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

Background Brief on ...

# Employment Law

*Prepared by: Janet Adkins*

## Background

Employee-employer relations are governed by a myriad 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 following areas: state personnel practices; public contracting; executive appointments; higher education recruitment and retention of minority students 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, as well as protection from retaliation for employees filing or supporting discrimination complaints. 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, and injured workers. The Bureau of Labor and Industries' (BOLI) Civil Rights Division 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.

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.

BOLI maintains a summary list of federal, state, and local protected classes and the size of business to which the laws apply – see <http://egov.oregon.gov/BOLI/TA/ProtectedClassesOverview.pdf>

## Wage and Hour Laws

Employers are required by both federal and state laws to post certain employment-related information about employment laws in their workplaces. Employers are also required to follow laws covering the state and federal minimum wage (see discussion below), 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 (prevailing wage).

## Minimum Wage

The federal minimum wage is the default wage for all states, unless the state chooses to set a minimum wage above the federal rate. States may also set a different minimum wage rate for certain specific occupations not covered by the federal rate. The current federal minimum wage is \$5.15 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 three-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 2007 the state minimum wage is \$7.80.

There are exceptions to the minimum wage law (ORS 653.020). “White collar” (executives, administrative, and professional) employees paid a salary are exempt, as are employees of specific occupations, such as certain 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.

<b>Top State Hourly Minimum Wages 2007</b>	
Washington	\$7.93
Oregon	\$7.80
Connecticut*	\$7.65
Massachusetts* (\$8.00 in 2008) California (\$8.00 in 2008)	\$7.50
Hawaii* Vermont*	\$7.25
Alaska New York * New Jersey*	\$7.15
Rhode Island*	\$7.10
District of Columbia	\$7.00

\* State has some form of tip credit

## Family Leave

In 1993, Congress enacted the Family and Medical Leave Act (FMLA), which requires companies with 50 or more employees to allow eligible employees to take up to 12 weeks unpaid leave per year to care for a newborn or newly adopted child, to care for certain seriously ill family members, or to recover from their own serious health conditions. An employee is entitled to his or her former job or an equivalent job upon return from FMLA leave.

Oregon lawmakers passed separate parental leave, pregnancy leave, and family leave laws in the 1980’s and consolidated them in 1995 as the Oregon Family Leave Act (OFLA). It requires employers of 25 or more employees to provide eligible workers with up to 12 weeks leave to care for themselves, family members, or same sex partners in cases of illness, injury, childbirth or adoption. 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. Oregon's family leave law 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.

There are a few situations, such as sick child leave and leave to care for a parent-in-law, where OFLA provides for leave and FMLA does not. Employers are required to provide leave according to the law that is most beneficial to the employee.

### **Oregon Safe Employment Act**

The Oregon Occupational Safety and Health Division (**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 ensure that workers have the necessary training and equipment to do their jobs safely.

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 no-cost consultative and training services 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.

### **Unemployment Insurance**

*(see Unemployment Insurance Background Brief)*

### **Workers' Compensation**

*(see Workers' Compensation Background Brief)*

### **Staff and Agency Contacts**

Janet Adkins, Legislative Committee Services  
503-986-1813

Governor's Office of Affirmative Action  
503-373-1224

Bureau of Labor and Industries  
Civil Rights Division  
503-971-673-0764  
Wage and Hour Division  
971-673-0761

Department of Consumer and Business Services  
OR-OSHA  
800-922-2689

Oregon Employment Department  
800-237-3710