

SELECTED OREGON EMPLOYMENT LEGISLATION¹

FINAL 2011 REPORT

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It's over! We're happy to report, that Oregon employers came away this year mostly unscathed with respect to new employment laws. You can review the summaries of the new laws below along with description of other legislation we were tracking that did not pass. The ones that did not pass are listed below and grayed out.

| BILL | DESCRIPTION | COMMENT |
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| HB 2036 | <p>Disabled Employees: Law makes some technical clarifications to the state disability discrimination statutes. Also applies a non-retaliation provision to employers with less than six employees.</p> <p>Effective: It became effective on June 1, 2011</p> | <p><i>Oregon employers with less than six employees were not subject to various requirements of the Oregon disability discrimination laws. This new law imposes liability on <u>all employers</u> in the event of discrimination on the basis that the employee or applicant previously applied for benefits or invoked the protections of the disability discrimination laws. Employers with fewer than six employees are still exempt from other protections of the law, including the duty to reasonably accommodate disabled employees. As a side note, the similar federal Americans with Disabilities Act ("ADA") applies to employers with 15 or more employees. Previously, HB 2036 included a provision that would have significantly eased the standard for determining whether a person is "disabled" and entitled to protection under Oregon's version of the ADA. This provision was removed as the result lobbying efforts.</i></p> |
| HB 2039 | <p>Penalty for Dishonored Paychecks: Allows BOLI to impose civil penalty against employers who issue dishonored paychecks. The money recovered is passed along to the employee.</p> <p>Effective: January 1, 2012</p> | <p><i>Oregon law already allows payees to sue for \$100 (or up to triple the amount for which the check is drawn) as a penalty for issuing a bounced check. For paychecks, this new law allows BOLI, on behalf of the employee, to collect this penalty from the employer.</i></p> |
| HB 2040 | <p>Payment of Wages / Unclaimed Wages: This new law requires employees who believe they are owed wages to be more specific in stating what is due.</p> <p>Effective: January 1, 2012</p> | <p><i>Oregon law imposes a statutory penalty for failure to pay wages owed at termination. The law also requires that employees first make a written demand if they want to collect the penalty wages. Until now, the statute did not expressly require the employee to say what he or she believes is owed. As a result, a vague demand might trigger the employer's obligation to pay, even though the employer is working in good faith to determine the amount owed. The new law helps put an end to this cat and mouse game, by requiring that the employee first estimate the wages owed or provide sufficient facts for the employer to estimate the amount.</i></p> |

¹ Randy Sutton and David Briggs are attorneys with the SAALFELD GRIGGS law firm in Salem Oregon. (www.sglaw.com). This summary was prepared with the firm's assistance. The information contained in this report is current as of July 5, 2011. This summary focuses on significant bills affecting private sector employers and is not intended to cover every employment-related bill. The status of particular bills will change rapidly during the legislative session. This information is considered accurate but is not guaranteed. Additional information is available at www.leg.state.or.us. The above comments are not legal advice and do not necessarily reflect the views of SHRM or the Oregon State Council, its board or members, or any affiliated organization. The purpose of this report is to provide information and is not intended to lobby one position over another.

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| HB 2828 | <p>Jury Service: This law will require employers with 10 or more employees to continue group health, life, disability and other insurance benefits while an employee is serving on jury duty. Employers may be required to pay the employee's share of coverage to keep the insurance in force. If so, the employer can deduct the employee's share of the insurance premiums from future paychecks. The bill also makes it an unlawful employment practice to discharge, threaten to discharge, intimidate or coerce any employee from serving as a juror.</p> <p>Effective: January 1, 2012</p> | <p><i>Although Oregon law currently protects employees on jury duty, this bill will make any effort by the employer to discourage jury service an unlawful employment practice. The law will also require the employer to continue to pay insurance premiums, including the employee's share, during the period of jury service. Payments on behalf of the employee can be recovered through future payroll deductions or by "other legal means" if the employee never returns to work.</i></p> |
| HB 3450 | <p>Arbitration Agreements: Currently, in order for an arbitration agreement to be effective, the job applicant must have at least two weeks prior notice before starting work that signing an arbitration agreement is a condition of employment. Under this new law, the time for notification will be reduced from two weeks to 72 hours.</p> <p>Effective: January 1, 2012</p> | <p><i>This new law will ease the burden on employers looking to hire more quickly, who still want to retain the protections and benefits of an arbitration agreement. When the bill was originally introduced, it also would have also shortened the two-week notification period for non-competition agreements. However, due to amendments in the bill, this waiting period remains.</i></p> |
| HB 3482 | <p>Leave for Harassment Victims: Currently, Oregon employers must provide unpaid time off and certain other safety accommodations to victims of domestic violence, sexual assault, and stalking. This bill would expand these protections to victims of criminal harassment.</p> <p>Effective: The bill declares an emergency and will be effective once the governor signs the bill.</p> | <p><i>The bill requires leave and safety accommodations to victims of criminal harassment. Criminal "harassment" is defined in ORS 166.065 to include: offensive physical contact; publicly insulting another person by abusive words or gestures intended and likely to provoke a violent response; false reports of death or serious physical injury to a person; and certain threats to a person or to property. This original version of the bill also covered victims of sexual harassment, which would have significantly expanded potential liability for Oregon employers. The references to sexual harassment have been removed.</i></p> |

LIST OF BILLS THAT DID NOT PASS

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| SB 2 | <p>Mandatory Veterans Day Holiday: Requires that veterans would get Veterans Day off. Veterans wishing to take this time off need to provide at least 21 days' notice. Employers can deny employees leave if they can show giving the leave would be an undue hardship. Time off would be unpaid, unless an the employee wanted to draw down on a paid leave bank.</p> | <p><i>If an employer denies a veteran leave on Veterans day, the employer would be required to give that employee a different day off later within the next year.</i></p> |
| SB 506 | <p>Bereavement OFLA Leave: Adds unpaid bereavement leave as a form of protected family leave under OFLA. Would allow eligible employees to take up to 2 weeks of leave to "deal with" the death of a family member, to attend a funeral or make funeral arrangements, or to grieve or receive counseling. The leave must be completed within 2 months of</p> | <p><i>In prior sessions, the legislature has considered bills seeking to add various new categories of activities as protected family leave. This bill would apply to all employers of 25 or more. Although many employers allow for paid or unpaid bereavement leave, this mandatory entitlement may limit an employer's</i></p> |

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| | the family member's death, and would have up to 12 months to use that leave. If more than one family member dies, the employer cannot require the concurrent use of family leave. This bill allows for the use of intermittent leave, and does not require prior notice to the employer. | <i>flexibility in managing its overall leave of absence policies.</i> |
| SB 611 | Definition of "Employer": Changes the definition of "employer" for purposes of wage and hour law to include "any other person acting directly or indirectly in the interest of an employer in relation to an employee." | <i>This bill creates a definition of "employer" that is indefinite and imprecise. Under this definition, HR professionals, payroll managers, outside consultants, and even attorneys for a company could be considered an "employer".</i> |
| SB 624 | Civil Action & Lien for Unpaid Wages: This bill allows employees to sue for unpaid wages as wages come due. Upon commencing a lawsuit against the employer, the bill would create a lien on the employer's real and personal property for the unpaid wages. | <i>This bill could prove problematic for businesses seeking credit, as the mere filing of the civil action by the employee, whether legitimate or not, creates a lien on the employer's assets.</i> <i>Similar to HB 2837</i> |
| SB 645 & 646 | Drug Testing: These bills would allow employers to enforce drug-free workplace policies without regard to whether an employee is a medical marijuana user. They would also set requirements for employers to have a workplace drug testing policy, such as a written policy must be in place for at least 30 days before testing can occur. | <i>The Oregon Supreme Court ruled on this issue in 2010, stating that Oregon employers do not have to accommodate medical marijuana users. There are currently no statutory requirements that an employer have a written policy in place before testing.</i> |
| HB 2035 | Statute of Limitations: Would allow additional time to file a lawsuit after BOLI issues a right to sue letter, so long as the lawsuit is filed within the one year statute of limitations. | <i>Currently, a BOLI "right to sue" letter creates a 90 day statute of limitations on filing a lawsuit. This bill would allow employees a full year to file a lawsuit after the occurrence of the unlawful practice, even in more than 90 days have passed since BOLI issued the right to sue letter.</i> |
| HB 2037 | Attorney Fees for BOLI Cease & Desist Orders: Allows BOLI to award attorney fees and costs to a prevailing complainant if BOLI issues a cease and desist order against an employer after a contested case hearing. The employer may recover attorney fees only if there was "no objectively reasonable basis" to issue charges against the employer. | <i>BOLI is often used as a free investigative tool for plaintiff attorneys. Once BOLI has obtained the employer's position statement and interviewed witnesses, the complaint is frequently dismissed and a lawsuit filed. This bill appears to be directed at keeping more claims within the BOLI administrative process.</i> |
| HB 2038 | Nursing Mother Protections: The new federal health care reform law requires employers with 50 or more employees to provide rest breaks for nursing mothers. The new law exempts employers under 50 if the rest breaks would create undue hardship by causing the employer significant difficulty or expense. Oregon also has a law protecting mothers who require rest breaks to express milk. The current Oregon law exempts any employer who can show undue hardship. This bill would eliminate this exemption for Oregon employers with 50 or more employees. | <i>Federal law is stricter than Oregon law for employers with 50 or more employees. This bill would help conform the Oregon law to the stricter federal law.</i> |
| HB 2041 | BOLI Cease & Desist Orders: Allows BOLI to issue temporary cease and desist orders when it has reason to believe that an employer is engaging in unlawful conduct. | <i>"Reason to believe" is a very low standard. This bill would greatly increase BOLI's flexibility to issue cease and desist orders.</i> |
| HB 2230 | Initial Payment of Wages: Requires an employer to offer a newly hired employee the option to receive his or her first payment of wages not later than 14 days after the first day of work. Provides for misdemeanor criminal liability in the event of a violation. | |

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| HB 2355 | Short-Term Disability Insurance Program: Establishes a short-term disability benefit program paid from mandatory employee contributions for employees who are disabled from working for at least 7 days. "Disability" includes sickness, nonindustrial injury, pregnancy and childbirth. Benefits can be collected by the employee for up to 52 weeks. Employees are paid approximately 55% of their average weekly wages. The bill makes it an unlawful employment practice to discharge or discriminate against an employee who makes a claim for short-term disability benefits. | <i>In prior sessions, the legislature has considered "Baby UI" and similar bills that would provide for paid family leave benefits by tapping the state's unemployment insurance fund. This bill would create a new short term disability program, funded through employee contributions, to pay employees who are unable to work. If the bill is passed, it is likely to increase employee use of OFLA and other leave of absence entitlements, by ensuring that a portion of the employee's wages will be reimbursed through the fund.</i> |
| HB 2360 | Job References: Increases protections for employers who give job references. Employers are presumed to be acting in good faith and that presumption can only be rebutted by clear and convincing evidence to the contrary. | <i>Oregon employers who give good faith employment references are immune from liability. This bill protects employers by making it even more difficult for an employee or former employee to show that an employment reference was made in bad faith.</i> |
| HB 2446 | Modification of Captive Audience Law: Oregon law currently makes it unlawful to discharge, discipline or otherwise penalize an employee who declines to attend an employer-sponsored meeting, if the primary purpose of the meeting is to communicate the employer's opinion about religious or political matters. The law defines "political matters" to expressly include discussions about supporting or joining labor unions. This bill deletes specific references to campaigns by organized labor. The bill also specifically allows mandatory employer-sponsored meetings to discuss business operations and other matters. | <i>The captive audience bill was pushed hard by labor unions in the 2009 session, and was viewed by employers as an attempt to tie their hands in speaking to employees during a union organizing campaign. Under this bill, "matters related to" labor unions are still protected, but the bill deletes specific reference to efforts by labor unions to organize the workforce. In addition, penalties are no longer mandatory, and an employee would not be entitled to damages or penalties unless he or she proves a right to back pay.</i> |
| HB 2656 | Minimum Wage Rate Adjustment: Oregon law currently adjusts the state minimum wage rate each year to account for inflation. This bill would link annual adjustments to the minimum wage rate to Oregon's rate of unemployment. If Oregon's monthly average unemployment rate is higher than the national average, the minimum wage rate would remain static whether or not there is an increase in the cost of living index. | <i>Oregon's unemployment rate is among the highest in the country. Oregon law currently ties annual minimum wage increases to increases in the Consumer Price Index (CPI), without regard for unemployment rates or other economic factors. The law also does not allow minimum wage to ratchet down when the cost of living decreases, as it did in 2009.</i> |
| HB 2771 | Repeal Captive Audience Law: This bill would repeal the recently enacted law prohibiting any adverse action against an employee who refuses to attend a mandatory meeting called by the employer to discuss certain topics, including discussions about union organizing. | <i>This bill seeks to repeal the captive audience law in its entirety. (The captive audience law is discussed in more detail re: HB 2446).</i> |
| HB 2837 | Civil Action & Lien for Unpaid Wages: This bill allows employees to sue for unpaid wages as wages come due. Upon commencing a lawsuit against the employer, the bill would create a lien on the employer's real and personal property for the unpaid wages. | <i>This bill could prove problematic for businesses seeking credit, as the mere filing of the civil action by the employee, whether legitimate or not, creates a lien on the employer's assets.</i> <i>Similar to SB 624</i> |
| HB 2844 | Search & Rescue Volunteer Leave: Oregon law currently gives employers the option to allow employees who are qualified as search and rescue volunteers to take unpaid time off. These volunteers are given various protections and reinstatement rights. This bill would make violation of these legal protections an unlawful employment practice. | <i>The law does not appear to require employers to offer leave to search and rescue workers, but does protect their reinstatement rights and employee benefits once leave is granted.</i> |

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| HB 2850 | Sibling OFLA Leave: This bill would include siblings in the definition of a “family member” under the Oregon family leave laws. | <i>OFLA allows protected leave to care for the employee’s family members. OFLA does not currently include siblings within the definition of a “family member.” Currently, the definition broadly covers just about everyone else, including the employee’s spouse, parent, parent-in-law, children, grandparents, and grandchildren. This bill would create another deviation from FMLA, which does not grant family and medical leave to care for siblings. In addition, given that an employee may have multiple siblings, it may greatly increase the number of occasions where an employee would be entitled to use OFLA leave.</i> |
| HB 2861 | Pay Discrimination: This bill would expand Oregon’s gender-based pay discrimination statute to prohibit pay discrimination based upon race, color, religion, sexual orientation, national origin, marital status, disability and age. | <i>Oregon law currently prohibits an employer from paying the opposite sex lower wages for work that is of comparable character and requires comparable skills. This bill would expand the law to cover other protected classes.</i> |
| HB 2905 | Family Leave for School Conferences: This bill would allow employees to take up to 18 hours of OFLA leave for school conferences to discuss academic issues such as academic achievement, attendance, dropout prevention and disciplinary issues. An employee would be limited to no more than six hours of leave in one month. Employees are required to give seven days notice unless unexpectedly summoned by the school or in case of emergency. The schools are required to try to schedule meetings in a manner that accommodates the employee’s work schedule. | <i>The legislature has frequently considered bills that seek to add various new categories of activities as protected family leave. This bill would apply to all employers of 25 or more. In particular, prior sessions have considered leave for school plays, concerts and the like. This bill limits leave to conferences with teachers and school officials.</i> |
| HB 2973 & 3045 | Mandatory Use of E-Verify: This bill would effectively require all employers to use the federal E-Verify program for verifying employment eligibility upon hire, by eliminating business expense tax deduction for employers who fail to comply. | <i>The federal E-Verify system requires employers to enter data from the employee’s I-9 into a Social Security Administration (SSA) database. Employees who are not confirmed in the database are required to take action to follow up with SSA. Currently, the E-Verify program is voluntary for most employers.</i> |
| HB 2995 | Mandatory Unemployment Drug Testing: Requires any applicant or recipient of unemployment insurance benefits to undergo substance abuse testing. A positive test results in disqualification unless the individual enters into a rehabilitation program. | |
| HB 3122 | Return to Work Rights: This bill would allow employers to put employees returning from family medical leave into an available equivalent position instead of being returned to the same position. | <i>This proposed change would give employers flexibility in working with employee leave issue. However, it would only affect employers with 25-49 employees, since federal law still requires employees to be returned to the same position in most cases.</i> |