



LPRO: Legislative Policy and Research Office

EMPLOYMENT LAW

BACKGROUND BRIEF

Employee-employer relations are governed by state and federal laws, as well as administrative rules 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 nonprofit enterprise. Likewise, some laws apply to all employees while others apply only to certain employees. The following is a short summary of some of the federal and state laws that affect Oregon workplaces.

EMPLOYMENT CIVIL RIGHTS

Employment discrimination laws seek to prevent discrimination by removing race, color, religion, sex, sexual orientation, national origin, marital status, age or disability as standards for employment or barriers to employment. In addition, the laws provide a remedy for persons who are discriminated against or suffer retaliation for filing or supporting discrimination complaints.

The Civil Rights Division of the Bureau of Labor and Industries (**BOLI**) is charged with

enforcing these 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. Individuals alleging a civil rights violation can file a complaint with BOLI or take their case to court.

HIRING

As of January 1, 2016, an employer may not ask about a job applicant's criminal convictions on an employment application, nor may they exclude an applicant from an initial interview based solely on the applicant's past criminal convictions. An employer may ask about the candidate's criminal convictions during an interview. If no interview is conducted, the employer may ask about criminal convictions only after making a conditional job offer. An employer can base a hiring

decision on an applicant's criminal history so long as the information was not obtained prior to the interview or, when no interview is conducted, prior to a conditional job offer.

CONTENTS

EMPLOYMENT CIVIL RIGHTS

HIRING

EMPLOYMENT OF MINORS

WAGE AND HOUR LAWS

MEAL AND REST BREAKS

MINIMUM WAGE

PAYMENT OF WAGES

FAMILY LEAVE

SICK LEAVE

MILITARY LEAVE

WORKPLACE SAFETY

WHISTLEBLOWER PROTECTION

AFFIRMATIVE ACTION

STAFF CONTACT



EMPLOYMENT OF MINORS

Oregon statute defines a “minor” as anyone under the age of 18. In most circumstances, a minor employee must be at least 14 years old, and an employer who hires a minor must first obtain an annual employment certificate from BOLI. 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.

Minors who are 14 or 15 years old 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 and 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 number of hours a minor may work depends on the minor’s age and whether school is in session. During the school year, minors who are 14 or 15 years old cannot work during school hours, cannot work more than three hours on a school day and are limited to 18 hours per week. During summer break, these minors cannot work more than eight hours a day or more than 40 hours per week. 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. There are no limits on the number of hours in a day that minors who are 16 or 17 years old can work, but they are limited to working 44 hours per week.

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 payment. Generally, when both 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. Employees alleging a violation can file a claim with BOLI or, for certain violations, can take their case to court. Employers are required by federal and state laws to post information about employment laws in their workplaces. BOLI provides [technical assistance](#) to employers who have questions about the application of, and compliance with, employment laws.

MEAL AND REST BREAKS

Oregon statute provides the BOLI Commissioner with rulemaking authority to set requirements for meal and rest periods. Employers are generally required to provide meal and rest breaks to employees, although there are exemptions. Employees who 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 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 and 24 hours. Meal periods are not required for employees whose work period is less than six hours. The employer does not have to pay for a meal period.



EMPLOYMENT LAW

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

Employees must receive a rest break of at least 10 minutes (15 minutes for minors) for every segment of four hours or "major part thereof" worked, and the break must be taken in addition to and separately from required meal periods. Unlike meal periods, rest breaks must be paid by the employer. 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 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 (which may not include a public restroom or toilet stall) within close proximity to the employee's work area for expressing milk.

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 2002, Oregon voters approved a ballot measure to increase the state minimum wage to \$6.90, with annual increases tied to inflation. Due to the inflation adjustments, the minimum wage increased to \$9.25 by January 2016. The legislature moved away from a statewide minimum wage in 2016 and instead set minimum wages for three geographic regions and phased in increases over a seven-year period, with increases occurring on July 1 of each year, as shown in the table below.

	Urban Counties	Portland Metro UGB	Nonurban Counties
July 2016	\$9.75	\$9.75	\$9.50
July 2017	\$10.25	\$11.25	\$10.00
July 2018	\$10.75	\$12.00	\$10.50
July 2019	\$11.25	\$12.50	\$11.00
July 2020	\$12.00	\$13.25	\$11.50
July 2021	\$12.75	\$14.00	\$12.00
July 2022	\$13.50	\$14.75	\$12.50
Following years	CPI adjusted	Urban plus \$1.25	Urban less \$1.00

There are many exceptions to the minimum wage law listed in 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, along with six other states, requires the same minimum wage rate for tipped and non-tipped workers. The remaining states allow a "tip credit" against the minimum hourly rate, meaning that employers may count a limited amount of the worker's tips toward the minimum wage.



PAYMENT OF WAGES

Employers are required to set and maintain a regular payday schedule. Beginning January 1, 2017, employers are required to provide specified information on the employee's paystub that includes information about the employer (name, address, business identification number); the number of hours worked and rate of pay, including overtime and piece-rate information, if applicable; the gross and net pay; and the amount and purpose of each deduction. The employer may provide the paystub in an electronic format only if the employee expressly agrees and if the employee is able to store and print the paystub.

An employer may not discriminate or retaliate against an employee who asks about or discusses their own or a co-worker's wages or who makes a charge or files a complaint based on the disclosure of the wage information.

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. An employee who quits with 48-hour notice must be paid on the last working day, but if less notice is provided, the employer has five days (excluding weekends and holidays) or the next payday, whichever occurs first, to provide the final paycheck.

Employees owed final wages from an employer who closes the 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 a maximum benefit of \$4,000 from the Fund. Benefits are only for unpaid wages and do not cover any accrued leave or benefits; state and federal taxes are deducted from the worker's benefit amount.

FAMILY LEAVE

The federal Family and Medical Leave Act (**FMLA**) requires companies with 50 or more employees to allow eligible employees to take up to 12 weeks of unpaid leave per year for the birth, adoption or placement of a child; prenatal care or a pregnancy disability; to care for their own serious health condition or that of an immediate family member; or for qualifying exigency arising from a family member's military deployment. Eligible employees can take up to 26 weeks of unpaid leave to 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.

The Oregon Family Leave Act (**OFLA**) requires employers of 25 or more employees to provide eligible workers with up to 12 weeks of unpaid leave per year to care for themselves or family members 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. Leave to deal with the death of a family member is limited to two weeks per family member. 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 his or her



EMPLOYMENT LAW

previously held position or to an equivalent job if the former position no longer exists. Employees are required to give 30-day advance notice when taking leave unless notice is impracticable. There is no requirement that family leave be paid, but employees must be allowed to use any accrued paid leave. Employers can determine the order in which the accrued paid leave is to be used. Employer-provided group health insurance may not be discontinued during the period of family leave.

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. Since OFLA allows leave to be taken for more purposes than allowed under FMLA (e.g., bereavement leave), leave taken under OFLA that is not allowed under FMLA cannot be counted against the employee's 12-week FMLA entitlement.

SICK LEAVE

Beginning in 2016, state law requires employers to implement a sick time policy that allows employees to accrue and use sick time to care for their own or a family member's mental or physical illness, injury or health condition; for preventative care; to care for a new family member; to grieve a family member's death; or to handle matters related to domestic violence, sexual assault or stalking. All employers must allow employees to accrue and use one hour of sick leave for every 30 hours worked, up to a maximum of 40 hours per year. When employees use their leave, they must be paid at the regular rate of pay only if the employer has at least ten workers or if an employer is located in Portland, the employer has six employees working anywhere in the state.

Employers may require medical verification of the need for sick leave under certain circumstances and employees must provide advance notice of intent to use sick leave when the need is foreseeable. Employers cannot require employees to find replacements or work alternative shifts when they are using accrued sick leave. The law prohibits retaliation or discrimination against employees who inquire about or use sick leave. An employee who alleges a violation can file a complaint with BOLI or take their case to court.

MILITARY LEAVE

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 or an alternative position of like seniority and status, if the returning veteran is physically disabled (due to their military service) from



EMPLOYMENT LAW

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

The Oregon Military Family Leave Act (**OMFLA**) requires employers to provide up to 14 days of unpaid leave to an employee who is the spouse 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 this type of leave to qualified employees 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.

WORKPLACE SAFETY

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. 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. It conducts unannounced inspections and accident investigations to determine whether 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; the division may stop work on worksites that pose an imminent danger to workers.

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

No employer may retaliate or 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 may 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 occurred.

WHISTLEBLOWER PROTECTION

Public employers and nonprofits receiving public funds are prohibited from taking action against employees or board members who respond to requests from legislators or legislative committees or who disclose information believed to be evidence of a violation of a federal, state or local law, rule, or regulation; mismanagement; gross waste; misuse of funds; abuse of authority; or public endangerment resulting from actions of the public or nonprofit employer.



EMPLOYMENT LAW

These employers cannot request or require an employee to give notice prior to blowing the whistle, nor may they discourage, coerce or otherwise interfere with the employee's whistleblowing disclosure. In certain situations, the whistleblower is provided an affirmative defense to a civil or criminal charge related to the disclosure of lawfully accessed information related to the violation.

There are similar whistleblower protections for employees in the private sector who have reported, in good faith, evidence of a violation of federal or state law, rule or regulation. Any employee who believes his or her employer has violated the law may file a complaint with BOLI or file a civil action in court.

AFFIRMATIVE ACTION

Affirmative action is defined in Oregon statute, ORS 243.305, 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."

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 that apply to state personnel practices, public contracting, executive appointments, higher education, community colleges and economic development.

STAFF CONTACT

Jan Nordlund
Legislative Policy and Research Office
503-986-1557
jan.nordlund@oregonlegislature.gov

Please note that the Legislative Policy and Research Office provides centralized, nonpartisan research and issue analysis for Oregon's legislative branch. The Legislative Policy and Research Office does not provide legal advice. Background Briefs contain general information that is current as of the date of publication. Subsequent action by the legislative, executive or judicial branches may affect accuracy.