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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 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 locally protected classes and the size of business to which the laws apply on their [website](#).

## **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 *Minimum Wage* section), 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 wages).

## **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.

Minors are by and large 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. For instance, fourteen

and 15 year old minors must be fully relieved of work duties during a meal period and a limitation of the types of jobs that they can perform. Sixteen and 17 year olds are allowed to work through a meal period when business conditions require such, but only if they are paid for the meal period; and are restricted only from jobs that entail the use of some machinery, explosives, radioactive substances, mining and logging operations, and motor vehicles (17 year olds can drive under certain circumstances).

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, and 18 hours per week during the school year and 40 hours per week when school is not in session. They are also limited on when work can be performed; 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 1<sup>st</sup> and Labor Day.

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 (i.e. lawn mowing or babysitting) in private residence. Minors working on a farm are covered under a separate set of laws (see the *Farmworker Labor* Background Brief for more information).

## **Meal and Rest Breaks**

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.

The basic requirements for meal periods is no less than 30 minutes for non-exempt employees who work at least six hours in one work period, 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 to 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 sixth hour worked if the work period is more than seven hours.

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; proceeding 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. Public employees that are statutorily exempt from minimum wage and overtime are also exempt from rest and meal period requirements.

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. Employers are not required to provide a rest period to an employee if the employee is over the age of 18, works less than five hours in any period of 16 continuous hours, works alone, employed in a retail or service establishment, and the employee is allowed to their assigned station when they must use the restroom facilities.

Employers with at least 25 employees are also required to provide nursing mothers with additional unpaid rest periods and must make a reasonable effort to provide with a private location within close proximity to the

employee's work area for expressing milk. A "private location" cannot include a public restroom or toilet stall, but must be an area where the employee is concealed from view and is free from possible intrusion by other employees or the public.

### **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 \$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 2010, the state minimum wage is \$8.40. Nine other states have minimum wages that are linked to either inflation or the consumer price index. 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 types of agricultural workers, taxicab operators, in-home care providers, volunteer firefighters, and nonprofessional ski patrollers and certain volunteers who perform services related to races sponsored by nonprofit corporations.

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 Wage – January 2010</b>	
Washington <sup>^+</sup>	\$8.55
Oregon <sup>^</sup>	\$8.40
Connecticut* District of Columbia <sup>^</sup>	\$8.25
Vermont <sup>^*</sup>	\$8.06
Massachusetts* # California Illinois* <sup>+</sup> (\$8.25 on 7/2010)	\$8.00
Alaska	\$7.75
Nevada <sup>^</sup>	\$7.55
New Mexico (\$9.85 in Santa Fe) Maine*	\$7.50
Rhode Island* Michigan <sup>*,+</sup>	\$7.40
Ohio <sup>^*,+</sup>	\$7.30

<sup>^</sup> minimum wage tied to inflation, consumer price index (CPI) or Fair Minimum Wage Act of 2007

\* has some form of tip credit

<sup>+</sup> allows minors to be paid less than minimum wage, training wage for specified period of time, or for employers with low gross profits

# allows agricultural employees to be paid less than minimum wage

## 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 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 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 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, grandparent, or grandchild, 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.

Federal law requires employers to provide military leave for employees in regards to military or to comply with reserve training operations, and to guarantee job reinstatement rights for returning veterans in most cases. All employers are covered under this law.

In order to qualify for military leave, 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 of duty. The returning veteran cannot have served more than five years on active duty since leaving the job to which the veteran requests reinstatement, with no time limit on the amount of 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.

The Oregon Military Family Leave Act allows a spouse of a military member who has been called or ordered to active duty or deployment is entitled to take a total of 14 days of unpaid leave per deployment and/or during leave from deployment. 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.

### **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 ensures 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.

### **Whistleblowing**

For years, public employers were 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.

Employees in the private sector are also protected when reporting law or health and safety violations.

### **Unemployment Insurance Workers' Compensation**

See the *Unemployment Insurance and Workers' Compensation* Background Briefs.

### **Staff and Agency Contacts**

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[Civil Rights Division](#)

971-673-0764

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