



2016: The Year Ahead for Employers in Oregon

LEGISLATIVE UPDATE

Paid Sick Leave – Effective January 1, 2016, private-sector employers throughout the state are now required to implement sick time policies or ensure that existing leave benefits meet or exceed the minimum benefits set forth in Oregon’s new Sick Leave law. Employers with operations outside of Portland, but who have at least 10 employees working in the state, will be required to provide employees up to 40 hours of paid sick leave per year. Employers with Portland operations and who employ at least six employees anywhere in the state will similarly be required to provide up to 40 hours of paid sick leave benefits. Employers with fewer than 10 Oregon-based employees, and fewer than six employees, if operating in Portland, must provide up to 40 hours of unpaid sick leave per year.



All employees, regardless of whether they are temporary, part-time, full-time, salaried, or paid on a commission basis, are entitled to benefits. Employees generally must accrue sick leave at the minimum rate of one hour for every 30 hours worked. Alternatively, employers may “frontload” or credit eligible employees with a minimum of 40 hours of leave at the beginning of each year. New employees have the right to use protected sick leave beginning after their 90th calendar day of employment.

The new law extends well beyond traditional sick leave. Leave may be taken not only for an employee’s own illness, injury, or preventive medical care, but also for a qualifying family member’s similar needs. Additionally, sick leave may be taken for absences resulting from workplace or school

closures, or for reasons related to domestic violence, sexual assault, or stalking that affect the employee or the employee’s family members. Further, sick leave may be taken for traditional “baby bonding leave” to care for an infant or newly adopted child. Finally, sick leave may be taken to grieve the death of a family member, to make funeral arrangements, or to make arrangements necessitated by a family member’s death.

Non-Compete Agreements – All valid non-competition agreements with Oregon employees that are entered into after January 1, 2016, must be limited in time to 18 months from the date of the employee’s termination – thus, shortening the previous two year limitation time.

Ban the Box – In 2015, Oregon passed “Ban the Box” legislation, which bars employers from asking applicants about criminal histories on job applications (the referenced “box” that is banned is the “yes” or “no” box an applicant must check in response to an inquiry about criminal history). As of January 1, 2016, Oregon businesses cannot include such a question during preliminary hiring stages, but they do have permission to ask about an applicant’s criminal history during the interview process.

Employers that are required by federal, state, or local laws to consider an applicant’s criminal history (e.g., schools, law enforcement, criminal justice, etc.) are still permitted to make such inquiries. The majority of Oregon employers, however, will need to review their job applications to make sure the criminal history questions are stricken.



Updated Social Media Protections – As of January 1, 2016, it is unlawful for an employer to: 1) require an employee or applicant to establish or maintain a personal social media account; 2) require an employee or applicant to allow an employer to advertise on a personal social media account; and 3) refuse to hire an applicant or to take any negative employment action against an employee for failing to do one or both of these two things. The new social media law expands protections for employees. An earlier version of the statute already prohibited employers from requiring disclosure of social media account user names and passwords or requiring access to personal social media accounts. Consistent with the current law, an employer is authorized to conduct investigations and access the public sections of a social media account as long as the employer does not require the disclosure of a password to access private sections of the account.

Portland Ban-the-Box to Take Effect – Beginning on July 1, 2016, Portland will take its Ban-the-Box law a few steps further. Not only will covered businesses (those with 6 or more employees) be barred from including such questions on their job applications, but such questions cannot be asked during the job interview or at any point before a conditional job offer is made. Under the new law, employers cannot inquire about or even access an applicant’s criminal history from any other source before making a “conditional offer of employment.” If an employer learns of an applicant’s criminal background after making the conditional job offer, the new law states that an employer can rescind the offer after determining that rejecting the applicant would be job related and consistent with business necessity.

OFLA Updates – An OFLA (Oregon Family Leave Act) covered employer that provides group health plan coverage will be required to continue offering an employee the same coverage (including any coverage provided to spouses and dependents of the employee), while the employee is on OFLA leave, in the same manner as if the employee had continued to work. The employee must continue to make any regular contributions to their monthly premiums. This has already been the requirement since 1993, for leave covered under the federal Family and Medical Leave Act (FMLA). However, as of January 1, 2016, this requirement also applies to leaves that are covered by OFLA.



Pay Discussions and Disclosures – Oregon employers are now prohibited from disciplining an employee who shares wage information. ORS 659A.355 provides that it is an unlawful employment practice for an employer to discharge, demote or suspend, or to discriminate or retaliate against, an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee has: 1) Inquired about, discussed or disclosed in any manner the wages of the employee or of another employee; or 2) Made a charge, filed a complaint or instituted, or caused to be instituted, an investigation, proceeding, hearing or action based on the disclosure of wage information by the employee. The law provides a carve out for those employees who have access to wage information as part of their job function. Oregon joins a growing list of states to prohibit employers from discharging, disciplining, or otherwise discriminating against an employee because the employee discloses the amount of his or her wages or salary. Employers should review their policies and procedures to ensure that discussing wages is not prohibited.

Amendment to Oregon’s Domestic Violence Leave Act – Employees have the option of using all available vacation time while on leave. As of January 1, 2016, employees may also use sick and personal time.

Oregon’s Clean Air Act – Oregon’s Indoor Clean Air Act (ICAA) protects nearly every Oregonian from the health risks of secondhand smoke. The ICAA, also known as the Smokefree Workplace Law, prohibits smoking in the workplace and within 10 feet of all entrances, exits, and accessibility ramps that lead to and from an entrance or exit, windows and air-intake vents. Effective January 1, 2016, the ICAA included the use of “inhalant delivery systems,” which are devices that can be used to deliver nicotine, cannabinoids and other substances in the form of a vapor or aerosol. These include e-cigarettes, vape pens, e-hookah and other devices. In addition, “No smoking or vaping” signs will be required to be posted at all entrances and exits.

Medical And Recreational Marijuana – House Bill 3400, which took effect on June 30, 2015, made it clear that employers may still choose to maintain a zero-tolerance drug policy, since it confirms that nothing in the Oregon Medical Marijuana Act requires an employer to accommodate the medical use of marijuana in the workplace, and that Ballot Measure 91 (pertaining to recreational marijuana) “may not be construed ... to amend or affect state or federal law pertaining to employment matters.” However, it is advisable to revise your handbook or drug policies to specifically list marijuana under “prohibited legal drugs,” if that is your intent.

MORE INFORMATION

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