



September 2012

Inside this Brief

- **Affirmative Action**
- **Employment Civil Rights Laws**
- **Wage and Hour Laws**
- **Employment of Minors**
- **Meal and Rest Breaks**
- **Minimum Wage**
- **Final Paychecks**
- **Family and Military Leave**
- **Oregon Safe Employment Act**
- **Whistleblowing**
- **Unemployment Insurance Workers' Compensation**
- **Staff and Agency Contacts**

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

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 areas of state personnel practices; public contracting; executive appointments; higher education recruitment and retention of minority students, faculty and staff; school districts in regards to reductions in 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 or association with a protected class, as well as retaliation for employees filing or supporting discrimination complaints, and employees serving in the military. 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, and sexual orientation and gender identity, income sources, and marital status in regards to fair housing. 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 [list](#) of federal and state classes and the size of business to which the laws apply.

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 wage rates).

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. 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).

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, while 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.

Fourteen and fifteen year old minors 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/student-learner programs. All minors are prohibited from operating most types of power-driven machinery and tasks that involve exposure to dangerous worksites, i.e. mines and areas containing radioactive substances.

The maximum amount of working hours depends on the minor's age and the time of year. 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. 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.

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. Employees that 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 period¹, 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 six 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.

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

¹ The time an employee starts and ends work, including all rest breaks and any period of up to an hour that isn't designated as a meal period in which the employee is relieved of all duties.

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 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 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 2012, the state minimum wage is \$8.80. Nine other states have minimum wages that are linked to inflation, the consumer price index, or other cost of living formula. Ten states and the District of Columbia automatically adjust their state's minimum wage upon adjustments to the federal minimum wage rate, or replace the state wage rate with the federal wage rate if it is higher than the state minimum.

There are exceptions to the minimum wage law (ORS 653.020). Examples include "white collar" (executives, administrative, and professional) employees who are paid a salary, and 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.

Top State Hourly Minimum Wage – January 2012	
Washington ^{^+}	\$9.04
Oregon [^]	\$8.80
Vermont ^{^*}	\$8.46
Connecticut [*] (\$9.00 on July 2012) Nevada ^{^#} District of Columbia ^{^*} Illinois ^{*+}	\$8.25
Massachusetts ^{*+} = California (\$10.24 in San Francisco)	\$8.00
Alaska [^]	\$7.75
Ohio ^{^*+#}	\$7.70
Florida ^{^*}	\$7.67
Arizona ^{^*} Montana ^{^#}	\$7.65
Colorado ^{^*}	\$7.64

[^] minimum wage tied to inflation, consumer price index (CPI) or Fair Minimum Wage Act of 2007

^{*} has some form of tip credit

⁺ allows minors or agricultural workers to be paid less than minimum wage, or employers to pay a training wage for a specified period

[#] allows employees who receive health benefits or work for employers with low gross profits to be paid less than the state minimum wage

⁼ allows time-and-a-half wages on Sundays for retail workers

Final Paychecks

If an employee is fired, all earned wages are due no later than the end of the first business day after discharge. Employees who quit have different timeframes for receiving final wages: the last working day, excluding weekends and holidays, if an employee quits with at least 48 hours’ notice; and either five days, excluding weekends and holidays, or the next payday, whichever occurs first. Different time frames are established for workers at a state or county fair and for seasonal farmworkers (see the *Farmworker Labor* Background Brief for more information).

Employees that are owed final wages from an employer who closes their business and does not have sufficient funds to pay the wages can apply to the Oregon Wage Security Fund for benefit. Workers can receive payments for the amount earned during the 60 days preceding the business’s closure date or amount of unpaid wages earned within 60 days of the last day of employment, with a maximum benefit of \$4,000. Benefits are only for unpaid wages and do not cover any form of accrued leave or benefits, and FICA taxes (social security and Medicare) and state and federal income taxes are deducted from the worker’s benefit amount.

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 for the birth, adoption, or placement of a child; prenatal care or a pregnancy disability; care for certain seriously ill immediate family members; recover from their own serious health condition; or address a qualifying exigency arising from a family member’s deployment. Eligible employees can take up to 26 weeks 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.

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 per year to care for themselves or family members² in cases of 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. 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.

Like with FMLA, OFLA 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. Employees are required to give 30 days' notice in advance to the employer when taking leave unless impracticable or taken for an emergency, or five days' notice if the requested time off is for family leave. There is no requirement that family leave is paid, but employees must be allowed to use any existing accrued paid leave. Furthermore, employers can require that employees exhaust all accrued paid leave before taking family leave as unpaid leave and can dictate the order in which the leave is to be used, as long as the policy is in writing and timely sent to the employee in advance of their first day of leave.

For employees that are covered under both OFLA and FMLA, employers are required to provide leave according to the law that is most beneficial to the employee. However, leave

² Spouse, child, parent/guardian, grandparents, grandchildren, parents-in-law, same-gender domestic partners, and children and parents of same-gender domestic partners.

counted as FMLA is also counted as OFLA if the leave is a circumstance under both laws, the employer is covered by both laws, and the employee is eligible under both laws at the time the leave was taken.

The Oregon Military Family Leave Act (**OMFLA**) 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. Unlike the other types of family leave, the employee is entitled to determine if they will use accrued paid leave and may dictate the order in which it is used. 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. In order to qualify, an employee must have worked an average of at least 20 hours per week.

Federal law requires employers to provide military leave for non-temporary (i.e., part-time and seasonal) 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 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.

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. 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. 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.

House Bill 3162 (2009) extends similar whistleblower protections to employees in the private sector who have reported, in good faith, evidence of a violation of state or federal law, rule, or regulation. Examples of such reports include exposing a lack of required breaks or lunches for employees or reporting violations of consumer protection laws.

Unemployment Insurance Workers' Compensation

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

Staff and Agency Contacts

Theresa Van Winkle

[Legislative Committee Services](#)

503-986-1496

[Governor's Office of Affirmative Action](#)

503-373-1224

Bureau of Labor and Industries

[Civil Rights Division](#)

971-673-0764

[Wage and Hour Division](#)

971-673-0761

[Technical Assistance for Employers](#)

971-673-0824

Department of Consumer and Business Services

[OR-OSHA](#)

800-922-2689

[Oregon Employment Department](#)

800-237-3710

Committee Services provides centralized, non-partisan research and issue analysis for the Legislative Branch. Committee Services does not provide legal advice. Background Briefs are intended to give the reader a general understanding of a subject, and are based on information which is current as of the date of publication. Legislative, executive, and judicial actions subsequent to publication may affect the timeliness of the information.