

LABOR AND EMPLOYMENT



COLLECTIVE BARGAINING

Oregon's Public Employee Collective Bargaining Act (PECBA) governs employment relations between public employers and employees in the state, counties, cities, school districts, transportation districts, and other local governments, as well as private employers not subject to the jurisdiction of the National Labor Relations Board. In the 2021 session, the Legislative Assembly passed two measures that modify the PECBA.

Class size and caseload limits will be mandatory subjects of collective bargaining for [Title I](#) schools when [Senate Bill 580](#) goes into effect on January 1, 2022. Between 1989 and 1995, class size was a mandatory subject of bargaining; before and after that period, class size was a permissive subject of bargaining. Permissive subjects can be bargained only if both management and labor agree to do so.

Represented legislative branch employees will negotiate with the presiding officers or their chief negotiator when [Senate Bill 759](#) becomes effective on January 1, 2022. Prior to the passage of the measure, the Public Employee Collective Bargaining Act was silent on legislative branch representation in collective bargaining negotiations.

UNEMPLOYMENT INSURANCE

The dramatic impacts of the COVID-19 pandemic on employment spurred the Legislative Assembly to consider several measures related to unemployment insurance. To ease the impact of COVID-19 on unemployment insurance (UI) tax rates paid by employers, [House Bill 3389](#) (HB 3389) extended from 10 years to 20 years the look-back period used to determine the solvency of the Unemployment Compensation Trust Fund. The measure also made four changes regarding the calculation and payment of the UI tax. First, the bill excludes 2020 and 2021 from the high benefit cost period in the 20-year look-

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See the **2021 Legislative Summary Report** for [Labor and Employment](#), which highlights policy measures that received a public hearing during Oregon's 2021 Regular Legislative Session.

back to determine insurance fund solvency. Second, employer experience ratings that were used to determine 2020 rates will be used again in 2022, 2023, and 2024. Third, employers will be allowed to defer up to one-third of 2021 owed taxes if their rate increased by at least 0.5 percentage points in 2021. Tax deferrals will not accrue interest or penalties, and a percentage of deferred 2021 taxes will be forgiven for employers in good standing based on the employer's tax rate increase in 2021. Finally, HB 3389 reduces the fund adequacy percentages used to determine the tax rate schedules.

[Senate Bill 172](#) grants the Oregon Employment Department (OED) flexibility when recovering UI overpayments against future weekly UI benefits and allows the agency to waive all or part of a recipient's overpayment liability when recovery would be against equity or good conscience.

Two measures passed in 2021 that seek to clarify the "reasonable assurance" requirement that applies to school employees seeking UI benefits. This standard

assesses whether an employee has received written, verbal, or implied assurance that they will be performing services for a school after a break period when determining UI benefit eligibility for that break period. [Senate Bill 495](#) seeks to encourage more consistent treatment of instructional assistants seeking UI benefits by removing the current threshold for instructional work. Instructional assistants are still only eligible for UI benefits for weeks that begin between two successive academic years or terms if they lack “reasonable assurance” that their work will resume at the end of the vacation period or holiday recess. [Senate Bill 496](#) exempts workers, from the “reasonable assurance” requirement who provide food preparation and service, early intervention services and support, and prekindergarten services and support. Those workers are now eligible for UI benefits for weeks that begin between two academic years or terms, regardless of their employer’s long-term assurances.

WORKERS’ COMPENSATION

The Legislative Assembly considered, but declined to enact, several concepts related to the state’s workers’ compensation (WC) system (e.g., [Senate Bill 489](#), [Senate Bill 801](#), and [Senate Bill 802](#)). Several of the issues raised in the concepts are currently under discussion in the [Workers’ Compensation Management-Labor Advisory Committee \(MLAC\)](#), a standing executive branch committee composed of equal representation from subject workers and employers tasked with studying and making recommendations for improvement of the state’s WC system.

LEAVE LAWS

Oregon law provides protection for employees to take time off work for illness and family care. In 2021, the Legislative Assembly passed several measures updating or clarifying these protections. By narrowing the state’s current sick leave exemption, [Senate Bill 588](#) will make most union workers employed through a hiring hall or similar third party, and who receive benefits from a joint multiemployer-employee trust or benefit plan, subject to the state’s sick leave laws beginning January 1, 2023.

Effective January 1, 2022, [House Bill 2474](#) expands Oregon Family Leave Act protection to all employees of covered employers during a public health emergency unless the employee was employed for fewer than 30 days prior to commencing leave or worked an average of less than 25 hours per week in a 30-day period prior to commencing leave. The measure does not amend the 180-day requirement for protected leave outside of a public health emergency.

[House Bill 2005](#) (2019) established the Paid Family and Medical Leave Insurance (PFMLI) Program to provide employees with a portion of wages while on family, medical, or safety-related leave. [House Bill 3398](#) pushed out implementation timelines for the PFMLI program to account for the impacts of COVID-19. Under the new timelines, contributions will begin January 1, 2023, a year later than initially planned. Benefits and employer assistance grants will become available September 3, 2023, instead of January 1, 2023. The measure also extends the deadline for the Employment Department to repay the General Fund to June 30, 2023.

WAGES, HOURS, BENEFITS, AND EMPLOYMENT AGREEMENTS

A noncompetition agreement is a clause in an employment contract in which one party (usually the employee) agrees not to enter into a similar profession or trade against another party (usually the employer). Oregon law allows noncompetition agreements to be voided if they fail to meet specified criteria, including a minimum employee salary in excess of \$100,000 per year. With the passage of [Senate Bill 169](#), noncompetition agreements entered into on or after January 1, 2022, may only be in effect for up to 12 months from the date of separation and must be executed in writing. Nonconforming agreements are void and unenforceable rather than voidable. [Senate Bill 13](#) (*not enacted*) also proposed limiting the use of noncompetition agreements to the protection of trade secrets, the protection of proprietary information, or a covenant to not compete for former customers or clients or provide similar processes or services.

Legislators considered implementing standards for overtime pay for agricultural workers during the 2021

session. The federal Fair Labor Standards Act exempts agricultural employees from overtime requirements ([29 U.S.C. Section 213\(b\)](#)). Oregon statute provides the Commissioner of the Bureau of Labor and Industries (BOLI) the authority to adopt rules prescribing minimum working conditions of employment, excluding minimum wages, in an occupation as may be necessary for the preservation of the health of employees ([ORS 653.261](#), 2019). [Oregon Administrative Rule 839.020.0135](#) exempts individuals employed in agricultural employment from the overtime provisions. In contrast to agricultural workers, Oregon law requires overtime pay for workers employed in canneries, driers, and packing plants. For such workers, [ORS 653.265](#) (2019) requires overtime pay of one and one-half times the regular rate if the worker works more than 10 hours in a day or 40 hours in a week. Overtime is calculated on both a daily and weekly basis, with the worker paid the higher of the two amounts. [House Bill 2358 A](#) (*not enacted*) would have required employers to pay agricultural workers time and one-half for hours exceeding 55 per week in 2022, 48 per week in 2023, and 40 per week in 2024 and thereafter. It also would have appropriated \$100 million from the General Fund to the Oregon Business Development Department for a program to provide payments to employers who pay overtime wages to agricultural workers. Both Washington and California recently passed laws to phase in overtime pay requirements for agricultural workers.

The Wage Security Fund protects workers when their employer closes the business and lacks the resources to pay wages owed. The Fund receives a diversion of 0.03 percent of the wages subject to unemployment insurance taxes due in the first calendar quarter of the biennium. An employee can file a wage claim with BOLI for wages earned during the 60 days preceding the business' closure or during the last 60 days of employment. The BOLI Commissioner can access the Wage Security Fund to pay the employee up to \$10,000. [House Bill 2818](#) expands access to the Wage Security Fund, directing the Commissioner to pay up to \$10,000 of wages owed to a claimant when the Commissioner has obtained a judgment or issued a final order in an administrative proceeding for wage collection even if the business remains open. As with any wage claim paid from the Wage Security Fund, the Commissioner can take action to recover from the

employer the wages paid in addition to costs, attorney fees, and a penalty.

In response to COVID-19, [House Bill 2818](#) also modifies the pay equity statutes to specify that vaccine incentives and, until March 1, 2022, hiring and retention bonuses are not considered a form of compensation for purposes of pay equity.

WORKING CONDITIONS AND WORKPLACE SAFETY

The Legislative Assembly enacted two measures to address retaliation against workers for reporting workplace safety violations. Oregon law makes it an unlawful employment practice for an employer to retaliate against an employee or prospective employee because that person reported or opposed a workplace health or safety violation, filed a complaint, or testified in a proceeding under the Oregon Safe Employment Act. The elements of retaliation are: (1) the employee engaged in a protected activity; (2) the employee was subjected to an adverse employment action; and (3) there is a causal link between the activity and the adverse employment action. Currently, the burden is on the employee to prove the employer's action was retaliatory. An aggrieved employee or applicant may file a complaint with BOLI within 90 days and may file a civil action in court within one year of the alleged violation.

[Senate Bill 483](#) creates a rebuttable presumption that prohibited retaliation or discrimination has occurred if an employer retaliates against an employee or prospective employee within 60 days of the person engaging in protected activities regarding workplace safety.

[House Bill 2420](#) extends to one year the timeline for an employee to file a complaint with BOLI alleging retaliation or discrimination for reporting an unlawful practice or exercising rights relating to safety and health in the workplace. This change extends the current 90-day timeline to align with the timeline that typically applies to civil rights complaint filings. The 90-day timeline was increased from 30 days in 2007. The timeline to file with the federal Occupational Safety and Health Administration remains at 30 days.

WORKFORCE DEVELOPMENT

The Eastern Oregon Border Development Board was established by [House Bill 2012](#) (2017) to address the unique economic and employment challenges of the region. The region is defined as any territory within 20 miles of the Oregon border with Idaho that includes Ontario, Vale, and Nyssa; an area across the border from Weiser, Idaho; Brogan and Willow Creek; and an area southwest of Vale for a distance of ten miles. Public employers recruiting for jobs performed within the Eastern Oregon Border Economic Development Region must now give a preference to Malheur County residents as established by [House Bill 2026](#). A Malheur County resident appointed to a position must maintain residency for five consecutive years or is subject to termination.

The federal Workforce Innovation and Opportunity Act of 2014 (WIOA) requires the creation of local workforce development boards, overseen by a state workforce development board, as vehicles to promote educational and training programs to dislocated workers and adult learners. Oregon's statewide board, the Workforce and Talent Development Board ([WTDB](#)), implements Oregon's federally mandated State [Plan](#) and coordinates workforce development programs across local boards and state agencies. The COVID-19 pandemic caused massive disruptions to the workforce, forcing thousands of Oregonians out of work and placing severe stress on the unemployment system. [Senate Bill 623](#) responds to the economic disruptions caused by the COVID-19 pandemic by establishing a permanent Committee for Continuous Improvement, jointly appointed by the WTDB and local boards, to comprehensively and regularly review and offer equity-oriented recommendations on how the state's workforce development system could be improved. Additionally, the Committee must select a contractor by September 30, 2021 to conduct an initial evaluation to identify immediate impacts to the system caused by COVID-19 and present its findings to the WTDB and the legislature.

The Oregon Youth Employment Program was originally created within the Higher Education Coordinating Commission (HECC) by [Senate Bill 175](#) (2011) as part of a broad legislative initiative on workforce development in the wake of the Great

Recession. It was intended to reduce youth unemployment by coordinating local workforce development boards to provide apprenticeships and work opportunities for Oregonians aged 16-24. However, it was never funded by the Legislative Assembly and has been dormant since its creation. [House Bill 2092](#) revises the Youth Employment Program by combining it with the Oregon Youth Corps and making the program eligible for federal funds via the WIOA. The bill also makes several equity-oriented changes to the program, including mandating that 20 percent of HECC-issued grants for the Oregon Youth Corps go to organizations that serve communities of color and that 75 percent of Youth Employment Program participants come from communities of color, rural communities, communities facing generational poverty, and other historically underserved communities. Program participants must be paid at least minimum wage and receive English language learner and accessibility services per the federal Americans with Disabilities Act.

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