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Legislative Committee Services
State Capitol Building
Salem, Oregon 97301
(503) 986-1813

Background Brief on ...

Employment Law

Employee-employer relations are governed by a number of state and federal laws, as well as years of administrative and case law. Some laws affect only a small group of employers, while others apply to every employer – whether a private company, government agency, religious institution, or non-profit enterprise. The following is a short summary of some of the federal and state laws that affect the workplace in Oregon.

Affirmative Action

Affirmative action in Oregon is defined as “a method of eliminating the effects of past and present discrimination, intended or unintended, on the basis of race, religion, national origin, age, sex, marital status, or physical or mental disabilities” (ORS 243.305).

All state agencies are required to follow affirmative action plans as defined by state law; private employers are not required to adopt affirmative action plans. The state has separate affirmative action laws in the areas of state personnel practices; public contracting; executive appointments; higher education recruitment and retention of minority students, faculty and staff; community colleges; and economic development.

Employment Civil Rights Laws

Employment discrimination laws seek to prevent discrimination by employers based on race, color, sex, religion, national origin, disability, or age or association with a protected class, as well as retaliation for employees filing or supporting discrimination complaints, and employees serving in the military. Both state and federal laws provide protection for employees, with some differences, mainly in the size of business to which the laws apply. State law also provides protection for additional reasons including marital status, family relationship, injured workers, sexual orientation and

and gender identity, and income sources in regard to fair housing.

The Civil Rights Division of the Bureau of Labor and Industries (**BOLI**) is charged with enforcing state laws to ensure job seekers and employees have equal access to jobs, career schools, promotions, and a work environment free from discrimination and harassment. BOLI maintains a [list](#) of federal and state protections.

Although not specifically addressed in state law, a number of local jurisdictions in Oregon have adopted ordinances that prohibit discrimination based on sexual orientation and/or gender identity.

Wage and Hour Laws

Employers are required to follow laws covering the state and federal minimum wage, overtime requirements, working conditions, child labor, farm and forest labor contracting, and wage collection. Generally, when state and federal laws apply, employers are required to comply with the law that is most beneficial to the employee. BOLI enforces these laws through its Wage and Hour Division, and also regulates the employment of workers on public works projects (see the *Public Contracting* Background Brief for information on prevailing wage rates).

Employers are required by both federal and state laws to post certain employment-related information about employment laws in their workplaces.

Employment of Minors

Oregon statute defines a “minor” as anyone under the age of 18. In most circumstances, a minor must be at least 14 years old to work in Oregon, and an employer who hires minors must obtain an annual employment certificate from BOLI. Exemptions to child labor laws are made for minors working on an entertainment production (i.e., film or play), newspaper delivery, or performing domestic work (e.g., lawn mowing or babysitting) in a private residence. Minors working on a farm are covered under a separate set of laws (see the

Farmworker Labor Background Brief for more information).

Minors are protected by the same employment laws that protect adults, including anti-discrimination, minimum wage, overtime, and meal and break laws. However, there are a few limitations and accommodations depending on the age of the minor.

Fourteen- and fifteen-year-old minors are restricted from performing job duties that are in or around most kinds of power-driven machinery or at construction sites, warehouses, or other locations where power-driven machinery is used. Exceptions are made for specific types of work experience/student-learner programs. All minors are prohibited from operating most types of power-driven machinery and tasks that involve exposure to dangerous worksites (e.g. mines and areas containing radioactive substances).

The maximum amount of working hours depends on the minor’s age and the time of year. There are no limits on the number of hours that 16- and 17-year-olds can work in a day, but they are limited to working 44 hours per week. Fourteen- and 15-year-old minors cannot work during school hours, and cannot work more than three hours on a school day or more than eight hours on non-school days; nor can they work more than 18 hours per week during the school year and 40 hours per week when school is not in session. The hours in which work can be performed are limited to 7:00 a.m. to 7:00 p.m. during the school year and 7:00 a.m. to 9:00 p.m. between June 1st and Labor Day.

Meal and Rest Breaks

Oregon statute provides the Commissioner of Labor with rulemaking authority regarding meal and rest periods. Employers are required to provide meal and rest breaks to employees unless exempt. While the federal Fair Labor Standards Act (**FLSA**), which covers most Oregon employees, does not require such breaks, employers must comply with the law that is most beneficial to the employee, which in this circumstance is Oregon law. Employees that are statutorily exempt from minimum wage

and overtime are also exempt from rest and meal period requirements.

The basic requirements for meal periods is no less than 30 minutes for adult non-exempt employees who work at least six hours in one work period¹, with additional meal periods to be provided to employees who work more than 14 hours in a work period, with a maximum of three meal periods if the employee's work period is between 22 and 24 hours. Meal periods are not required for employees whose work period is less than six hours. The meal period is required to take place between the second and fifth hour worked during a six-hour work period, or between the third and six hour worked if the work period is more than seven hours. The employer does not have to pay for a meal period.

Exemptions are made for specific circumstances such as: unforeseeable equipment failures, acts of nature, or other exceptional and unanticipated circumstances; industry practice or custom has established a paid meal period of less than 30 minutes but no less than 20 minutes; providing a 30-minute, unpaid meal period where the employee is relieved of all duties would impose an undue hardship of the employer's business operations; or if the employee is a tipped food beverage server who has voluntarily waived their meal period under specific established conditions.

Employer-paid rest breaks of no less than 10 minutes must be given for every segment of four hours or "major part thereof" (two hours and one minute through four hours), and must be taken in addition to and separately from required meal periods. The rest period should be taken as nearly as possible in the middle of the work segment, and employers are prohibited from allowing employees to add the rest period to a meal period or deduct rest periods from the beginning or end of an employee's work shift.

¹ The time an employee starts and ends work, including all rest breaks and any period of up to an hour that isn't designated as a meal period in which the employee is relieved of all duties.

Employers with at least 25 employees are also required to provide reasonable unpaid rest periods to accommodate an employee who needs to express milk for her child. The employer must make a reasonable effort to provide a private location within close proximity to the employee's work area for expressing milk. A "private location" does not include a public restroom or toilet stall.

Minimum Wage

The federal minimum wage is the default wage for all states, but a state may choose to set a minimum wage above or below the federal rate. States may also set a different minimum wage rate for certain specific occupations or employee classes not covered by the federal rate. The current federal minimum wage, set in 2009, is \$7.25 per hour.

In 1996, Oregon voters approved a ballot measure to increase the state hourly minimum wage from \$4.75 to \$6.50 over a 3-year period. In 2002, Oregon voters approved a ballot measure to increase the state minimum wage to \$6.90, with future increases tied to inflation. For 2014, the state minimum wage is \$9.10. Only Washington and the District of Columbia have a higher rate, \$9.32 and \$9.50, respectively.

As of June 2014, 22 states and the District of Columbia have a minimum wage above the federal level, 19 states set their minimum wage the same as the federal rate, four states have a minimum wage below the federal rate, and five states have not established a state minimum wage. Twelve states and the District of Columbia, like Oregon, have linked their state minimum wage to the consumer price index or a cost of living formula. Eleven states have linked their state minimum wage to the federal rate.

There are many exceptions to the minimum wage law (ORS 653.020). Examples include professional salaried employees, and employees of specific occupations such as certain types of agricultural workers, taxicab operators, in-home care providers, and volunteer firefighters.

Oregon's minimum wage is the same for tipped and non-tipped workers. Many states provide a level of "tip credit," meaning that employers may reduce a tipped worker's minimum wage.

Final Paychecks

If an employee is fired or employment is terminated by mutual agreement, all earned wages are due no later than the end of the first business day after discharge or termination. Employees who quit have different timeframes for receiving final wages: the last working day (excluding weekends and holidays) if an employee gives at least 48-hour notice; or either five days (excluding weekends and holidays) or the next payday, whichever occurs first, if 48-hour notice is not provided.

Employees who are owed final wages from an employer who closes their business and does not have sufficient funds to pay the wages can file a wage claim against the Oregon Wage Security Fund. Workers can receive payments for the amount earned during the 60 days preceding the business's closure date or amount of unpaid wages earned within 60 days of the last day of employment, with a maximum benefit of \$4,000. Benefits are only for unpaid wages and do not cover any form of accrued leave or benefits; FICA taxes (social security and Medicare) and state and federal income taxes are deducted from the worker's benefit amount.

Family and Military Leave

In 1993, Congress enacted the Family and Medical Leave Act (**FMLA**) that requires companies with 50 or more employees to allow eligible employees to take up to 12 weeks unpaid leave per year for the birth, adoption, or placement of a child; prenatal care or a pregnancy disability; care for their own or an immediate family member's serious health condition; or address a qualifying exigency arising from a family member's deployment. Eligible employees can take up to 26 weeks care for a seriously injured or ill service member in the family. To be eligible for FMLA leave, an employee must have worked for an employer for at least 12 months and at least 1,250 hours during the 12-month period.

Oregon lawmakers passed separate parental leave, pregnancy leave, and family leave laws in the 1980s and consolidated them in 1995 as the Oregon Family Leave Act (**OFLA**). The Act requires employers of 25 or more employees to provide eligible workers with up to 12 weeks unpaid leave per year to care for themselves or family members² in cases of death, illness, injury, childbirth or adoption. Women taking any pregnancy disability leave are allowed an additional 12 weeks for any OFLA purpose, and a parent who has taken a full 12 weeks of parental leave can take up to an additional 12 weeks leave to care for a child with a non-serious health condition that requires home care. To be eligible for OFLA leave to care for a newborn or newly adopted child, employees must have been on the job at least 180 days. For all other OFLA leave benefits, workers must have been employed at least 180 days and also have worked at least an average of 25 hours a week during the 180-day time period.

OFLA requires an employee returning from family leave to be restored to their previously held position or to an equivalent job if the former position no longer exists. Employees are required to give 30-day notice in advance to the employer when taking leave unless notice is impracticable. There is no requirement that family leave is paid, but employees must be allowed to use any accrued paid leave. Employers can determine the order in which the leave is to be used.

For employees who are covered under both OFLA and FMLA, employers are required to provide leave according to the law that is most beneficial to the employee. OFLA allows leave to be taken for more purposes than allowed under FMLA. Therefore, leave taken under OFLA that is not allowed under FMLA (e.g., bereavement leave) cannot be counted against the employee's 12-week FMLA entitlement.

² Spouse; same sex domestic partner; biological, adoptive, or foster parent or child; grandparent or grandchild; parent-in-law; or person with whom the employee was or is in a relationship of in-loco parentis.

The Oregon Military Family Leave Act (**OMFLA**) requires employers to provide up to 14 days of unpaid leave to an employee who is a spouse or same sex domestic partner of an active duty member of the military. The employee is entitled to 14 days of leave per deployment to be taken before deployment and/or during leave from deployment.

The employee can use accrued paid leave and must provide the employer notice within five days of receiving the call to duty or leave from deployment. Leave taken under OMFLA is to be included in the 12 weeks of OFLA leave. Employers cannot deny qualified employees from this type of leave or discriminate or retaliate because an employee has inquired about or submitted a request for military family leave. In order to qualify, an employee must have worked an average of at least 20 hours per week. Employers of 25 or more workers are subject to OMFLA.

Federal law requires employers to provide military leave for non-temporary employees for military training, service, or examination; and to guarantee job reinstatement rights for returning veterans in most cases. All employers are covered under this law.

In order to qualify for reinstatement, reservists and guardsmen returning from training must inform their employer of their training obligations and report back at the next regularly scheduled working period. Veterans and reservists who are returning from active duty must notify their former employer of their intention to resume their former job within 90 days of their release from duty. The returning veteran cannot have served more than five years on active duty since leaving the job to which the veteran requests reinstatement; there is no limit on the time a reservist spends in training.

The veteran or reservist must be reemployed in the same position of “like seniority, status, and pay” as if they had remained on the job instead of performing military service, with an alternative position of like seniority, status, and pay to be given to a returning veteran who is physically disabled (due to their military

service) from performing the former job. Furthermore, pay and fringe benefits may not be reduced and denied due to military leave.

Oregon Safe Employment Act

The Oregon Occupational Safety and Health Administration (**OR-OSHA**) of the Department of Consumer and Business Services administers the Oregon Safe Employment Act of 1973 (**OSEA**). The OSEA requires that employers provide safe and healthy workplaces for their employees and ensures that workers have the necessary training and equipment to do their jobs safely. Employers are required to post a notice from OR-OSHA that outlines employees’ rights under the OSEA.

OR-OSHA enforces minimum occupational safety and health standards for all industries. The division conducts unannounced inspections and accident investigations to determine if the employer is in compliance with safety and health requirements. OR-OSHA may issue citations with civil penalties to employers who violate OSEA requirements. Additionally, OR-OSHA requires employers to correct identified hazards, and may stop work on worksites that pose an imminent danger to workers.

OR-OSHA provides consultations and training at no cost to Oregon employers to assist them in complying with occupational safety and health requirements. The division operates a resource center and library of training videos, periodicals, and research publications.

No employer may bar or discharge from employment or otherwise discriminate against employees or prospective employees because they have opposed unsafe or unhealthy working conditions, or have complained or assisted in an occupational safety and health proceeding under state law. Employees may file civil rights complaints or civil suits if they believe that an employer has discriminated against them because they opposed safety or health hazards. An individual alleging such discrimination must file a complaint with BOLI’s Civil Rights Division within 90 days of the time that the individual had reason to believe that an illegal action under this statute occurred.

Whistleblowing

Public employers have long been prohibited from taking action against or prohibiting employees from responding to requests from legislators or legislative committees; or disclosing information that the employee believes is evidence of violating any federal or state law, rule, or regulation, mismanagement, gross waste or misuse of public resources or funds, abuse of authority regarding the administration or execution of a public program or public contract, or public endangerment resulting from an action by their employer. Legislation enacted in 2009 extended similar whistleblower protections to employees in the private sector who have reported, in good faith, evidence of a violation of state or federal law, rule, or regulation. An employee who believes their employer has violated the law may file a complaint with BOLI or file a civil action in court.

Legislative Branch. Committee Services does not provide legal advice. Background Briefs are intended to give the reader a general understanding of a subject, and are based on information which is current as of the date of publication. Legislative, executive, and judicial actions subsequent to publication may affect the timeliness of the information.

Staff and Agency Contacts

Jan Nordlund
Legislative Committee Services
503-986-1557
jan.nordlund@state.or.us

[Governor's Office of Diversity and Inclusion](#)
503-986-6524

Bureau of Labor and Industries
[Civil Rights Division](#)
971-673-0764

[Wage and Hour Division](#)
971-673-0844

[Technical Assistance for Employers](#)
971-673-0824

Department of Consumer and Business Services
[OR-OSHA](#)
800-922-2689

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