



EMPLOYMENT AND LABOR

BACKGROUND BRIEF

LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

Employment and labor practices are governed by state and federal laws, 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. This background brief summarizes some of the federal and state laws that affect Oregon workplaces. More detailed information concerning employment and labor practices is available in the following background briefs: [COLLECTIVE BARGAINING](#), [PUBLIC CONTRACTING](#), [PUBLIC EMPLOYEES RETIREMENT SYSTEM \(PERS\)](#), [UNEMPLOYMENT INSURANCE](#), and [WORKERS' COMPENSATION](#)

WORKER CLASSIFICATION

A worker's classification as an independent contractor or an employee may have significant consequences for both the party paying for services and the party performing the services. Improper classification of workers can lead to increased business taxes, wrongful tax avoidance, underfunded worker benefits, and unfair wage practices.

Many employment laws cover employees only, and misclassification of workers as non-employees denies workers the protections of those laws. An employer's tax liability is determined by the worker's employment status. Employers must pay state and federal unemployment tax, social security tax, and workers' compensation/disability premiums on behalf of their employees, while a hiring party is not required to make any of those payments for an independent contractor.

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Test for Independent Contractor

A worker who provides services for remuneration generally will be considered an employee by the courts and state regulatory agencies, unless that worker meets the criteria required of an “independent contractor” (or other exception) with the emphasis falling on the word “independent.” In making classification determinations, the courts and regulatory agencies weigh certain facts to determine whether the worker in question is: (1) free from direction and control; or (2) as a matter of economic reality, independent of the business to which services are being provided.¹

Consequences of Worker Misclassification

Misclassification of workers has consequences for employers, employees, independent contractors, and state agencies.

Employers

- Employer fails to maintain adequate records of hours worked and wages earned
- Employer gains unfair business advantage by not purchasing required workers’ compensation insurance or paying payroll taxes

Workers

- Employer fails to meet its obligations to pay employees minimum wages and overtime
- Employer fails to provide employees with rest and meal periods
- Employer fails to permit employees to accrue and use sick time
- Worker injured at work fails to receive timely benefits
- Worker does not receive unemployment insurance benefits when out of work

State Agencies

- Wages are reported incorrectly to Oregon Employment Department and Department of Revenue
- Employer fails to pay all required unemployment insurance taxes
- Employer fails to withhold tax or pay all required transit taxes
- Department of Revenue relies on misclassified individual to file a personal income tax return at the end of the year
- Misclassified individual claims items as expenses in personal income tax return that would not be allowed if properly classified
- Cost to address worker's injury may be paid from public funds



Oregon Employment Department audits in 2016 identified 3,400 misclassified workers and \$20,237,668 in unreported payroll.²

¹ State of Oregon, “Oregon Independent Contractors: Employee or Independent Contractor,” <<http://www.oregon.gov/ic/independent/Pages/EE-IC.aspx>>, visited November 20, 2017.

² Interagency Compliance Network Report to the Oregon Legislature (April 2017), <https://www.oregonlegislature.gov/citizen_engagement/Reports/2017%20ICN%20Legislative%20Report_2017_04%20FINAL.pdf>, visited November 20, 2017.

Interagency Compliance Network (ICN)

The Legislative Assembly created Oregon's Interagency Compliance Network (ICN) in 2009 to promote proper classification of employees, voluntary compliance with tax and employment laws, and education to the public.³ The ICN is comprised of seven state agencies that share information, collaborate on enforcement, and conduct educational outreach in accordance with Oregon Revised Statute (ORS) 670.700. The agencies included in the ICN are the Oregon Employment Department, Department of Revenue, Department of Consumer and Business Services, Bureau of Labor and Industries (BOLI), Construction Contractors Board, Landscape Contractors Board, and the Department of Justice. Every two years, the ICN is required to report to the Legislative Assembly on its activities, funding, and revenue impact.⁴

EMPLOYMENT DISCRIMINATION

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 experience unlawful discrimination or face retaliation for filing or supporting discrimination complaints.

The Civil Rights Division of BOLI enforces these state laws to ensure that job seekers and employees have equal access to jobs, career schools, promotions, and a work environment free from discrimination and harassment. Individuals alleging a civil rights violation can file a complaint with BOLI or take their case to court.

Affirmative Action

Affirmative action is defined by Oregon statute 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.”⁵

All state agencies are required to follow affirmative action plans as defined by state law. The state has separate affirmative action laws that apply to state personnel practices, public contracting, executive appointments, higher education, community colleges, and economic development. Private employers are not required to adopt affirmative action plans.

³ *Id.*

⁴ In 2015, the ICN completed eight unemployment insurance and payroll audits, identifying 112 misclassified workers and \$12,017,388 in total unreported payroll. In 2016, the ICN completed nine audits and identified 217 misclassified workers and \$13,563,149 in unreported payroll. Interagency Compliance Network Report to the Oregon Legislature (April 2017),

https://www.oregonlegislature.gov/citizen_engagement/Reports/2017%20ICN%20Legislative%20Report_2017_04%20FINAL.pdf, visited November 20, 2017.

⁵ ORS 243.305.

Public Contracting

Effective October 6, 2017, state public contracting agencies are prohibited from entering a contract worth \$150,000 or more, with some exceptions, unless the contractor certifies in writing that it has a policy and practice to prevent sexual harassment, sexual assault, and discrimination against members of protected classes.⁶

Pay Equity

Existing wage and hour statutes prohibit employers from paying a lower wage rate to employees of one sex than to the opposite sex for work of comparable character when the work requires comparable skills unless the difference results from a nondiscriminatory merit or seniority system currently in place or is based in good faith on factors other than sex. An employee who was paid in violation of the statute has a private right of action for recovery of unpaid wages due for the prior one-year period and an equal amount in damages. Reasonable attorney fees may be awarded to the prevailing plaintiff.

Effective October 6, 2017, employers are also prohibited from seeking the salary history of an applicant or employee from a current or former employer.⁷ The objective of this prohibition is to avoid perpetuating past discrimination that may have resulted in lower salaries. However, it does not preclude applicants from voluntarily disclosing salary history when negotiating compensation. Beginning on January 1, 2024, applicants may file a civil action against an employer alleged to have sought the salary history of an applicant.⁸

Three additional changes to the pay equity requirements will go into effect on January 1, 2019⁹:

1. Pay equity requirements will be extended to people based on the following protected classes: race, color, religion, sex, sexual orientation, national origin, marital status, disability, age, and veteran status.
2. Employers will be prohibited from using salary history to screen applicants or to determine compensation.
3. Additional administrative and judicial remedies for pay equity violations and retaliation for wage claims will become available, including compensatory and punitive damages and jury trial. However, effective October 6, 2017, compensatory and punitive damages may be precluded if an employer demonstrates in a pre-trial motion that it completed an equal-pay analysis within the three years preceding the claim, eliminated pay differentials for the plaintiff, and made reasonable substantial progress toward eliminating the wage differentials for the protected class asserted by the plaintiff.

⁶ [House Bill 3060 \(2017\); Chapter 212, 2017 Laws.](#)

⁷ [House Bill 2005 \(2017\); Chapter 197, 2017 Laws.](#)

⁸ *Id.*

⁹ *Id.*

WAGE AND HOUR LAWS

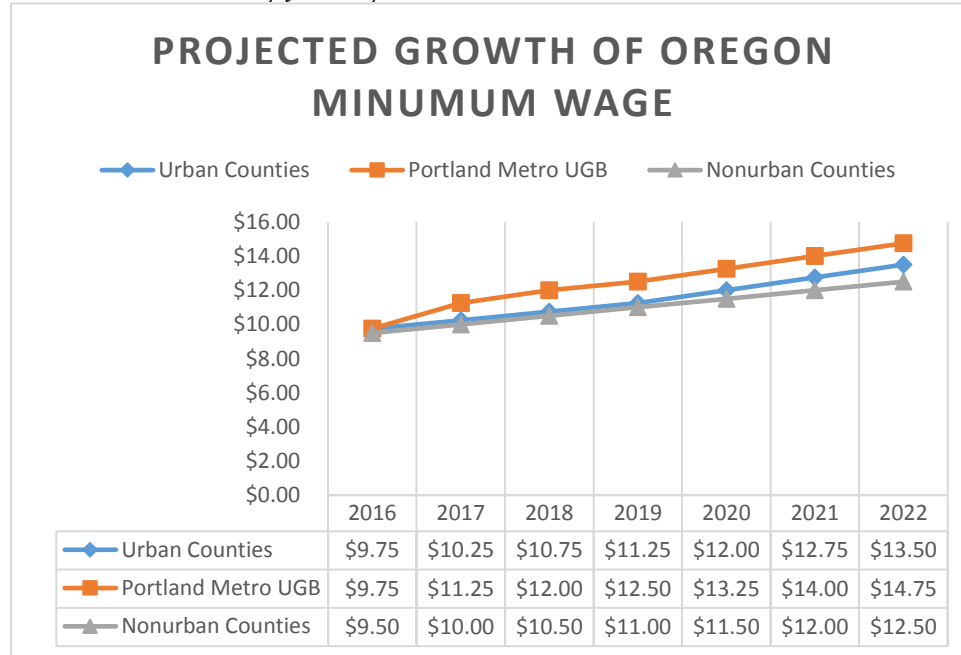
Both state and federal laws govern employee wages and hours, including minimum wages, overtime requirements, wage payments, working conditions, work schedules, child labor, and farm and forest labor contracting. Generally, when the laws of both jurisdictions apply, employers are required to comply with the law that is most beneficial to the employee.

The Oregon Bureau of Labor and Industries (BOLI) Wage and Hour Division provides [technical assistance](#) to employers about compliance with employment laws. Employers are required to post information about federal and state employment laws in their workplaces. Employees alleging a violation may file a claim with BOLI or, for certain violations, may take their case to court.

Minimum Wage

The federal minimum wage is the default wage in all states for most occupations that are involved in interstate commerce. A state may choose to set a minimum wage above or below the federal rate, but minimum wage earners receive the higher of the two amounts. States also may set a different minimum wage rate for 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 had increased to \$9.25 by January 2016.



The legislature moved away from a statewide minimum wage in 2016 and instead set regional minimum wages, phasing in increases over a seven-year period with increases occurring on July 1 of each year, as shown in the table to the left.¹⁰

¹⁰ [Senate Bill 1532 \(2016\)](#); [Chapter 012, 2016 Laws](#). The minimum wages in the following states, effective July 1, 2017, provide a point of comparison: Washington, D.C. (\$12.50 - highest in the nation), Massachusetts and Washington (\$11.00), California (\$10.50), Colorado (\$9.30), Nevada (\$8.25), Idaho (\$7.25). Five states have no state minimum wage law: Alabama, Louisiana, Mississippi, South Carolina, and Tennessee.

Following 2022, the minimum wages for urban counties will continue to grow according to annual adjustments in the Consumer Price Index (CPI); the Portland Metro Urban Growth Boundary (UGB) minimum will be \$1.25 higher than the urban county rate, and the nonurban counties will be \$1.00 lower than the rate of urban counties.

Exceptions to the minimum wage law are listed in ORS 653.020. Examples include professional salaried employees and employees in specific occupations, such as taxicab operators, in-home care providers, volunteer firefighters, and some agricultural workers.

Oregon, along with six other states, requires the same minimum wage rate for tipped and non-tipped workers.¹¹ 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.

Overtime

Mills, factories, and manufacturing establishments are subject to state maximum hours laws.¹² Currently, manufacturing employees may work up to three hours of overtime in a day, while cannery workers have no limit on their number of working hours. Effective January 1, 2018, mandatory work hours for employees of any mill, factory, cannery, or other manufacturing establishment is limited to 10 hours per day or 55 hours per workweek, but employees may consent to work up to 60 hours per workweek.¹³ Employers who process perishable products may claim an undue hardship exemption, permitting their employees to work up to 84 hours per workweek for four weeks, and up to 80 hours per workweek for an additional 17 weeks. The employer must notify BOLI of the undue hardship and receive written consent from each employee before requesting them to work more than 55 hours per workweek. Seafood processors are exempt from the weekly cap on mandatory overtime, but employers must pay those workers overtime for hours exceeding 10 per day and for hours exceeding 40 per workweek. Manufacturing employees are prohibited from working within 10 hours of their last eight-hour shift.

Oregon and federal law requires most employers to pay overtime to eligible employees at one and one-half times the employee’s regular pay rate for hours worked exceeding 40 per workweek.¹⁴ Oregon law also requires payment of daily overtime to certain employees at government agencies, hospitals, canneries, and manufacturing establishments.¹⁵ Specifically, manufacturing and food processing employees are due overtime for any work performed after 10 hours in any one day. Effective August 8, 2017, employers must calculate overtime wages for manufacturing and food

¹¹ ORS 653.035.

¹² ORS 652.020.

¹³ [House Bill 3458; Chapter 685, 2017 Laws.](#)

¹⁴ ORS 652.020.

¹⁵ ORS 653.265.

processing workers on both a daily and weekly basis, and must pay employees the greater of the two amounts.¹⁶

Agricultural workers engaged in agricultural employment for 100 percent of the workweek are exempt from overtime pay.¹⁷ However, employees of agricultural employers who work on products not grown by their employer, or who do not work within the statutory definition of agriculture, are due overtime after 40 hours per workweek.

Employees alleging overtime violations may submit a complaint with BOLI or file a civil action in court.¹⁸ BOLI may assess a civil penalty on employers who coerce workers to work beyond the mandatory overtime limits or fail to pay overtime wages.¹⁹

Payment of Wages

Employers are required to set and maintain a regular payday schedule for their workers and pay them for all time worked.²⁰ Effective January 1, 2017, employers must provide specified information on the employee's paystub, including 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.²¹ The employer may provide the paystub in an electronic format only if the employee expressly agrees and if the employee can store and print the paystub.

An employer may not discriminate or retaliate against an employee who asks about or discusses the employee's own or a co-worker's wages or who makes a charge or files a complaint based on the disclosure of the wage information.²²

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.²³ If less notice is provided, the employer has five days (excluding weekends and holidays) or until 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.²⁴ Workers can receive a maximum benefit of \$4,000 from the Fund. Benefits are for unpaid wages

¹⁶ [House Bill 3458](#); [Chapter 685, 2017 Laws](#).

¹⁷ ORS 653.020(1).

¹⁸ ORS 653.055.

¹⁹ ORS 652.900; ORS 653.256.

²⁰ ORS 652.120.

²¹ [Senate Bill 398 \(2017\)](#); [Chapter 333, 2017 Laws](#).

²² ORS 659A.355.

²³ ORS 652.140.

²⁴ ORS 652.414.

only and do not cover any accrued leave or benefits; state and federal taxes are deducted from the worker's benefit amount.

Existing remedies for wage enforcement often depend on the employee's ability to provide an accurate timesheet of hours worked as evidence. Effective January 1, 2018, a private right of action is available to an employee who is compelled, coerced, or otherwise induced by their employer to create, file, or sign wage and hour documents that the employer knows are false.²⁵

Meal and Rest Breaks

Oregon statute provides the BOLI Commissioner with rulemaking authority to set requirements for employee meal and rest periods.²⁶ Employers generally are required to provide meal and rest breaks to employees, although there are exemptions.²⁷ Employees who are statutorily exempt from minimum wage and overtime laws are also exempt from rest and meal period requirements.

The basic requirements for meal periods are 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, and 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 unless the nature of the job prevents the worker from being relieved of all duties during the work period.

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.²⁸ 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.

Exceptions from requirements for meal and rest periods apply to certain classes of agricultural employees, such as immediate family members, or those paid at a piece-rate basis and who meet the criteria for an exemption from paying minimum wage. Agricultural workers who are minors must receive at least a 30-minute meal period no later than five hours and one minute after reporting to work.

Employers with at least 25 employees are also required to provide reasonable, unpaid rest periods to accommodate an employee needing to express milk for her child. The employer must make a reasonable effort to provide a private location for expressing milk within close proximity to the employee's work area other than a public restroom or toilet stall.²⁹

²⁵ [House Bill 3008 \(2017\)](#); [Chapter 211, 2017 Laws](#).

²⁶ ORS 653.040.

²⁷ OAR 839-020-0050.

²⁸ OAR 839-020-0050(6)(a).

²⁹ ORS 653.077(5).

Predictable Work Schedules

Oregon is the first state in the country to require larger retail, food service, and hospitality employers to provide their hourly workers predictable schedules. Effective August 8, 2017, retail, food service, and hospitality employers with 500 or more employees worldwide must provide good faith estimates of employees' work schedules and seven-days advanced written notice of work schedules.³⁰ In addition, those employers must offer "predictability pay" when schedules change (unless exemptions apply)—compensation of up to one-half of the employee's regular rate of pay for each scheduled hour that the employee does not work due to employer scheduling changes—and extra compensation for hours worked when fewer than 10 hours separates shifts (minimum rest period).



Employers may maintain a standby list of employees who want to work additional hours as needed to address unanticipated customer needs or unexpected employee absences.

Employers are prohibited from interfering with or retaliating against employees for exercising their rights regarding predictable work schedules, and employees

have a private right of action and administrative remedies for violations. Local governments are preempted from regulating work schedules.

Employment of Minors

Minors, including all workers under the age of 18, are protected by the same employment laws that protect adults, including anti-discrimination, minimum wage, overtime, and meal and break laws.³¹ Generally, a minor must be at least 14 years old to work in Oregon. An employer who hires a minor first must obtain an annual employment certificate from BOLI. However, child labor laws do not apply to minors delivering newspapers or performing domestic work in private residences (such as lawn-mowing or babysitting).

Restrictions on work hours for minors differ by the age of the minor. Minors who are 16 or 17 years old have the same maximum daily work hours as adults, but are limited to 44 work hours per week. For 14- and 15-year-old workers, restrictions depend on whether school is in session. As

³⁰ [Senate Bill 828 \(2017\); Chapter 691, 2017 Laws.](#)

³¹ See ORS 653.305 - 653.545.

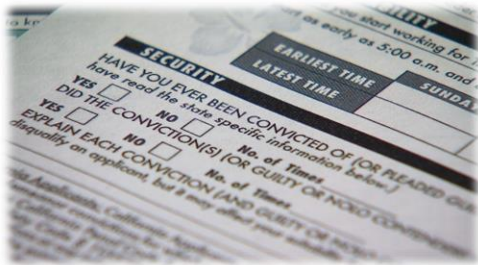
discussed above, employers must give minors a paid rest period of at least 15 minutes for every work segment of four hours and a meal period of at least 30 minutes. Sixteen- and 17-year old workers may work through a paid meal period when business conditions require, but 14- and 15-year-old workers must always be relieved of all duties during the meal period. All minors are prohibited from operating most types of power-driven machinery and performing tasks that involve exposure to dangerous worksites (e.g., mines and areas containing radioactive substances).

Different rules apply to minors working in agriculture. For example, under certain circumstances, 16- and 17-year-old workers can operate or assist in operating power-driven machinery in an agricultural warehouse. If certain requirements are met, 14- and 15-year-old workers who are enrolled in vocational agricultural programs are exempt from some of the hazardous occupations provisions. Minors as young as 9 years old may pick berries and beans in certain circumstances with their parents' written consent. Minors of any age may work in any job on a farm owned or operated by their parents.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

Applicant Criminal History

In 2015, the Legislative Assembly adopted a “ban the box” measure to reduce barriers to employment for people with criminal records. An employer may not ask about a job applicant’s criminal convictions on an employment application or exclude an applicant from an initial interview based solely on the applicant’s past criminal convictions.³² 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 may 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.



Whistleblower Protection

It is an unlawful employment practice for public employers and nonprofits receiving public funds to take adverse 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.³³ These employers may not 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. Effective January 1, 2017, whistleblowers have an affirmative

³² ORS 659A.360.

³³ ORS 659A.199.

defense to a civil or criminal charge related to the disclosure of lawfully accessed information related to the violation in certain circumstances.³⁴

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

EMPLOYEE LEAVE

Employee leave in Oregon is governed by both state and federal law. The federal Family and Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA) overlap in some respects with the Americans with Disabilities Act of 1990 and with Oregon's disability and workers' compensation laws. For employees who are covered under both FMLA and OFLA, employers must allow leave under the law that is most beneficial to the employee. Leave that qualifies for both FMLA and OFLA counts concurrently towards the employee's maximum leave time benefit under both laws. Because OFLA allows the employee to take leave for purposes that are not allowed under FMLA (e.g., bereavement leave), leave time taken under OFLA that is not allowed under FMLA cannot be counted against the employee's 12-week FMLA entitlement.

Federal Family and Medical Leave Act

FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. 29 U.S.C. § 2601, *et seq.* The law requires companies with 50 or more employees working in the United States 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; their own serious health condition or that of an eligible family member; or a qualifying exigency arising from an eligible family member's deployment; and up to 26 weeks to care for a seriously ill or injured service member or veteran.³⁵ Employer-provided group health insurance may not be discontinued during the period of family leave.³⁶ An employee returning from family leave must be restored to the employee's previously held position or to an equivalent job if the former position no longer exists.³⁷ An employer may not retaliate against an employee for inquiring about or taking family and medical leave.³⁸ Employees who allege a violation of FMLA may file an administrative complaint or take their case to court.³⁹

³⁴ [House Bill 4067 \(2016\); Chapter 73, 2016 Laws.](#)

³⁵ 29 U.S.C. § 2612.

³⁶ 29 U.S.C. § 2614(c).

³⁷ 29 U.S.C. § 2614(a).

³⁸ 29 U.S.C. § 2615.

³⁹ 29 U.S.C. § 2617.

To be eligible for FMLA leave, an employee must have worked for an employer for at least 12 months and 1,250 hours during the preceding 12-month period.⁴⁰ Approximately 59 percent of American workers are eligible for protected leave under FMLA.⁴¹

Oregon Family Leave Act

OFLA builds on FMLA protections, covering more workers, providing more qualifying reasons for leave, and expanding the definition of family members for whom an employee may take leave. Upon enactment in 1995, OFLA consolidated Oregon's prior leave laws, including the Parental Leave Act (1987), Pregnancy Disability Act (1989), and Family Medical Leave Act (1991).

OFLA requires companies that have 25 or more employees to provide eligible employees up to 12 weeks of unpaid leave per year for specified purposes.⁴² Allowable purposes for leave under OFLA include all those covered by FMLA, except for those relating to military status, which are covered by a different Oregon statute.⁴³ In addition, OFLA allows family leave to care for a child with an illness, injury, or condition that is not serious but requires home care, and up to two weeks for bereavement leave.⁴⁴ An eligible employee who takes 12 weeks of family leave is also entitled to take another 12 weeks of leave for a disability related to pregnancy or childbirth.⁴⁵ Employees who take 12 weeks of parental leave may also take an additional 12 weeks of sick child leave.⁴⁶ Employees must be allowed to use any accrued paid leave time for OFLA leave; employers may determine the order in which the accrued paid leave is to be used.⁴⁷ Like under FMLA, employer-provided group health insurance may not be discontinued while on OFLA leave, ORS 659A.171(5)(b); an employee returning from OFLA leave must be restored to the employee's previously held position or to an equivalent job if the former position no longer exists, ORS 659A.171(1); and an employer may not retaliate against an employee for inquiring about or taking OFLA leave, ORS 659A.183(2).

To be eligible for OFLA parental leave, an employee must have worked for an employer for at least 180 days. For all other OFLA leave benefits, an employee must have worked at least 180 days and at least an average of 25 hours a week during the 180 days before leave begins.⁴⁸

Employees may allege a violation of OFLA by filing a complaint with BOLI or filing a civil action.⁴⁹

⁴⁰ 29 U.S.C. § 2611.

⁴¹ U.S. Department of Labor, "Family and Medical Leave in 2012: Technical Report" (Cambridge, MA: Abt Associates, Inc., 2014), <<https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>>, visited November 20, 2017.

⁴² ORS 659A.153; ORS 659A.159; ORS 659A.162.

⁴³ ORS 659A.159.

⁴⁴ ORS 659A.159; ORS 659A.162.

⁴⁵ ORS 659A.162(3)(a).

⁴⁶ ORS 659A.162(3)(b).

⁴⁷ ORS 659A.174.

⁴⁸ ORS 659A.156.

⁴⁹ ORS 659A.820; ORS 659A.870.

Oregon Military Family Leave Act

The Oregon Military Family Leave Act (OMFLA) requires employers with 25 or more employees to provide an employee who is the spouse of an active duty member of the military up to 14 days of unpaid leave per deployment, which the employee may take before and during deployment. ORS 659A.093(1). To qualify, an employee must have worked an average of at least 20 hours per week for an unspecified period and provide the employer notice within five days of receiving the spouse's call to duty or leave from deployment.⁵⁰ Leave taken under OMFLA counts toward the 12 weeks of leave allowed under OFLA.⁵¹

Mirroring FMLA and OFLA protections, employers cannot deny leave for qualified employees or discriminate or retaliate because an employee has inquired about or submitted a request for military family leave.⁵² The employee has an option to use accrued paid leave.⁵³ As under OFLA, employees may allege a violation of OMFLA by filing a complaint with the Bureau of Labor and Industries or taking their case to court.⁵⁴

Leave for Victims of Domestic Violence, Sexual Assault, or Stalking

Oregon's domestic violence leave law requires employers with six or more employees to provide reasonable time off to all employees who are victims of domestic violence, harassment, sexual assault, or stalking, regardless of the number of hours worked per week or length of time worked for the employer.⁵⁵ An employer may limit an employee's duration of leave if it would create an undue hardship.

Reasonable leave from work may be available for employees who need time off to address safety-related matters such as court hearings, counseling sessions, moving to a safe home, or visiting a doctor. An employee may take leave to address the employee's own safety-related matters or to assist a minor child or dependent in doing so. Employers may request certification that the person is a victim, including a police report, restraining order, stalking order, or other type of court order, or letter or note from other professionals. Employers must keep confidential any records regarding a safety accommodation or leave request.

Employees who are victims of domestic violence may use any accrued paid leave to take time off from work for purposes related to domestic violence.

Sick Leave

Under the state's paid sick leave law, Oregon employees of covered employers are entitled to accrue and use sick time for preventative care; care for a new family member; care for their own or

⁵⁰ ORS 659A.090(1); ORS 659A.093(3).

⁵¹ ORS 659A.093(5).

⁵² ORS 659A.096(2).

⁵³ ORS 659A.093(4).

⁵⁴ ORS 659A.820; ORS 659A.870.

⁵⁵ ORS 659A.270.

a family member's mental or physical illness, injury, or health condition; grieving a family member's death; or handling matters related to domestic violence, sexual assault, or stalking. Covered 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.⁵⁶ The accrued leave used must be paid at the employee's regular rate of pay if an employer has at least 10 workers, or at least six employees working anywhere in the state if the employer is located in Portland.

Employees must provide notice of intent to use sick leave when the need is foreseeable. Employers may require medical verification of the need for sick leave under certain circumstances, but must pay reasonable costs to obtain a required medical verification. Employers may not require employees to find a replacement or work an alternative shift when using accrued sick leave. The law prohibits retaliation or discrimination against employees who inquire about or use sick leave. Employees who allege a violation may file a complaint with BOLI or take their case to court.

Effective July 1, 2017, [Senate Bill 299](#) clarifies that an employer may limit employees to 40 hours of sick time accrual per year, and may adopt a policy limiting employees from accruing more than a total of 80 hours of sick time and from using more than 40 hours in a year. The measure also modifies the rate of pay for accrued sick leave by employees paid on a piece-rate or commission basis and exempts employers with adequate alternate time-off policies from complying with the sick time requirements after the first 40 hours that the employer's policy provides per year.

WORKPLACE SAFETY

Safe and Healthy Workplace

The Oregon Occupational Safety and Health Administration Division (OR-OSHA) of the Department of Consumer and Business Services administers the Oregon Safe Employment Act of 1973 (OSEA).⁵⁷ 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 provides no-cost consultations and training to Oregon employers to assist them in complying with

⁵⁶ See ORS 653.606-ORS 653.661.

⁵⁷ ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and 654.991.

occupational safety and health requirements. It operates a resource center and library of training videos, periodicals, and research publications.

OR-OSHA also conducts unannounced inspections and accident investigations to determine whether employers are complying with safety and health requirements. It 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.

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.

Workers' Compensation

Workers' compensation insurance pays for workers' medical treatment and lost wages on accepted claims when workers suffer work-related injuries and illnesses.⁵⁸ Workers' compensation insurance also protects employers by shielding them from liability lawsuits that might result from work-related injuries or illnesses.

The Workers' Compensation Division of the Department of Consumer and Business Services administers and regulates laws and rules that affect the participants in the Oregon workers' compensation system. The division oversees programs and services that help ensure timely and appropriate medical treatment and time-loss benefits to injured workers, while helping keep costs and burdens low for Oregon employers. The division also administers return-to-work programs that help injured workers return to their previous jobs or find new employment.

Oregon employers that have one or more employees, full or part-time, must carry workers' compensation insurance or be self-insured. Employers pay premiums to workers' compensation insurance companies, and those premiums finance most of the benefits received by workers who are injured or suffer an occupational disease on the job. If a dispute concerning a claim arises, an insurer or injured worker may request mediation services, a hearing, or an administrative review.

The Office of the Ombudsman for Injured Workers serves as an independent advocate for injured workers by helping them to understand their rights and responsibilities, investigating complaints, and acting to resolve those complaints. The ombudsman also provides educational and

⁵⁸ Oregon Department of Consumer and Business Services, "Oregon Workers' Compensation, Frequently Asked Questions," <<http://wcd.oregon.gov/Publications/5126.pdf>>, visited November 20, 2017.

informational seminars to labor groups, employers, insurance companies, and others interested in workers' issues.

The Office of the Small Business Ombudsman for Workers' Compensation serves as an independent advocate for small businesses, entrepreneurs, and their professional advisers. The office provides guidance on workers' compensation coverage requirements, shopping for workers' compensation insurance, navigating disputes with insurance companies, and understanding their rights and responsibilities under the workers' compensation laws.

UNEMPLOYMENT INSURANCE

Congress enacted the nation's unemployment insurance (UI) program in 1935 as part of the Social Security Act (SSA) in response to the Great Depression. The program is a federal-state partnership with oversight by the U.S. Department of Labor. The SSA provides grants to states with laws that meet federal requirements for administering the UI program and overseeing the payment of benefits. UI benefits replace part of the income lost when workers become unemployed through no fault of their own.

UI eligibility requirements and benefits are set by state law. Eligibility is based on the amount of wages earned and number of hours worked by the claimant during the year prior to filing. As of July 2, 2017, the minimum weekly benefit is \$141, and the maximum weekly benefit is \$604. A claimant is eligible to receive up to 26 weeks of benefits during a 52-week benefit year, and may be eligible to receive benefits for additional weeks if state or federal extensions apply.

UI benefits are paid out of the Unemployment Insurance Trust Fund. The fund is financed by employer payroll taxes that are set according to an annual self-adjusting rate schedule. The UI Trust Fund maintains a balance based on statutory requirements tied to the solvency of the fund, and no contributions are from employee wages. Oregon is nationally recognized as having a solvent UI Trust Fund and was one of the few that remained solvent during the Great Recession.

RETIREMENT BENEFITS

Public Employees Retirement System (PERS)

The [Public Employees Retirement System \(PERS\)](#) enables public employers to provide their employees with retirement benefits. State government, public schools, community colleges, and many local governments participate in PERS, covering approximately 925 employers and about 95 percent of all public employees in Oregon. PERS contains approximately 347,000 members, including 168,000 active, 43,000 inactive, and 136,000 retired employees. Approximately 32 percent of members are currently eligible to retire with full benefits due to age or years of service.

PERS is a hybrid pension plan that includes a defined benefit plan and a defined contribution plan. Upon retirement, all PERS members receive both a life pension (defined benefit) and the

balance of the member's individual account (defined contribution). The calculation of a member's pension benefit varies by type of membership plan.

The Individual Account Program (IAP) is funded through a required employee contribution of six percent of members' salaries. Under that program, all active member contributions are placed into members' individual accounts. Earnings and losses are credited annually to IAP accounts, and they are subject to earnings and losses until the member removes the funds. At retirement, a member may receive the amount in their IAP account as a lump-sum payment or in equal installments over a specified number of years.

Oregon State Retirement Plan

OregonSaves is a new way for Oregonians in the private sector to save for retirement at work. Before OregonSaves was established, about one million workers in Oregon had no retirement option at work. To address this, the Legislative Assembly created OregonSaves, which began enrolling employers in a pilot phase in July 2017 and will roll out in phases, starting in 2018 with larger businesses and over time to smaller businesses.⁵⁹

Under the OregonSaves program, employees contribute part of their paycheck into their own personal Roth IRAs that stay with them throughout their careers. The employer cannot contribute to the employee's IRA. Employers will register employees for the plan unless the employee chooses to opt-out. Employees can access their account any time, opt-out at any time, and change investment types and their contribution rate. They can also withdraw their contributions without a penalty. The program is overseen by the Oregon Retirement Savings Board (a part of the Oregon State Treasury) and administered by a plan service provider under contract with the Oregon State Treasury.

LABOR RELATIONS

Unions organize workers to bargain with employers for favorable working conditions and wages, and they also seek to influence public policy for the benefit of workers. Collective bargaining is the process by which unions ask for improvements in wages, hours, and working conditions of represented employees. In 1933, the Oregon Legislative Assembly codified the principle that workers have the right to organize to improve their working conditions and refuse to work until grievances are addressed, free from retaliation.⁶⁰

⁵⁹ State of Oregon, Oregon Saves website, <<http://www.oregon.gov/retire/Pages/index.aspx>>, visited December 19, 2017.

⁶⁰ Agricultural workers were expressly excluded from collective bargaining under the 1933 legislation. In 1997, the Oregon Court of Appeals held in *Rauda v. Oregon Roses* (147 Or App 106, 1997) that, based on legislative policy in ORS chapters 661 and 662, "concerted activities" of farmworkers, including discussion of wages and working conditions, are protected by state law. However, the Oregon Supreme Court subsequently dismissed the case, leaving some question as to the applicability of collective bargaining law to agricultural labor.

Union Security Agreements

The National Labor Relations Act (NLRA), enacted in 1935, allows employers and unions to enter into union security agreements requiring all employees in a bargaining unit to become union members and pay union dues. Employees who object to full union membership may continue as “core” members and pay only that share of dues used directly for representation.

The federal Taft-Hartley Act of 1947 amended the NLRA, authorizing states to ban union security agreements. States that have adopted this policy are referred to as “right-to-work” states. However, effective June 14, 2017, Senate Bill 1040 (2017) establishes that private-sector labor organizations and employers in Oregon may enter into union security agreements requiring membership in labor organizations as a condition of employment to the full extent allowed by federal law.

Limits on Organizing

Some public employees are prohibited from organizing, including elected officials, persons appointed to serve on boards or commissions, certain incarcerated persons, and persons who are confidential employees, supervisory employees, or managerial employees. Effective January 1, 2018, academic faculty members of a public university or the Oregon Health and Science University may organize and collectively bargain with their employer.⁶¹

Governance of Labor Relations

Federal laws establish and enforce good-faith collective bargaining requirements on unions and employers. The National Labor Relations Board (NLRB) has jurisdiction over most non-government employers with a workplace in the United States. Private-sector employees who are not subject to NLRB jurisdiction, including all agricultural employees, are governed by state labor relations laws in ORS chapter 663, enforced by the Oregon Employment Relations Board (ERB). The ERB also administers the collective bargaining law that covers Oregon public employees and adjudicates appeals from state employees concerning personnel actions.

Membership Rates

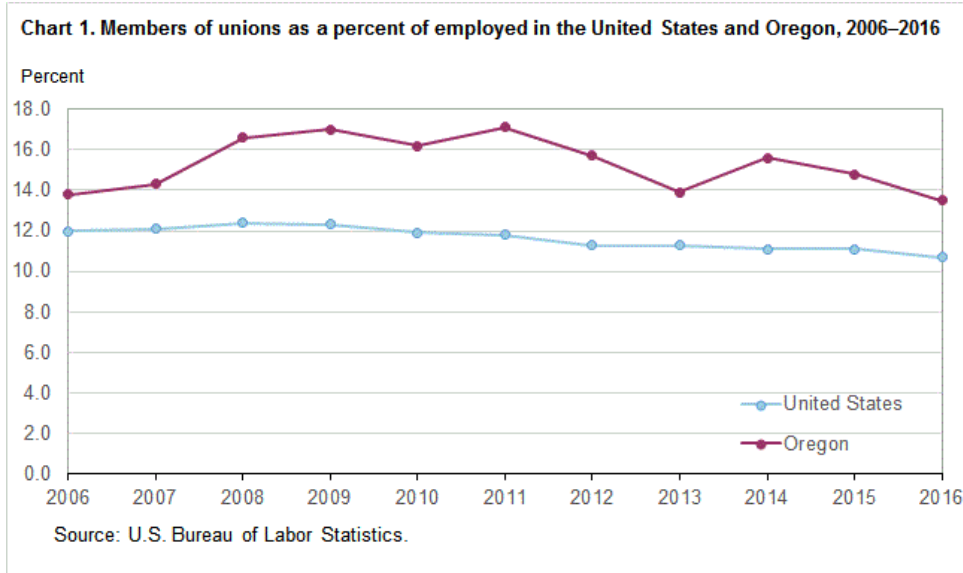
Nationwide, union membership shrunk by nearly one-tenth between 2000 and 2016, with roughly 10.7 percent of employed wage and salary workers as union members in 2016.⁶² Oregon’s union membership rate peaked in 1989, when it averaged 21.6 percent, and reached its lowest point in 2016 at 13.5 percent. Since 1989, when comparable state data became available, union membership rates in Oregon have been above the U.S. average.⁶³

⁶¹ [House Bill 3170 \(2017\)](#); [Chapter 553, 2017 Laws](#).

⁶² State of Oregon Employment Department, “Oregon’s Union Membership” (May 4, 2017), <<https://www.qualityinfo.org/-/oregon-s-union-membership>>, visited November 16, 2017.

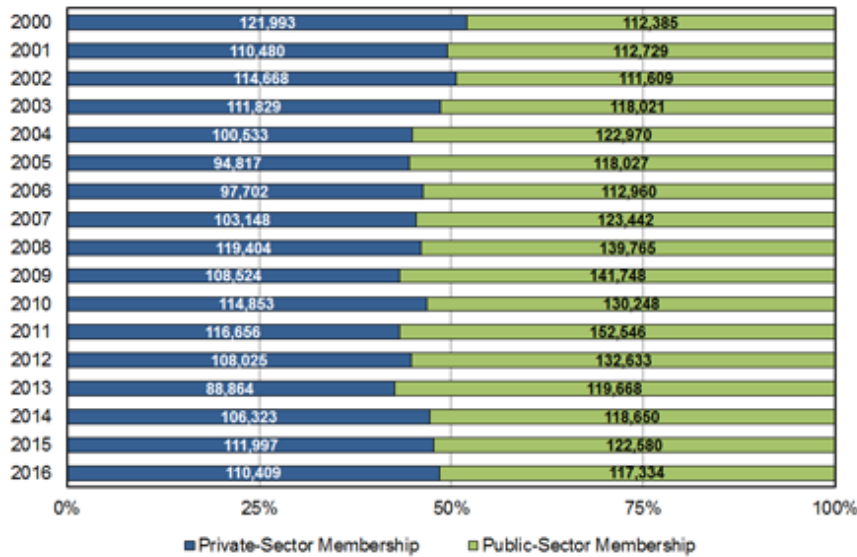
⁶³ United States Department of Labor Bureau of Labor Statistics, “Union Members in Oregon—2016,” <https://www.bls.gov/regions/west/news-release/unionmembership_oregon.htm>, visited November 16, 2017.

The following chart prepared by the U.S. Bureau of Labor Statistics illustrates changes in union membership as a percentage of the workforce in the United States and Oregon between 2006 and 2016.



Union membership rates are substantially higher in Oregon’s public sector than private sector, with a peak of 18.7 percent membership in private employment (1984) and 60.7 percent in public employment (1995).⁶⁴

Private and Public Shares of Total Union Membership in Oregon, 2000-2016



However, the proportion in overall numbers of Oregon’s union members in each sector has been similar since 2000.⁶⁵ The following chart prepared by the State of Oregon Employment Department compares public and private shares of total union membership in Oregon between 2000 and 2016.

State of Oregon Employment Department, “Oregon’s Union Membership” (May 4, 2017), <<https://www.qualityinfo.org/-/oregon-s-union-membership>>, visited November 16, 2017.

⁶⁴ State of Oregon Employment Department, “Oregon’s Union Membership” (May 4, 2017), <<https://www.qualityinfo.org/-/oregon-s-union-membership>>, visited November 16, 2017.

⁶⁵ *Id.*

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