



Oregon Employers Face Significant New Workplace Laws

Insights

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There's good news for Oregon employers about the recently concluded 2017 legislative session: unlike years past, there were only a very small number of workplace laws passed. In fact, the Oregon Legislature only passed four pieces of workplace legislation that are even worth discussing.

There's a downside, however. The significance of at least two of these new laws is fairly profound, and will almost certainly change the way you do business. This update will get you up to speed on the new laws so you can begin making necessary adjustments.

Oregon Follows Trend By Passing Equal Pay Law

Given the equal pay movement that has rapidly spread across the country in the past several years, seeing federal, state, and local action attempting to remedy the pay gap that exists between genders, it should come as no surprise that the legislature passed and Governor Brown signed HB 2005 – Oregon's new "Equal Pay Law." Although originally designed to aid women who were being paid less than men for the same work, the new law will go much further than that.

Oregon's new "Equal Pay Law" will explicitly prohibit employers from paying people less based not only on gender, but also on race, color, religion, sexual orientation, national origin, marital status, disability, or age – in other words, it will aim to eradicate a number of alleged unfair pay practices. Once the law takes effect, you must ensure that wage levels for comparable work are equivalent no matter the employee's protected class status. If you can identify bona fide reasons for pay disparities – such as seniority, merit, production-related metrics, workplace locations, travel needs, education, training, or experience – you should be able to avoid legal liability. However, if you identify problematic pay issues, you are prohibited from cutting someone else's pay in order to even things out; you must take active steps to remedy the gap.

The new law will also bar employers from using salary history when determining new workers' pay, ensuring that pay inequities do not become entrenched from one job to another. Businesses are also barred from firing workers who ask what their coworkers earn, so make sure any confidentiality provisions you might have in your policies do not interfere with this right.

There are two pieces of good news with this law. First, you can enjoy a safe harbor from the law if, within three years of any future legal action, you have voluntarily assessed your pay practices in order to identify and eliminate discriminatory pay practices, and then taken steps to ensure fair pay in the workplace. Second, the great majority of provisions in the law do not go into effect until

January 1, 2019. Take this time to familiarize yourself with the new requirements and ensure your business is in compliance when it comes to equal pay.

Takeaway: *We suggest you retain counsel in the near future to assist you with conducting a privileged internal assessment of your compensation levels; after such a review is complete, you can determine whether there are legitimate reasons to justify pay disparities and make adjustments as necessary. Additionally, after this internal assessment, your company should be able to benefit from the law's safe harbor provision.*

Oregon Becomes First State To Pass Predictive Scheduling Law

Oregonians are no strangers to blazing new trails, and this year the legislature ensured that we continue with this trend. Once Governor Brown signed SB 828 into effect on August 8, she confirmed that Oregon will soon be the first state to enforce a predictive scheduling law, regulating larger retail, food service, and hospitality employers when it comes to scheduling workers. Although several cities (including Seattle) have recently passed similar laws, Oregon's "Fair Work Week Act" will be the first such statewide measure to go into effect. The law includes a permanent statewide preemption, which means no other cities in Oregon can pass a more flexible scheduling law.

The new law will require certain employers – those retail, food service, and hospitality businesses with 500 or more employees worldwide – to post schedules seven days in advance, allowing workers plenty of time to know when they will be working in the future. This requirement will go into effect on July 1, 2018, although enforcement will not begin until January 1, 2019. Beginning on January 1, 2020, however, schedules must be posted 14 days in advance.

But there's more – much more. Employers covered by the new law will also have to provide new employees with a written, good faith estimate of the worker's schedule at the time of hire. Additionally, employers are no longer allowed to schedule employees within 10 hours of their last shift, effectively eliminating the practice of "clopenings."

If changes are needed in the schedule, employers have a set of notification hoops to jump through and may need to provide premium pay to workers affected by the changes. Moreover, workers will have a right to provide their preferences with regard to schedule times and locations, and although employers cannot retaliate against employees for making such requests, they have no actual obligation to grant such requests. Finally, employers with collective bargaining agreements will not be exempt from the law's requirements, so you cannot point to a union contract as an escape hatch.

On the positive side, the new law will allow employers to develop "voluntary standby lists" to allow you to call upon employees who agree to work on short notice. Another small relief – franchisees are not covered unless they have 500 employees of their own. However, Oregonians also know how these things tend to go. It would be of little surprise to anyone if the law is eventually expanded to capture smaller employers and employers in different industries.

The law will initially include a narrow private right of action against employers for retaliation, and other enforcement will be left to the Bureau of Labor and Industries (BOLI). If you want to avoid dealing with either, the time to bone up on the new law is now.

Takeaway: *Although it seems like you have plenty of time before the law takes effect, the effective date will be here before you know it. Do not postpone your education process, as you may need to make major changes to your policies and software scheduling systems in order to comply with the new law.*

Oregon Permits Caps On Sick Time

In 2015, the Oregon legislature passed a comprehensive sick leave law requiring most employers to provide workers with up to 40 hours of paid sick leave per year. Smaller employers – those with fewer than 10 employees, or fewer than six if in Portland – were required only to provide unpaid sick leave. The legislature just fixed the ambiguity that law left with regard to accrual issues.

Starting January 1, 2018, employers can limit the accrual of both paid and unpaid sick time to 40 hours per year. As originally written, the law specifically allowed employers to limit the amount of carryover of sick hours from one year to the next, but it was uncertain whether you could limit sick time accrual within a single year. Now, the legislature has clarified that employees can have a maximum sick leave bank of 80 hours, but only if they have 40 hours from a prior year and 40 hours from the current year.

Takeaway: *You should consider revising your sick leave policy on January 1, 2018 to cap accrual as the cap is now expressly permitted.*

Overtime Fix Comes As Welcome Relief

Some employers will come out of this legislative session happy after HB 3458 passed. The law essentially provides a fix to a sticky situation that became apparent in the last year. Recently, BOLI changed its interpretation of how manufacturers should apply daily and weekly overtime calculations to their workforces. In some instances, the new interpretation would have sometimes required payment of both kinds of overtime.

This law fixes that less-than-ideal situation by requiring manufacturing employers who owe daily and weekly overtime to calculate the two amounts and then pay out the greater of the two to their employees. Although this is not the greatest news in the world, at least the new law specifically says that employers do not have to pay out both kinds of overtime. This portion of the new law is effective immediately.

The law also caps weekly manufacturing hours at 55, although employees can voluntarily request or agree to up to five more hours as a permissible overage. For manufacturers dealing with perishable products, the bill allows the cap to be raised to 80 hours per week for up to 21 weeks so long as the employer files for and gets an undue hardship notice approved by BOLI. Within that 21-week period, the new law allows the cap to be raised to 84 hours per week for four weeks (again) upon approval of

the new law allows the cap to be raised to 64 hours per week for four weeks (again, upon approval of an additional undue hardship notice). The punishment for violating this portion of the law will be a slate of possible civil penalties. This portion of the law takes effect on January 1, 2018.

Takeaway: *If you found yourself on the losing end of the pay-out proposition, you can implement an instant fix and cease paying out two kinds of overtime pay. Work with your legal counsel to ensure your pay practices are up to snuff. If it turns out that they need an adjustment, your legal counsel can show you how to use the solution provided by the new law and limit your overtime liability.*

If you have any questions about these new laws, please contact any attorney in the Portland office of Fisher Phillips at 503.242.4262.

This Legal Alert provides an overview of several specific new state statutes. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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Richard R. Meneghello
Chief Content Officer
503.205.8044
[Email](#)





Stephen Scott
Partner
503.205.8094
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