307-672-7471

Crisis Line: 307-672-3222

Fax: 307-672-5259

E-Mail: [charlotte@arcsheridan.org](mailto:charlotte@arcsheridan.org)

## **Sublette County**

### \*SAFV Task Force

PO Box 1236, 209 E. Magnolia  
Pinedale, WY 82941

Office: 307-367-6305



Toll Free Crisis Line: 888-301-4435

Fax: 307-367-9808

E-Mail: [cloversafv@vcn.com](mailto:cloversafv@vcn.com)

#### Big Piney Office

Office: 307-276-3975

### **Sweetwater County**

#### \*YWCA Support & Safe House (SASH)

PO Box 1667, 707 O'Donnell

Rock Springs, WY 82902

Office: 307-352-6630

Crisis Line: 307-352-1030

Fax: 307-352-6633

E-Mail: [sash@ywcasweetwater.org](mailto:sash@ywcasweetwater.org)

Website: [www.fascination.com/pub/ywcasash](http://www.fascination.com/pub/ywcasash)

#### Green River Office

6 N. 1st E.

Green River, WY 82935

Office: 307-872-3250

Crisis Line: 307-872-3250

Fax: 307-872-3236

### **Teton County**

#### \*Community Safety Network

PO Box 1328, 650 E. Hall

Jackson, WY 83001

Office: 307-733-3711

Crisis Line: 307-733-7233

Fax: 307-733-3772

E-Mail: [sharel@csnjjh.org](mailto:sharel@csnjjh.org), [carol@csnjjh.org](mailto:carol@csnjjh.org)

### **Uinta County**

#### \*Sexual Assault & Family Violence (SAFV)

350 City View Drive, Ste 203

Evanston, WY 82930

Office: 307-789-3628

Toll Free Crisis Line: 800-997-9026

Crisis Line: 307-789-7315

Fax: 307-789-6978

E-Mail: [director@safv-uintacounty.org](mailto:director@safv-uintacounty.org)

Website: [www.safv-uinta.com](http://www.safv-uinta.com)

### **Washakie County**

#### \*Victims of Violence Center

PO Box 494, 101 No 19th

Worland, WY 82401

Office: 307-347-4992

Crisis Line: 307-347-4991

Fax: (Call First) 307-347-4992

E-Mail: [vovc@rtconnect.net](mailto:vovc@rtconnect.net)

### **Weston County**

#### FOCUS (Foundation of Caring, Understanding & Services)

719 C Washington Blvd

Newcastle, WY 82701

Office: 307-746-2748

Crisis Line: 307-746-3630

Fax: 307-746-4940

E-Mail: [ffcc@rtconnect.net](mailto:ffcc@rtconnect.net)

### **Joint Business Council DV/SA Program**

#### \*Sacred Shield WRIR

PO Box 217

St. Stephens, WY 82524

Office: 307-857-3965

Toll Free Crisis Line: 800-803-8596

Fax: 307-857-3983

E-Mail: [sacredshield@wyoming.com](mailto:sacredshield@wyoming.com)

# Wills and Health Care Directives



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# **Wills and Health Care Directives**

## **Introduction<sup>1</sup>**

Wills are the most common way for people to state their preferences about how their estates should be handled after their deaths. Many people use their wills to express their deepest sentiments toward their loved ones. A well-written will eases the transition for survivors by naming the representative who reports to the probate court and making the probate process more certain. By some estimates, at least seventy percent of Americans do not have valid wills. If a person does not have a valid will, state intestacy laws will control who receives his or her property after death, which may not correspond to the person's wishes. While it is difficult to contemplate mortality, many people find that great peace of mind results from putting their affairs in order.

Wills vary from extremely simple single-page documents to elaborate volumes, depending on the estate size and preferences of the person making the will (the "testator"). Wills describe the estate, the people who will receive specific property (the "devisees"), and even special instructions about care of minor children, gifts to charity, and formation of posthumous trusts. For all these examples, the testator must follow the legal rules for wills in order to make the document effective. In addition to wills, various types of trusts, a discussion of which is beyond the scope of this handbook, can be written and used to implement a person's estate plan.

### **Will Limitations—Certain Property Not Distributed Under a Will**

Some legal restrictions prevent a testator from giving full effect to his or her wishes. Some laws prohibit disinheritance of spouses or dependent children. A married person cannot completely disinherit a spouse without the spouse's consent, usually in a pre-nuptial agreement. In most jurisdictions, a surviving spouse has a right of election, which allows the spouse to take a legally-de-

<http://estate.findlaw.com/estate-planning/wills/wills-overview.html>

termined percentage (up to one-half) of the estate when he or she is dissatisfied with the will. Non-dependent children may be disinherited, but this preference should be clearly stated in the will in order to avoid confusion and possible legal challenges.

Certain types of property are not distributed under a will or under the intestacy laws. For example, if an individual holds life insurance policies, annuities, or retirement benefits payable to named beneficiaries, these pass directly to the beneficiaries at the person's death. Sometimes real property or bank accounts are held jointly by two or more people with a right of survivorship. This means that, when one owner dies, her share of the property is automatically given to the surviving owner or owners. Property owned in joint tenancy may only go to the surviving joint tenant. Also, pensions, bank accounts, insurance policies and similar contracts that name a beneficiary must go to the named party. *See "Property and Housing Issues" Chapter in this handbook for an example.*

### **Appointing a Representative**

A will usually appoints a personal representative (or "executor") to perform the specific wishes of the testator after he or she passes on. The personal representative need not be a relative, although testators typically choose a family member or close friend, as well as an alternate choice. The chosen representative should be advised of his or her responsibilities before the testator dies, in order to ensure that he or she is willing to undertake these duties. The personal representative consolidates and manages the testator's assets, collects any debts owed to the testator at death, sells property necessary to pay estate taxes or expenses, and files all necessary court and tax documents for the estate.

### **Choosing a Guardian**

Testators who have minor or dependent children may use a will to name a guardian to care for their children if there is no surviving parent to do so. If a will does not name a guardian, a court may appoint someone who is not necessarily the person whom the testator would



have chosen. Again, a testator usually chooses a family member or friend to perform this function, and often names an alternate. Potential guardians should know they have been chosen, and should fully understand what may be required of them. The choice of guardian often affects other will provisions, because the testator may want to provide financial support to the guardian in raising surviving children.

## Making a Will

A person's estate includes all the property she holds at her death in her own name. An individual may write a will describing how she wants her estate divided. Writing a will may be complicated and should be done with an attorney's supervision. After a will is written, it should occasionally be reviewed - especially after marriages, births, adoptions, deaths, or divorces. Any person *of legal age* and sound mind may make a will and dispose of all of her property by will except what is sufficient to pay her debts, and subject to the rights of the surviving spouse and children. **W.S. 2-6-101.**

A will is construed to pass all property which the testator owns at her death including property acquired after the execution of the will, unless a contrary intention is indicated by the will. "Property", as used in this section, includes both real and personal property, or any interest therein, and means anything that may be the subject of ownership. **W.S. 2-6-102.**

Once a will is made, it remains in effect unless the testator revokes it in a lawful manner. Revocation can be done by making a new will that specifically revokes any earlier wills or disposes of all the property or by adding a codicil (an amendment to the will) that only voids certain parts of the will. The testator may also revoke her will by intentionally, physically destroying it with the purpose of voiding it. This method has drawbacks, however, because it may be difficult to prove the intent to revoke the will at a later time. The mental capacity required to make a will is also required to revoke a will.

### Elective Share

Typically, people may dispose of property in a will however they choose, but there are some exceptions.

For instance, if a testator leaves a major portion of his estate to someone other than his spouse, the spouse may be able to claim an *"elective share"* of the estate as follows:

- One half (1/2) if there are no surviving issue of the decedent, or if the surviving spouse is also a parent of any of the surviving issue of the decedent; or
- One fourth (1/4), if the surviving spouse is not the parent of any surviving issue of the decedent.

**W.S. 2-5-101.**

### Time Limit

If the surviving spouse or his personal representative or guardian fails to exercise the right of election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within three (3) months after the admission of the will to probate or within thirty (30) days after being advised of the right of election, whichever limitation last expires, the will governs and controls the distribution of the estate.

**W.S. 2-5-105.**

## Valid Will in Wyoming

To be valid, all wills, other than holographic wills (see below), shall be in writing, or typewritten, witnessed by two (2) competent witnesses and signed by the testator or by some person in his presence and by his express direction. If the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency shall not prevent the probate and allowance of the will. No subscribing witness to any will can derive any benefit from the Will unless there are two (2) disinterested and competent witnesses to the same, but if without a will the witness would be entitled to any portion of the testator's estate, the witness may still receive the portion to the extent and value of the amount devised. **W.S. 2-6-112.**

## Self Proving Wills

Wyoming law provides that any will may be simultaneously executed, attested and made self proven, by the acknowledgment of the testator and the affidavits of the



witnesses, each made before an officer authorized to administer oaths (i.e. Notary Public). Sample language can be found in **W.S. 2-6-114** (<http://legisweb.state.wy.us/statutes/titles/title02/chapter06.htm>)

## Holographic Will

A holographic will is one which is *entirely* in the handwriting of the testator (sometimes referred to as “testatrix” if person making the will is a woman) and signed by the hand of the testator herself. A holographic will does not have to be witnessed to be valid. A form will that has both handwritten and typewritten language will not qualify as a holographic will. **W.S. 2-6-113.**

## When No Valid Will Exists/Intestacy

If a person dies without a valid will and did not make alternative arrangements to distribute property, that person has died “intestate,” and an administrator is appointed by the probate court to pay the debts of the decedent and divide the property of the estate using legal defaults that give property to surviving relatives. The administrator, pays any unpaid debts and death expenses first, and then follows the legal guidelines. The rules vary depending on whether the deceased was married and had children, and whether the spouse and children are alive. If the intestate individual has no surviving spouse, children, or grandchildren, the estate is divided between various other relatives. Therefore, intestacy may mean that people who would never have been chosen to receive property will in fact be entitled to a portion of the estate. Additionally, state intestacy laws only recognize relatives, so close friends or charities that the deceased favored do not receive anything. If no relatives are found, the estate typically goes to the state or local government. When made aware of the consequences of intestacy, most people prefer to leave instructions and appoint a representative their choosing, rather than subject their survivors and property to government-mandated appointment of an administrator and property division. **W.S. 2-4-101 et seq.**

## Intestate Succession

Generally if a person dies without a will, the property will be passed on as follows:

If the intestate leaves husband or wife *and* children, or the descendants of any children surviving, one-half (½) of the estate shall descend to the surviving spouse, and the remainder to the surviving children and descendants of children;

If any of his children have predeceased him, the descendants of a deceased child collectively will take the share which their parents would have taken if living;

If there are no children, nor their descendants, then to his father, mother, brothers and sisters, and to the descendants of brothers and sisters who are dead, the descendants collectively taking the share which their parents would have taken if living, in equal parts;

If there are no children nor their descendants, nor father, mother, brothers, sisters, nor descendants of deceased brothers and sisters, nor husband nor wife, living, then to the grandfather, grandmother, uncles, aunts and their descendants, the descendants taking collectively, the share of their immediate ancestors, in equal parts.

If the intestate leaves husband or wife and *no child nor descendants of any child*, then the real and personal estate of the intestate shall descend and vest in the surviving husband or wife;

A person who has surviving children and a surviving spouse may prefer the property be distributed to the surviving spouse, so the surviving spouse will be able support himself or herself for his or her remaining life. This plan cannot be easily accomplished without the consent of the surviving children if a person dies intestate, and under some circumstances, the consent by the surviving children may be considered a gift from the children to the surviving spouse.

Wyoming law also addressed the intestate succession of an “illegitimate” person. For more information, see **W.S. 2-4-102**. The distribution is basically the same as above; however, there is assumed to be no father for purposes of distribution.



If a child is conceived before the decedent's death but born after the death, he or she inherits as if born in the lifetime of the decedent. **W.S. 2-4-103.**

## Need for Advance Planning for Health Care and End of Life Issues

Without a living will or durable power of attorney for health care (advance health care directive), family members may end up arguing over what treatments should or should not be provided. Doctors will only consult family members on health care decisions and not friends or unmarried partners. If a person prefers that a friend or unmarried partner participate in his or her health care decisions, a living will and/or durable power of attorney (advance health care directive) is necessary. Health care advance planning, if done right, accomplishes four things:

- It helps ensure that the person you want to speak for you has the legal authority to do so;
- It helps ensure your wishes about your health care are known and respected;
- It avoids unnecessary, intrusive, and costly medical treatment at the point you no longer want it;
- It reduces the suffering experienced by your loved ones, because they will have your guidance. Making serious medical decision on a loved one's behalf without their guidance can be an agonizing experience.

## Living Wills<sup>2</sup>

Living wills are not really wills at all. Instead, a living will (which also may be known as a *healthcare directive* or *directive to physicians*) is a document that expresses a person's desires and preferences about medical treatment in case he or she becomes unable to communicate these instructions during terminal illness or permanent unconsciousness. The first living wills helped people who wanted a natural death unattended by artificial life support and other advanced medical techniques. As these documents became more popular and widely

available under local laws, they came to include other health care concerns such as tube feeding, resuscitation, and organ donation.

Wyoming's Living Will Statute was repealed in 2005 and replaced with the Wyoming Health Care Decision Act. **W.S. 35-22-401.**

## Wyoming Health Care Decisions Act

### Advance Health Care Directive or Durable Power of Attorney for Health Care

This document gives an "attorney-in-fact" legal power to make health care decisions for someone who cannot make those decisions him or herself. **W.S. 35-22-403(b).** A durable power of attorney for health care may be used whenever the individual granting the power cannot make his or her own health care decisions; it does not depend on terminal illness or permanent unconsciousness to become effective.

### Revocation

Advance health care directives may be revoked *in writing*. Also, a decree of annulment, divorce, dissolution of marriage or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care. **W.S. 35-22-404.**

### What Can an Advance Health Care Directive Cover?

Many people believe that living wills and advance health care directives only direct health care providers to withhold treatment. While many choose to issue that type of instruction, a health care directive also allows a person to ask for all available treatment options and medical techniques, or to choose some medical options and reject others. Because health care directives and living wills involve complicated medical issues, consultation with a doctor may help clarify different treatment types and assist the patient in making advance health care and living will decisions. Some people do not complete liv-

<sup>2</sup><http://estate.findlaw.com/estate-planning/wills/estate-planning-living-wills.html>

<sup>3</sup>[http://estate.findlaw.com/estate-planning/wills/estate-planning-living-wills\(1\).html](http://estate.findlaw.com/estate-planning/wills/estate-planning-living-wills(1).html)



ing wills and health care directives because they worry doctors could let them die when there is still a chance for recovery.

Unless the form you sign limits the authority of the person(s) you authorize (your agent), your agent may make all health care decisions for you. You may also limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;
- (b) Select or discharge health care providers and institutions;
- (c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
- (d) Direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.

### **W.S. 35-22-405 Optional Form.**

This optional form allows a person to appoint an agent for health care decisions; give specific instructions for health care, including the choice to receive or refuse specific life support treatments; give specific instruction for anatomical donations; and designate a physician who will have primary responsibility for his or her health care.

### **Choosing an Attorney-In-Fact<sup>3</sup>**

The person chosen as the attorney-in-fact or agent for health care decisions should be a trusted individual who is comfortable discussing health care issues. Because this person may need to argue the patient's case with doctors or family members, or even go to court, an assertive and diplomatic individual may be preferred. The representative should be well aware of the choices made in the relevant documents, and should support those instructions. It is also useful to enlist the cooperation of friends, relatives, and health care providers by

giving them executed copies of the document for their reference, should the need arise.

Under Wyoming law, none of the following shall be used as a witness for a power of attorney for health care:

- (i) A treating health care provider or employee of the provider;
- (ii) The attorney-in-fact nominated in the writing;
- (iii) The operator of a community care facility or employee of the operator or facility;
- (iv) The operator of a residential care facility or employee of the operator or facility.

**W.S. 35-22-403(c).**

## **What to do With Your Will or Directive**

1. Keep the original some place they can be easily found. A safe deposit box is not advised because there may be delay in obtaining the original documents.
2. Give your chosen agent or personal representative (executor) a copy of the will or directive and any attachments. Make sure your agent knows where to find the original.
3. Give your doctors a copy of your directive. Make certain it is put in your medical record. Make sure your doctor will support your wishes. If your doctor has objections, you need to work them out or find another doctor.
4. If entering a hospital or nursing home, take a copy of your directive with you and ask that it be placed in your medical records.
5. Some organizations offer to register advance directives electronically and enable health care institutions to access them electronically. Some churches and synagogues keep advance directives on file for members. You may wish to consider such a service.

## **For More Information**

For more information about wills, probate court, rights of spouses and children, contact an attorney.



Information regarding these topics can also be found in Title 2, Chapters 1 through 6 of the Wyoming Statutes. An optional advanced health care directive form can be found at <http://legisweb.state.wy.us/statutes/titles/title35/c22a04.htm>.

#### **Some other information and organizations:**

**Americans for Better Care of the Dying (ABCD)**, 3720 Upton St., N.W., Rm. B147, Washington, DC 20016 (Tel. 202-895-2660), is a non-profit public charity dedicated to social, professional, and policy reform aimed to improve the care system for patients with serious illness, and their families. Web page: [www.abcd-caring.org](http://www.abcd-caring.org).

**Center for Practical Bioethics (formerly the Midwest Bioethics Center)**, Town Pavilion, 1100 Walnut St., Ste. 2900, Kansas City, MO 64106-2197 (Tel. 816-221-1100). A non-profit ethics resource center dedicated to a health care delivery system anchored in respect for patients and their families and guided by ethical discourse. They publish the *Caring Conversations Workbook*, described above. Web page: [www.midbio.org](http://www.midbio.org).

**National Hospice and Palliative Care Organization (NHPCO)**, established in 1978, is a nonprofit organization whose mission is advocacy for the rights of terminally ill Americans. NHPCO is the largest nonprofit

membership organization devoted exclusively to the promotion of hospice care in America. In addition to providing informational and educational materials to members, NHPCO provides information and referrals to the public. Web page: [www.nhpc.org](http://www.nhpc.org).

**Five Wishes Advance Directive**. Published by Aging with Dignity. This nationally used and very popular advance directive focuses on ways of talking about health care wishes and needs. Can be purchased and downloaded from their Web site: <http://www.agingwithdignity.org/5wishes.html>. Also available by mail order from P.O. Box 1661, Tallahassee, FL 32302-1661 (Tel. 850-681-2010).

**Shape Your Health Care Future with Health Care Advance Directives**. Published jointly by the American Bar Association, the American Medical Association, and AARP. Available for free on the ABA Commission Web site at: [www.abanet.org/aging](http://www.abanet.org/aging).

**The Medical Directive**, by Linda L. Emanuel, M.D., and Ezekiel J. Emanuel, M.D. This more medically-oriented advance directive includes six illness scenarios. For each, you consider possible medical interventions and goals of medical care. It also includes a proxy designation form. Can be purchased and downloaded from their Web site: <http://medicaldirective.org>.

# Workplace Issues



## **In this chapter:**

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**Unemployment Compensation**

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**Other Policies**

Unused Sick Days, Personal Days and Vacation

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**Family and Medical Leave Act**

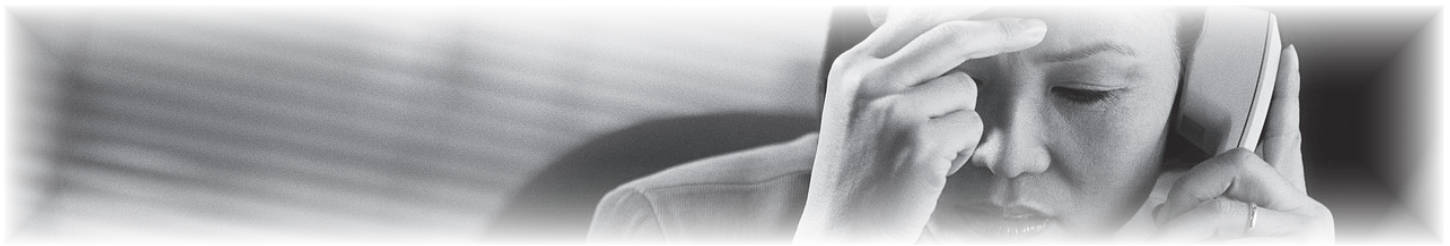
**Employment of Children**

**Drug Testing**

**Covenants Not to Compete**

**Occupational Safety and Health Act (OSHA)**

**Where to Get Help**



## **Workplace Issues**

Unlawful employment discrimination occurs when an individual is denied employment or harassed at work based on sex, race, religion, color, marital status, physical or mental disability, pregnancy, age, national origin, or sexual orientation. A number of state and federal laws prohibit employment discrimination. Federal protection laws are overseen by the **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)**. For more information on these issues or on the EEOC, see [www.eeoc.gov](http://www.eeoc.gov) (the Spanish language website for EEOC is [www.eeoc.gov/es](http://www.eeoc.gov/es))

### **Minimum Wage**

You should check with the Wyoming Department of Employment, Labor Standards Program to find out if the state or federal rates have been changed by the time you consult this guide.

Wyoming sets the minimum hourly wage rate for an employee at \$5.15 per hour (in 2006). **W.S. 27-4-202**. All employers who employ tipped employees shall not pay less than \$2.13 per hour to tipped employees. Although, if the wage paid by the employer combined with the tips received by the employee during a given pay period do not equal the applicable minimum wage, the employer shall pay the difference to the tipped employee. The Federal Fair Labor Standards Act (FLSA) sets the minimum hourly wage rates for specific “covered employees.” Covered employees are individuals employed or permitted to work by an employer engaged in interstate commerce. Exceptions are: casual baby sitters and companions for the aged; executive, administrative, and professional employees; outside sales people; employees of certain small, local retail or service establishments; and some agricultural workers.

Federal law permits lodging, board or other facilities provided by an employer to be considered as a part of wages. Also, tips actually received and retained by an employee in the hotel, motel, tourist place and restaurant industry may be counted for up to 50% of the minimum wage. This tip credit may be claimed only for workers who are engaged in an occupation in which

they customarily and regularly receive tips of more than \$30.00 per month.

### **Overtime Pay**

Most covered workers are entitled to 1 ½ times their regular rate of pay when they work more than 40 hours per week. Your employer must pay you overtime wages for any time over 40 hours in a work week and cannot require you to take compensatory time or time off at a later time instead. If your 40 hours includes working on the weekend, this “weekend work” is not entitled to overtime pay. Neither federal nor state law requires time-and-a-half pay for weekends or holiday work or, generally, for daily overtime, if these are part of your basic 40 hours.

The law also doesn’t require meal breaks, rest periods, discharge notices, or severance pay (pay given in place of notice). But if vacation, sick, or severance pay has been offered to you, in writing, by your Wyoming employer, Wyoming law will help you enforce these “wage supplements.”

#### **Is an employer required to pay overtime pay to certain categories of employees?**

There is no Wyoming law requiring an employer to pay overtime pay to certain salaried employees, including supervisors, professionals, and administrative employees. Neither is there such a requirement for employees in retail stores who work on a commission basis or outside sales representatives.

However, state law provides time and one-half overtime pay for all laborers, workers or mechanics employed upon any public works project of the state of Wyoming, or of any county, city, town or of any political subdivision thereof for work in excess of eight hours in a day, or 40 hours in one week; however, an employee may agree to work more than 8 hours in a day or more than 40 hours in any week, provided the employee shall be paid at the rate of one and one-half times the regularly established hourly rate for all work in excess of forty hours in any one week. **W.S. 16-6-110**.



### **What to do about Violations of Minimum Wage and Overtime Laws**

- Consult with a private attorney.
- Contact the Wyoming Department of Employment, Labor Standards Program.
- Contact the U.S. Department of Labor, Wage and Hour Division.

Employees may find out how to file a complaint from local Wage and Hour Division offices, or from the program's toll-free help line at 1-866-4USWAGE.

In addition, an employee may file a private suit, generally for the previous two years of back pay (three years in the case of a willful violation) and an equal amount as liquidated damages, plus attorney's fees and court costs.

### **Unemployment Compensation**

If you quit or are discharged, your employer must pay you whatever wages are due within 5 working days of the date you terminated employment.

You might be eligible to receive unemployment compensation benefits if you have been laid off from your job or, under some circumstances, if you quit or were fired. Whether you can receive unemployment compensation benefits will depend on many factors. These can include why you were terminated, how long you worked and how much you have been paid over a particular time period. **W.S. 27-3-101 et seq.**

To find out if you qualify for unemployment compensation benefits, you have to go to your local office of the Wyoming Employment Department, Workers' Safety and Compensation.

### **Disqualification from Unemployment Benefits**

You can be disqualified for a number of reasons. These include, among others:

- You voluntarily quit your most recent work without good cause (except for bona fide medical reasons);

- You were discharged (fired) from your most recent employment for misconduct connected with your work;
- You failed (without good cause) to apply for or accept suitable work as defined by Wyoming statutes;
- After four weeks of receiving unemployment benefits, you failed to apply for or accept suitable work outside of your customary occupation which pays at least 50% of your previous wages;
- You obtained benefits by fraud or by misrepresented material facts.

### **Workers' Compensation**

Once you have experienced a work-related injury, you must do the following:

- Notify your employer immediately after the injury either verbally or in writing and no later than 72 hours from the time of the injury.
- Obtain an injury report from your employer, the Division or a location site nearest you.
- Complete all information on the Injury Report form, sign it and submit it to the Workers' Safety and Compensation Division ("Division") within 10 days of the injury. If you omit any information, it may delay processing of your claim. The Division will assign a case number after receiving the Injury Report. Your case number will be provided to you by mail.
- Give your case number to everyone providing medical services for the work-related injury or condition. Medical bills cannot be paid without a case number.
- You must notify the Division in writing if you change your mailing or physical address, or your telephone number. Keep in contact with the analyst at the Division for updated information on your case or any claims you have filed. When calling the Division for information, you will be asked for your case number.
- Notify the Division immediately when your doctor releases you or you return to work.
- You should make and keep copies of all papers and documents regarding your case.



- According to the Workers' Compensation Act, any person who knowingly makes or allows any misrepresentation or false statement to be made for the purpose of receiving payments under the Act is guilty of a misdemeanor or felony.
- All injury related medical bills must be sent directly to the Division by the provider. If you receive a bill, tell the provider to submit the bill to the Division.

*See also W.S. 27-14-101 et seq.*

**If you are injured on the job, you may be entitled to:**

- Payment of medical bills associated with that injury, including mileage to and from the doctor.
- Temporary total or partial disability payments between the time of your injury and the time you can either return to work or you have improved medically as much as you are going to improve.
- Permanent partial or total disability benefits for any permanent injury you have suffered.
- Vocational rehabilitation services to help you return to the work force.
- Reinstatement to the first suitable, available position when you are able to return to work following your injury (as long as your recovery occurs within two years of the injury and you work for an employer who has at least 10 employees).

For information on medical benefits, reimbursements, examinations, travel, temporary total disability benefits, permanent partial impairment (physical) benefits, vocational rehabilitation benefits, permanent partial disability benefits, permanent total disability benefits, and death benefits, contact your area Division.

You always have a right to obtain legal counsel for representation in connection with any disputed claim for benefits. In some situations, the Division may be required to pay attorney fees and costs. In a contested case hearing, the hearing authority may appoint an attorney to represent you. The hearing authority may allow an appointed attorney reasonable fees for services at the conclusion of the proceedings. (See Sections 602(d) and 608 of the Act for additional information.)

## **Other Policies**

### **Unused Sick Days, Personal Days and Vacation**

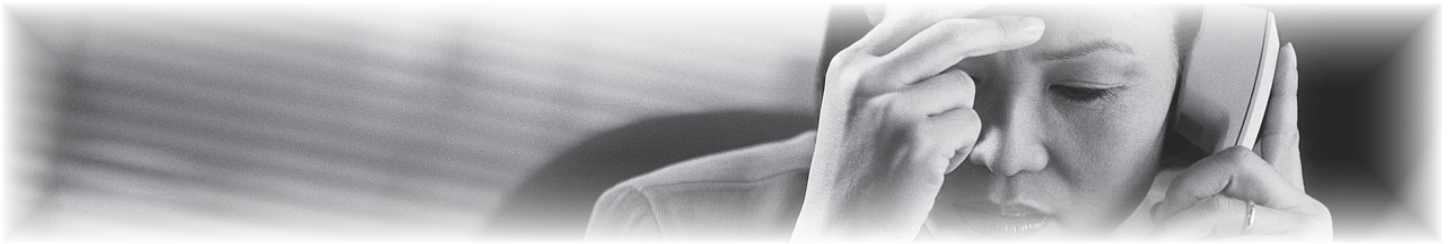
With regard to unused sick days and personal days, an employer may provide that these will not be paid upon termination of employment. An employer may also provide that no such payment will be made if an employee resigns without giving at least ten (10) days written notice or before his or her anniversary date. With regard to unused vacation days, an employer may *not* provide that it will not be paid upon cessation of employment if the employee has earned the vacation according to the time frame set forth in the employer's policy. This would allow an employer to provide that vacation pay will not be earned (or paid) before an employee's anniversary date, but there would have to be a policy on this prior to application of such a rule. **W.S. 27-4-507, and Wyoming Attorney General Opinion Number 53.**

### **Vacation Policies**

Employers can adopt vacation policies which provide that unused days, at the end of the year, are lost (rather than being carried over or paid), but only if the employer has provided the employee full opportunity to use earned vacation days or has not refused a request to use it. Other policies that are acceptable include that vacation days are earned only upon reaching the employee's anniversary date and that no payment will be made if employment ceases before the employee reaches her anniversary date.

### **Commissions**

An employer may adopt a commission policy which provides that employees are not eligible to receive commissions for sales which are made following an employee's termination, for customer payments received following an employee's termination and for any commission accrued after termination. However, if commissions are earned according to the wage agreement, all such commissions must be paid. **W.S. 27-4-507.**



## Employment-At-Will

Wyoming is an “employment-at-will” state, which means that an employer can terminate an employee for any reason or for no reason at all. This can be done at any time, without cause, unless the employee has a written contract. Despite this legal doctrine, employers may not fire you in a way that discriminates, violates public policy or conflicts with written or implied promises they make concerning the length of employment or grounds for termination.

**Exceptions.** There are a few exceptions to the employment-at-will doctrine. For instance, under certain circumstances, courts may construe provisions in an employee’s handbook or spoken promises as creating an employment contract. The law is complex, so it is advisable to consult with an attorney if you believe you were terminated in violation of a written or verbal understanding between you and your employer.

**Disclaimers.** The Wyoming Supreme Court, in cases dealing with issues of employment-at-will, has held that disclaimers are necessary to protect at-will employees. The Court has also stated that these disclaimers must meet the following requirements:

- Text must be prominent and conspicuous;
- The disclaimer should be located so that a reasonable person ought to notice it; it must be on the first page of the handbook, directly behind the cover page. It cannot be placed in the middle of other policies, nor can it be located within introductory paragraphs or other statements; and
- The disclaimer must clearly reserve the employer’s right to change, alter or modify the terms of the handbook without notice.

## Right to Work

Wyoming is considered a right to work state, meaning no person is required to become or remain a member of any labor organization as a condition of employment or continuation of employment. **W.S. 27-7-109.**

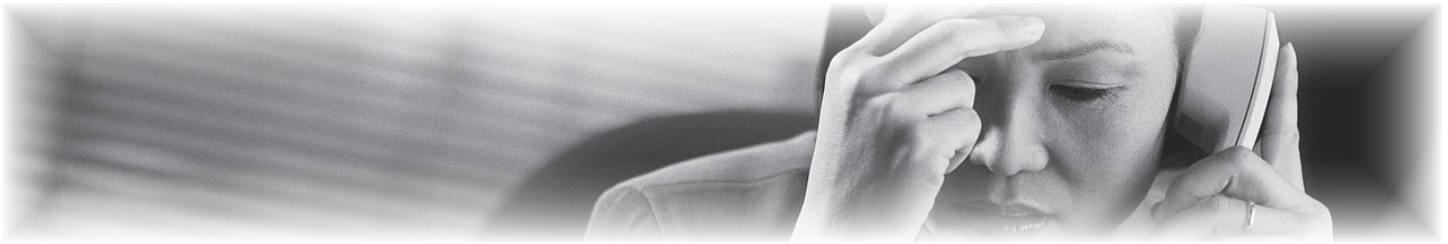
## Forms of Employment Discrimination

### Sex Discrimination

Sex discrimination is defined, but not limited to, the denial of equal opportunity in employment and in the delivery, provision of and access to any training service, program, resource, or opportunity because of an individual’s sex. Unlawful sex discrimination can occur at any stage of the employment process.

You should consider whether you have been treated unequally or subjected to different terms or conditions of employment because of being a woman in any of the following areas of employment:

- Recruitment - for example, only recruiting from male-dominated fields
- Hiring - for example, discouraging women from applying; not giving equal consideration to or refusing to hire
- Firing - for example, using different standards for women and men in deciding whether to terminate
- Training - for example, not providing equal training opportunities to women and men
- Job assignments - for example, making assumptions about what work women can do
- Promotions - for example, promoting a man over a more qualified woman; routinely passing over women for promotion
- Pay - for example, paying women at a different rate than men for the same or substantially similar work
- Benefits - for example, providing different benefits to women than men, such as pension and life insurance plans, health insurance and dates of optional retirement
- Layoffs - for example, applying sexist and unequal standards when making lay-off decisions, such as thinking it would be harder on a family for a man to lose his job than a woman to lose hers
- Leave - for example, not allowing women to take leaves in the same way or for the same reasons as men
- Treatment on the job, e.g. discipline, harassment (see section on Sexual Harassment)



- All other employment related activities

**Some exceptions.** Title VII protects workers from discrimination on the basis of gender. It applies to employers with 15 or more employees. An exception to Title VII allows employers to discriminate based on gender when they can show that gender is a “bona fide occupational qualification” (BFOQ). This exception is very narrow and means that the requirement for a certain gender is reasonably necessary to the normal operation of the business. It is not a BFOQ if the requirement is based on a gender stereotype (“women aren’t strong enough for this kind of job”).

### Theories of sex discrimination.

**Disparate treatment.** In a disparate treatment claim, the employee must show that she was treated differently because of her gender.

**Disparate impact.** In a disparate impact case, the employee must show that women are disproportionately adversely affected by the employer’s policies. This can usually be shown through statistical data. Next, the employer has the opportunity to justify the impact based on a business necessity. If the employer argues business necessity, the employee gets a chance to prove that the employer could satisfy its business necessity with a different process that would lessen the disparate impact.

### Sexual Orientation Discrimination

The same legal rights that make it unlawful to discriminate against or to harass people on the basis of sex may also apply to people who experience discrimination or harassment because of their sexual orientation, even though there is no federal law that specifically prohibits this type of discrimination in private employment. There is a federal executive order that outlaws discrimination based on sexual orientation in the federal government only. Wyoming does not have a state law that specifically outlaws sexual orientation discrimination.

Even though there is no law specifically addressing this issue, you may still be able to sue under a number of other legal theories that have nothing to do with dis-

crimination. These theories include the following:

- intentional or negligent infliction of emotional distress
- harassment
- assault
- battery
- invasion of privacy
- defamation
- interference with employment contract, and
- termination in violation of public policy.

### Age Discrimination

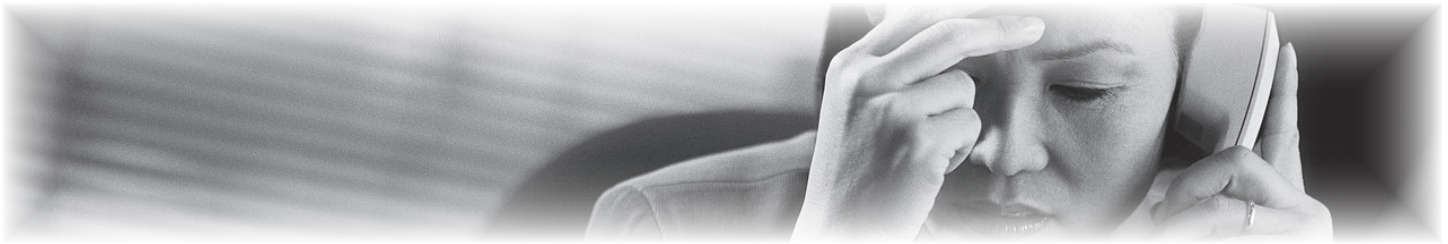
If you are a working woman age 40 or over, you may be experiencing age or sex discrimination. Now or in the past, your job opportunities may have been limited by unequal pay or lack of equal access to promotions. You may have lost your job in “downsizing,” only to be replaced by a younger worker.

Since many women earn less than men, and women are more often part-time or temporary workers, their pension benefits are much less than men’s. Some of these barriers to fair employment may constitute age discrimination.

A federal law protects workers against age discrimination—the Age Discrimination in Employment Act (ADEA). It outlaws discrimination in recruitment, hiring, pay, benefits, training, promotion, job retention and other employment practices. The ADEA protects workers who are 40 years of age or older.

### Have any of these things happened to you?

- You didn’t get hired because the employer wanted a younger looking person to do the job.
- You were passed over for training courses and then got a negative job evaluation because you weren’t “flexible” in taking on new assignments.
- You got fired or laid off because your boss wanted to keep younger workers who are paid less.
- You received undeserved negative performance evaluations then your employer used your “record” of poor performance to justify demotion or termination.



- You got turned down for a promotion to a mid-management job, which went to someone younger hired from the outside because “the company needs new blood.”

**Under the Age Discrimination in Employment Act (ADEA), employers who have at least 20 workers are not allowed to:**

- Recruit—or ask an employment agency to send—only young job applicants; or
- Withhold training opportunities from workers just because they are older; or
- Fire or force a worker to retire because he or she is “over the hill.” (NOTE: This does not apply to a few occupations like certain executives or high-level policy makers); or
- Allow younger workers certain benefits, such as flexible schedules, part-time work, job sharing and telecommuting, while denying such options to workers age 40 and over.

An employee can waive her rights under the ADEA. For a waiver to be valid, it must:

- Be in writing;
- Specifically refer to ADEA rights;
- Not waive rights or claims that may arise in the future;
- Be in exchange for valuable consideration;
- Advise the employee in writing to consult an attorney before signing the waiver; and
- Provide the employee with at least 21 days to consider the agreement and at least seven days to revoke the agreement after signing.

## Disability Discrimination

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination in employment against the disabled. It also prohibits discrimination against the disabled in other areas, such as government services and the way buildings are designed and maintained.

**Title I and Title V of the Americans With Disabilities Act of 1990 (ADA)** Title I of the Americans with Disabilities Act of 1990 prohibits private employers,

state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

If you have a physical or mental impairment that substantially limits one or more major life activities (walking, seeing, speaking, or hearing, for example), you should know what your workplace rights are. And if you have had a disability in the past or if your employer thinks you have a disability (but you don't), the Americans with Disabilities Act (ADA) may protect you.

The ADA protects job applicants and workers against disability discrimination. One part of the ADA outlaws discrimination in job application procedures, hiring, firing, advancement, job assignments, pay, benefits, job training, and other employment practices.

Other parts apply to state and local government services and employment, public accommodations, transportation, and telecommunications.

### Have any of these things ever happened to you?

- You use a wheelchair and have several years experience as a receptionist, but you didn't get hired because the employer wanted a person without an obvious disability dealing with customers.
- You were fired when your boss refused to modify your work schedule to allow treatment for breast cancer, although you performed the essential functions of your job.
- Your back was permanently injured while lifting patients as a nursing home aide. Your employer refuses to purchase the necessary inexpensive equipment enabling you to lift patients safely.



- A family member is infected with the virus that causes AIDS, and after co-workers complain to your employer about sharing office equipment with you—you lose your job. \*You're blind, you've been sexually harassed by a co-worker, and you're having trouble getting your employer to understand that a woman who is blind can be a target of sexual harassment.
- Your employer finds out you are seeing a psycho-therapist for depression and fires you.

**Under the ADA, an individual with a disability is a person who:**

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such impairment; or
- Is regarded as having such impairment.

A qualified employee with a disability is a person who, with or without reasonable accommodation, can perform the essential functions of the job.

**Private employers who have at least 15 workers, state and local government employers, employment agencies, labor unions, and the U.S. Congress are not allowed to:**

- Recruit only job applicants without obvious disabilities; or
- Ask job applicants to describe their disability and to take medical examinations before a job offer is made; or
- Give fewer or less attractive advancement opportunities to qualified workers with disabilities than to others or fire qualified workers because of a disability; or
- Treat qualified workers with a disability worse than other workers because of the disability.

The ADA also prohibits employers from asking certain health-related questions of job applicants.

The Rehabilitation Act of 1973 protects you against disability discrimination if you are employed by a federal contractor or by the Executive Branch of the federal government. This law also requires federal contractors to take affirmative action for people with disabilities.

## **Pregnancy Discrimination**

The **Pregnancy Discrimination Act (PDA)** requires that pregnant women and women disabled by childbirth or related medical conditions be treated at least as well as employees who are not pregnant but who are similar in their ability or inability to work. The PDA does not prohibit the provision of additional benefits to pregnant employees.

US Supreme Court decision in *UAW v. Johnson* controls. In this landmark sex discrimination case, the Supreme Court ruled that employers were prohibited from adopting fetal-protection policies that exclude women of child-bearing age from certain hazardous jobs. This decision as well as others has established that employers are prohibited from forcing a pregnant employee to take disability leave as long as the employee is still physically fit to work.

Laws against sex discrimination protect pregnant workers and pregnant women applying for jobs. Federal laws make sure that Americans are able to have children without losing their jobs. Women who are pregnant or new mothers should file complaints with the Equal Employment Opportunity Commission (EEOC). This is the federal agency that protects you from job discrimination.

Discrimination against you because you are pregnant violates the Civil Rights Act of 1964. Under this law, employers who have at least 15 workers are not allowed to:

- Refuse to hire a woman because of pregnancy; or
- Fire or force a worker to leave because she is pregnant; or
- Take away credit for previous years, accrued retirement benefits, or seniority because of maternity leave; or
- Fire or refuse to hire a woman because she has an abortion.

**Eligibility for and Duration of Pregnancy and Child Care Leave.** Under the FMLA, eligible employees may take 12 weeks of unpaid leave for the birth or adoption of a child. If an employee elects to use accumu-



lated paid leave benefits such as sick leave, vacation or compensation time, departments should not count this time toward the 12 weeks of leave, although the FMLA allows them to do so. Conversely, departments should not require that an employee exhaust all sick, vacation, holiday, and personal leave before they can apply for unpaid leave. You must be allowed to keep working as long as you are able to do your job. Your boss cannot make a rule about how long you must stay out of work before or after childbirth. If your company does not offer sick leave, then it may be discriminating against pregnant workers. Any health care coverage provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other conditions. Pregnancy-related benefits cannot be limited to married employees.

**Light Duty.** One of the most critical components of a pregnancy policy is inclusion of a light duty policy. Without the option of a light duty assignment, many women may have to take unpaid leave, creating financial and emotional hardships that can be avoided. Light duty assignments may include a transfer to different duties or a modification in current duties. If the employer provides light duty assignments for other employees who have non-service related temporary disabilities, then they are required by law to provide the same assignments for pregnant employees. However, a pregnant employee should not be forced into a light duty assignment against her will if she is physically able to safely perform her current assignment. If the employee's ability to perform her assignment is at issue, consultation with a physician may be necessary.

## **Racial Discrimination**

Title VII protects employees from discrimination based on race or color. It applies to employers with 15 or more employees. Private employers, government employers, and labor unions are covered. Title VII prohibits employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of certain racial groups. Also, employers cannot deny equal employment opportunity because of marriage to or association with an individual of a different race.

There are two types of claims: disparate treatment and disparate impact. And, an employer cannot raise bona fide occupational qualification (BFOQ) as a defense.

## **National Origin Discrimination**

It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. For example, a rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences of violating the rule.

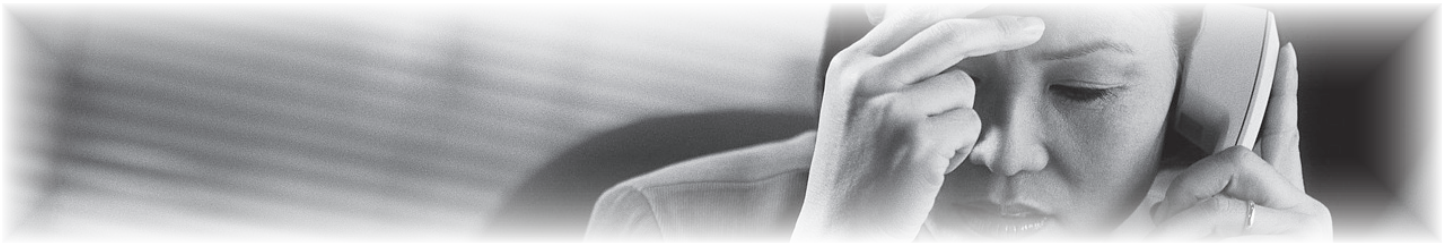
The **IMMIGRATION REFORM AND CONTROL ACT (IRCA) of 1986** requires employers to assure that employees hired are legally authorized to work in the U.S. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA. In order to be non-discriminatory, verification must be obtained from all applicants and employees. Employers who impose citizenship requirements or give preferences to U.S. citizens in hiring or employment opportunities also may violate IRCA.

Additional information about IRCA may be obtained from the OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES at 800-255-7688 (voice), 800-237-2515 (TTY for employees/applicants), or 800-362-2735 (TTY for employers) or at [www.usdoj.gov/crt/osc](http://www.usdoj.gov/crt/osc).

## **Migrant and Seasonal Agricultural Workers Protection Act**

The MSPA is a federal law that protects migrant and seasonal agricultural workers by establishing standards for wages, housing, transportation, disclosures, and recordkeeping. Every non-exempt farm labor contractor, agricultural employer, and agricultural association that "employs" workers must:

- Provide written disclosure of the terms and condi-



tions of employment;

- Post information about worker protections at their worksite;
- Pay workers the wages owed when due and provide an itemized statement of earnings and deductions;
- Comply with the terms of any working arrangement made with workers; and
- Make and keep payroll records for three years for each employee

The U.S. Department of Labor enforces the MSPA. For more information, see its website at [www.dol.gov](http://www.dol.gov).

## Worker's Compensation Discrimination

(Also see section on Worker's Compensation.)

It is also against the law for an employer to fire or to discriminate against an employee for filing a worker's compensation claim.

## Sexual Harassment

Sexual harassment is a particular form of sex discrimination. The fact that no person should have to put up with sexual harassment, and that an employer is responsible for maintaining a workplace free of sexual harassment, began to be recognized by the law in the early 1980's.

### Have Any of These Things Ever Happened to You at Work?

- Someone said something sexual about how you look;
- Someone touched you sexually when you didn't want them to;
- Someone made sexual jokes or said sexual things that you didn't like; or
- Someone showed you or put up pornographic pictures.

In 1980, the Equal Employment Opportunity Commission (EEOC) (the federal employment discrimination enforcement agency), published its Guidelines on Sexual Harassment. These guidelines helped form the basis of sexual harassment law which has been developing

in state and federal courts since then. <http://www.eeoc.gov/policy/docs/sexualfavor.html>

Sexual harassment violates a law called the Civil Rights Act of 1964. The law tells us that:

- Sexual harassment is unwanted sexual attention at work. It includes touching you, saying sexual things to you, asking for sex, or making advances toward you.
- Sexual harassment is illegal if you have to go along with it to get or keep a job; or you have to go along with it to get a raise or a vacation, or to influence other decisions about your job; or the harassment is making it hard for you to work.

The EEOC defines sexual harassment as follows:

"Sexual harassment" is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (A) Submission to that conduct is made either explicitly or implicitly a term or condition of employment or academic advancement; or
- (B) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that 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 work or academic environment.

### Types of Sexual Harassment

**Hostile Environment.** A hostile environment consists of unwelcome sexual behavior, such as "jokes", cartoons, posters, banter, repeated requests for dates, requests for sexual favors, references to body parts, or physical touching that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Isolated acts that are not severe will not rise to the level of a hostile environment.

**Quid Pro Quo Sexual Harassment.** Another type



of sexual harassment is called "quid pro quo" harassment. It means that you are asked to perform sexual acts in return for a job benefit. For example, you will pass probation, get a promotion, get a good performance evaluation, not be written up for doing something wrong, etc, if you will engage in some type of sexual behavior.

**Gender Harassment.** The courts also recognize that behavior that is not based on sexual behavior, but is based on gender is also unlawful harassment. Typical examples would be comments such as "women are not brave enough to be police officers," "women should stay home and have babies and leave this type of work to real men", etc. These are all comments that demean women.

A few things of note about sexual harassment:

- The victim and/or the harasser can be a man or a woman.
- The victim does not have to be of the opposite sex of the harasser.
- The victim does not have to be the person harassed—she could be anyone affected by the offensive conduct.
- The victim does not have to have been fired to have a claim.

An employer will usually be held responsible for hostile environment harassment if it was caused by a supervisor (this might depend on the level of management authority of the supervisor). If the harassment is caused by a co-worker, the employer may be held liable if the employer knew or should have known of the harassment and failed to take prompt and appropriate action in response to this knowledge.

## **What to do about Discrimination or Harassment**

Generally, you have the burden to show that the employer has violated a law. You must supply some specific evidence--with names, approximate dates, and possible witnesses to the events -- that suggests unlawful discrimination has occurred. Keep your notes in a safe place at home, not in the office. If your employer's

personnel policies allow it, keep copies at home of your job evaluations and any letters or memos that show your good work (your boss may try to criticize your job performance later in order to defend his or her act of discrimination).

## **Laws**

**Title VII of the Civil Rights Act of 1964**, as amended, and the case law interpreting it is the basis for federal employment discrimination actions of sexual harassment and gender discrimination. States and localities have their own discrimination laws, as well, and these laws may provide coverage when federal laws do not.

The Equal Employment Opportunity Commission (EEOC) is the federal agency that protects you from discrimination based on disability, sex, race, color, national origin, religion, and age. Guidelines issued by the EEOC require employers to take certain actions to prevent discrimination in the workplace.

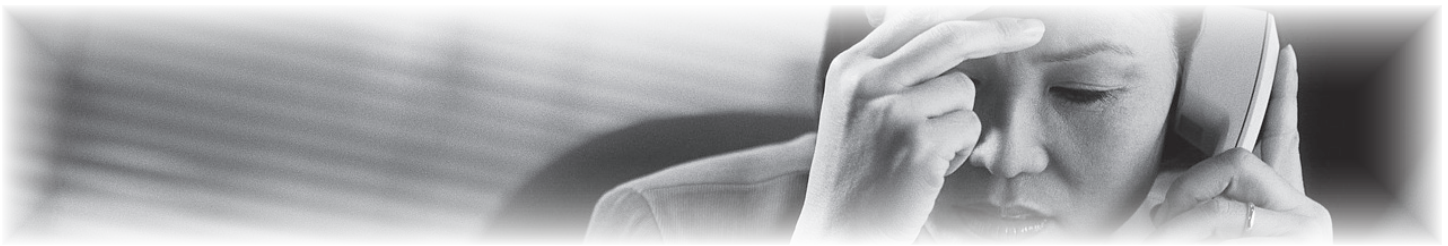
## **Options for Handling Discrimination in the Workplace**

Most people have several options of how to handle workplace discrimination. You are the only person who can decide which option is the right one for you.

1. Confront the person who is discriminating against you. Sometimes this works in cases of sexual harassment. Confronting the harasser and clearly telling him/her that the behavior is unwanted will sometimes stop the harassment. For example, "I do not want to hear any more of your dirty jokes. That is harassment." Or, "I have told you that I am not interested in dating you. If you ask me again, I will report you for harassment."

You probably know the person well enough to know if this will work. Sometimes, you may feel that it will only make things worse. You have to decide if you want to take this step. The law does not require you to confront your harasser.

2. Find out how other people have been treated. Talk to other workers to find out if they have had trouble at work disabilities and how they handled it. You may want to share information on your unfair

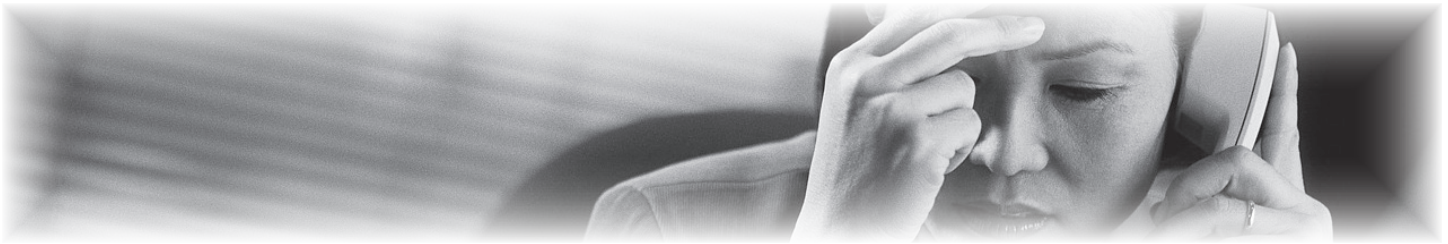


treatment and begin thinking of ways to improve working conditions at your company, including hiring, pay, promotion, work schedule, or termination practices.

- o A different law, the National Labor Relations Act, protects your right to meet together with other workers in an effort to improve your working conditions. For more information, contact the National Labor Relations Board (NLRB). **TOLL FREE NUMBER:** The Agency also has a toll free telephone number that offers a general description of the Agency's mission, referrals to other related agencies and access to an Information Officer based upon the caller's telephone number. A Spanish language option is also available. Toll free access is available by dialing: **1-866-667-NLRB (1-866-667-6572)** or (TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.
- 3. File a grievance with your union. Sometimes this type of behavior is covered by union contract. Check with your union to determine if they will file a grievance on your behalf. However, you should also consider how the union has reacted to these issues in the past. Did they support the person, most likely a woman, filing the grievance? Or, did they support the accused person.
- 4. Read the Sexual Harassment Policy in your manual. What options does it list? Usually, there is a person designated to receive complaints of sexual harassment or gender discrimination.
- 5. Report the behavior to your supervisor. If it is your supervisor who is harassing or discriminating against you, go to the next level in the chain of command to report it.
- 6. Report the behavior to the personnel or human resources person within your agency. They may be more equipped to deal with these situations.
- 7. Contact a higher-ranking woman in your organization and tell her about the situation.
- 8. File a complaint with the State Department of Labor and with the Federal Equal Employment Opportunity Commission. Filing a complaint in either of these places begins a formal process. First, your employer or agency will be notified and asked to respond to the complaint. Then, depending upon the response, an investigation will be conducted by the state or federal investigators. If your allegations are substantiated by the investigation, your agency will be given an opportunity to mediate the issues. If mediation fails, the state or federal agency may sue them. You also may obtain a Right to Sue letter from the state or federal agency and file a lawsuit on your own. Just remember, EEOC laws have strict time limits on filing a complaint, so you may need to act quickly. The time limit can be as short as 180 days from the date of the discriminatory action for filing with the U.S. Equal Employment Opportunity Commission (EEOC). You can find out where to file a charge with the EEOC at 1- 800-669-4000. You can file a charge even if you do not work for your employer anymore. If you have left your job because of how you were treated, you may be able to file a complaint about that.
- 9. Contact an attorney who specializes in Employment Discrimination. You can find attorneys by checking:
  - a. The yellow pages of your telephone directory
  - b. Your state or county Bar Association
  - c. The National Employment Lawyer's Association at [www.nela.org](http://www.nela.org)Most attorneys will talk to you about your case at no charge or a very small charge to determine if they want to represent you. Many attorneys will agree to a contingent fee arrangement on employment cases. This means that they will receive a percentage of the final award you obtain. If they lose, you are not required to pay them anything. Sometimes you are required to pay the costs up front, such as deposition transcription fees and court filing fees.

## Remedies

If you have been discriminated against on the basis of disability and you decide to take your case to court, you may be entitled to being hired, promoted, reinstated, receive back pay or other money, or reasonable accommodation including reassignment. You may also be entitled to money damages to pay for future financial losses, emotional pain, and the aggravation of having



to go to court to be treated fairly. Money damages that punish your employer may also be available, if your employer acted in ways intended to cause you harm. You may also be entitled to attorney's fees, expert witness fees, and court costs.

### Other Advice

1. Whether you decide to immediately file a complaint or not, be sure to keep a log or diary about what is happening to you. List dates, times, names of persons present, what happened and how you felt. This will become an important document when you do decide to file a complaint.
2. Talk to someone about what is happening to you. Sometimes, we tend to think we can handle it by ourselves, but that is not true. Talk to a friend, family member, counselor, or another trusted person.
3. Take care of yourself. When you are in a stressful situation, you need to make sure to get enough rest, exercise, and nutrition. Stress saps your energy and lowers your immune system.
4. Remember, you are not doing anything wrong! Being targeted for discrimination or harassment is not your fault! You have a right to work in an environment that is not hostile or demeaning.

## Gender Discrimination

Gender discrimination occurs when you are subjected to unequal treatment in the workplace on the basis of your gender. These are a few examples of the types of things that may constitute gender discrimination:

- Women are assigned to "traditionally women's jobs" and are prevented from being assigned to "traditionally men's jobs." These assignments are based on stereotypes of what types of work women are good at.
- Tests for promotions or other job opportunities that are not job related or represent a small part of the job duties that result in women not getting promoted at the same rate that men are promoted.
- Women receive more severe discipline than men do for similar misconduct. Or, women are disciplined for things for which men are not even investigated.

- Women are held to a higher or different level of performance on performance evaluations.
- Women are not given equal consideration for specialized training, conferences, specialty job assignments, etc.
- Pregnant women are not given light duty, but men who are injured off-duty are given these assignments.

## Retaliation

Title VII prohibits retaliation against an employee for filing a complaint of sexual harassment or gender discrimination or for complaining of sexual harassment or gender discrimination. This protection also applies to employees who cooperate with, or provide support to, an investigation into a claim of discrimination or harassment. However, you should realize you may be subjected to retaliation if you speak up. We are not trying to discourage you from complaining about discrimination; in fact, it may be helpful if more women would complain. However, we want you to be fully aware of the repercussions you may face.

## Equal Pay

In addition to a woman's right not to be subjected to unequal treatment in pay under Wyoming's Fair Employment Practices Act (**W.S. 27-4-302**) and Title VII of the federal Civil Rights Act of 1964, there is also a specific federal law called the Equal Pay Act of 1963 (EPA).

The **EQUAL PAY ACT of 1963 (EPA)** protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination. Although the Act protects both women and men from sex discrimination in pay rates, it was passed to help rectify the wage disparity experienced by women workers. And, in practice, this law has almost always been applied to situations where women are paid less than men for doing similar jobs.

This law provides that equal pay must be given for substantially equal work performed by women and men in the same company or government office. "Equal work" considers tasks requiring equal skill, effort, responsi-



bility, or training. Tasks should be substantially similar but need not be identical. For example, the pay for a female bookkeeper can be compared to that of a male bookkeeper working on a different ledger, but not to that of a male clerk.

The EPA does not apply to pay differences unrelated to sex. For example, it is legal to pay more according to seniority, merit, or productivity. The EPA covers most private employees and federal, state, and local government employees, including executive, administrative, and professional employees in companies engaged in commerce. “Commerce” has been interpreted broadly to cover nearly all employers. The EPA is administered by the EEOC, but unlike a Title VII claim, you may file an EPA suit directly in court.

Wyoming requires an employer not to discriminate, within the same establishment in which an employee is employed, between employees on the basis of gender by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite gender for equal work on jobs where the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions, except where the payment is made under (a) a seniority system, (b) a merit system, (c) a system measuring earnings by quantity or quality of production; or (d) a difference based on any other factor than gender.

## Fair Labor Standards Act

The **Fair Labor Standards Act of 1938 (FLSA)** provides fair labor standards for private companies involved in or providing services for interstate commerce, some retail and service establishments, and federal, state, and local governments. The exceptions include schools, hospitals, fire prevention, police protection, public health, parks, and recreation.

FLSA establishes minimum wage, overtime pay, record keeping, and child labor standards for full-time and part-time workers. Covered employees must be paid for all hours worked in a work week—the time an employee must be on duty or at the prescribed place of work.

Overtime pay must be at least one and one-half times the employee’s regular pay rate for each hour worked.

If you make a complaint, FLSA-authorized representatives will investigate, gather data about employment conditions or practices to determine compliance. If violations are found, the investigators may recommend changes in employment practices. Willful violations may be prosecuted criminally with fines, and a second conviction may result in imprisonment. Violators of child labor provisions are subject to a civil penalty for each violation. It is also a violation to fire or harass an employee for filing a complaint.

*See also W.S. 27-9-101 et seq.*

## Family and Medical Leave (FMLA)

The FMLA provides agencies with a starting point for developing leave policies. This law contains provisions on such issues as employer coverage, employee eligibility, entitlement to leave, maintenance of health benefits during leave, job restoration after leave, notice and certification of the need for FMLA leave, and protection for employees who request or take FMLA leave.

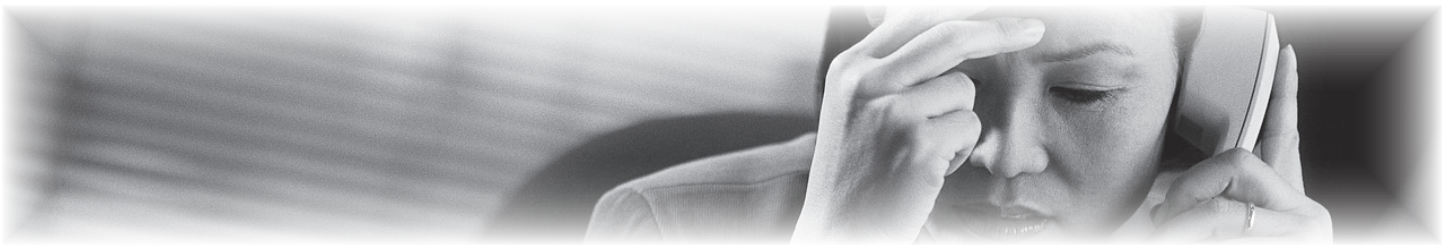
### FMLA Requirements:

The Family and Medical Leave Act of 1993 (FMLA) protects your job when serious illness strikes or when a new child needs to be cared for. The law says that if you:

- Have worked for the same company for at least 12 months; and
- Have worked at least 1,250 hours in the past year; and
- Work for a company with at least 50 employees, and there are 50 employees who work within 75 miles of your work site;

**FMLA Entitlements:** Then you are entitled to:

- Take a total of 12 weeks off work without pay (your company may provide some pay);
- Keep any health insurance you already had during the time you are off; and
- Get your old job back, or a job with equal pay, status and benefits, when you return.



You may choose to use, or your employer may require you to use, accrued paid leave to cover some or all of the FMLA leave taken. You may choose, or employers may require, the substitution of accrued paid vacation or personal leave for any of the situations covered by FMLA. The substitution of accrued sick or family leave is limited by your employer's policies governing the use of such leave.

**“Serious health condition”** means an illness, injury, impairment, or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- A period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- Any period of incapacity due to pregnancy, or for prenatal care; or
- Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- Any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

#### **Advance Notice and Medical Certification:**

You may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met. Ordinarily you must provide 30 days advance notice when the leave is “foreseeable.”

It is important that you give reasonable written notice to your employer that you want to take a leave, including when you want the leave to start and when you plan to return to work.

If you are taking a leave due to serious illness, your employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work. Your employer may request a letter from a physician explaining why you need to take a leave and for how long.

#### **Job Benefits and Protection:**

For the duration of your FMLA leave, your employer must maintain your health coverage under the “group health plan.” However, your employer can require you to pay the “employee's contribution” to those benefits, which is the amount that would normally come out of your paycheck.

Upon return from FMLA leave, you must be restored to your original or equivalent position with equivalent pay, benefits, and other employment terms. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of your leave.

#### **Unlawful Acts by Your Employer:**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA; or
- Discharge or discriminate against you for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

#### **Enforcement**

FMLA is enforced by the Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration. This agency investigates complaints of violations. If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance.



You may bring a civil action against your employer for violations. An employee is not required to file a complaint with the Wage and Hour Division prior to bring such action.

FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

### **What to do about an Employer's violation of the Family and Medical Leave Act**

- File a complaint with the Wyoming Attorney General's Office, Civil Rights Unit
- File a complaint with your county state's attorney.
- File a complaint with the Wyoming Human Rights Commission (only for employees of state agencies).
- File a complaint with the U.S. Department of Labor, Wage and Hour Division (under the Federal FMLA, if you work for an employer that has 50 or more employees).
- Consult with a private attorney.
- Contact the nearest office of the Wage and Hour Division, listed in the telephone directory under U.S. Government, Department of Labor.

### **Employment of Children**

No child in Wyoming under the age of 14 shall be employed at any occupation, except farm, domestic or lawn and yard services. **W.S. 27-6-107.**

No child in Wyoming under the age of 16 shall be employed to work (a) on heavy construction equipment, (b) in a position that requires contact or exposure to explosives or dangerous chemicals, or (c) hazardous jobs.

### **Drug Testing**

Wyoming recently amended a law providing for a premium discount on worker's compensation insurance for employers complying with a drug and alcohol testing program. Among other considerations to be included for the discount is whether the employer adopts and enforces policies establishing a drug-free workplace

which may include an employee assistance program to assist employees with alcohol or other drug problems. **W.S. 27-14-201 (o) (intro) and (o)(v) (2004).**

Workers' Compensation state law denies benefits to an employee who is injured or killed in an accident while intoxicated or under the influence of a controlled substance not prescribed by a health care provider.

Unemployment Compensation law provides that an individual is not entitled to the benefit of a valid claim until she has been employed in an employee-employer relationship and has earned at least twelve (12) times the weekly benefit amount of her current claim for services after that date, if the department finds she was discharged from her most recent work for misconduct connected with his work. **W.S. 27-3-311(f) (July 2004).**

Employers can require you to take a drug test if they have offered you a job and then make it contingent on your having a negative drug test. Don't worry if you are taking a prescription drug or over-the-counter drugs for treatment of an illness or condition, since these are not allowed to be included in the test results.

### **Covenants Not to Compete**

A covenant not to compete is an agreement between an employee and her employer that says that the employee will not become, or go to work for, a competitor when she leaves her current job. Courts have held that a well-drafted covenant not to compete preserves a careful and necessary economic balance in our society by protecting employers from former employees who misuse trade secrets or take customers from their former employer. This goal must be balanced with the need to protect employees from unfair restraints on competition which defeat broad policy goals in favor of small businesses and individual advancement. Whether a judge will enforce a covenant not to compete will depend on several factors. Covenants not to compete will not be enforced if they're found to be unreasonable. A covenant may be considered unreasonable if it:

- lasts for too long
- covers too wide a geographic area, or
- is too broad in the types of business it prohibits.



Courts have held that these agreements are enforceable, but they cannot unreasonably restrict a person's ability to earn a wage.

## **Occupational Safety and Health Act (OSHA)**

OSHA covers employers with ten or more employees and OSHA's mission is to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

### **To Contact:**

Main OSHA Office  
1510 E. Pershing Blvd. - West Wing  
Cheyenne, WY 82002  
Phone: 307-777-7786  
Fax: 307-777-3646  
E-Mail: [osha@state.wy.us](mailto:osha@state.wy.us)

## **Where to Get Help**

Wyoming Department of Employment, Labor Standards Program  
<http://wydoe.state.wy.us>  
1510 East Pershing Blvd., West Wing  
Cheyenne, WY 82002  
307-777-7261; or

Casper Local Office  
100 West Midwest  
P.O. Box 2760  
Casper, WY 82602  
307-235-3679

Office of Disability Employment Policy (ODEP)  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210  
1-866-633-7365  
1-877-889-5627 (TTY)

**Equal Employment Opportunity Commission:** You can file a charge with the EEOC at 1-800-669-4000. If your complaint is not filed on time, the EEOC may not be able to investigate it, and you may not be able to get any help. You can also file a charge with the Wyoming Department of Employment, Labor Standards Program at 307-777-7261 in Cheyenne or 307-472-3974 in Casper.

EEOC – Contact local offices listed in telephone directory under “U.S. Government, EEOC” or call 1-800-669-4000.

[www.eeoc.gov](http://www.eeoc.gov) (website available in English, Spanish, Arabic, Haitian Creole, Korean, Russian and Vietnamese)

OFCCP – Contact local offices listed in telephone directory under “U.S. Government, Department of Labor/OFCCP” or 1-866-4-USA-DOL or website at <http://www.dol.gov/esa/ofccp/index.htm>

Women's Bureau of the U.S. Department of Labor, Region VIII (Denver)  
1999 Broadway, Suite 1620  
P.O. Box 46550  
Denver, CO 80201-6550  
1-800-827-5335 or 303-844-1286  
(covers Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)



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