



The Latest and Greatest in Oregon Employment Law

Presented by
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Today's Presenters



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Today's agenda – updates on:

1. Oregon legislative session
2. Oregon Paid Family and Medical Leave
3. Federal rulemaking
4. Oregon Workplace Fairness Act
5. Oregon OSHA



2021 Oregon Legislature: “Dead” Employment-Related Bills of Interest

HB 2205 (Private Attorney General Act)

- Authorized private organizations to sue private entities on “behalf of” the State of Oregon
- More expansive than California statute in that this bill applied to all state law

2021 Oregon Legislature: “Dead” Employment-Related Bills of Interest

HB 2489 (Independent Contractors)

- State agencies to use ORS 670.600 independent contractor test for a broader swath of laws (including wage/hour)
- State agencies then apply “economic realities” test on top
- Rebuttable presumption of employment

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2021 Oregon Legislature: “Dead” Employment-Related Bills of Interest

SB 477 (Burden of Proof In Discrimination Cases)

- No “severe or pervasive” requirement for harassment claims
- No requirement of proof that employee treated less favorably than similarly situated comparator
- No requirement that employee follow the employer’s reporting process

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2021 Oregon Legislature: “Alive” Employment-Related Bills of Interest

HB 3389 (Unemployment Taxes)

- Adjusts experience ratings to those in effect at the start of 2020
- Forgives 1/3 of tax owing for certain employers that saw increases of 1% or more
- Reduces amount necessary for Oregon unemployment trust fund by 10%

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2021 Oregon Legislature: “Alive” Employment-Related Bills of Interest

HB 2474 (OFLA Expansion)

- Reduces 180-day requirement to 30-day requirement for leave during public health emergency
- Employee’s prior OFLA eligibility reinstated if they terminate and are rehired within 180 days
- Employees may use sick-child leave for school/daycare closure during a public health emergency (already in the rules!)

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2021 Oregon Legislature: “Alive” Employment-Related Bills of Interest

SB 483 (Safety-Retaliation Presumption)

- “Rebuttable presumption” of retaliation when adverse action taken against an employee within 60 days of safety-related protected activity

HB 2325 (Non-Compete)

- Makes non-compliant non-competes “void” rather than “voidable”
- Clarifies the minimum annual comp for a subject employee (\$100,533, adjusted annually for inflation)
- Reduces max non-compete period to 12 months

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2021 Oregon Legislature: “Alive” Employment-Related Bills of Interest

HB 3351 (Min Wage Increase)

- Minimum wage becomes \$17/hour in July 2022 instead of \$12.50-\$14.00
- 2023 increases tied to COLA instead of inflation

SB 616 (OT for Ag Workers)

- Requires overtime for agricultural workers who work 40+ hours in a work week
- No daily overtime or other hours limitations

SB 716 (Childcare Reasonable Accommodations)

- Applies to employers covered by predictive scheduling law
- Employees may request reasonable scheduling accommodations related to childcare needs

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Oregon Paid Family and Medical Leave

Paid Family and Medical Leave Insurance Timeline



Oregon Paid Family and Medical Leave

- To be funded like unemployment with employer/employee contributions (40% employer, 60% employee)
- Applies to employers with 25+ employees in OR
- Provides up to 12 weeks of paid leave for covered reasons mostly tracking OFLA/DV leave
- Benefit amount based on employee's average weekly wage
- Rate to be set annually, not to exceed 1% of wages
- Rate applies to first \$132,900 in wages
- Will run concurrent with OFLA/FMLA

Oregon Paid Family and Medical Leave

What has happened so far?

- “Town hall” listening sessions – fall 2020
- First draft of proposed rules – December 2020 (more to come)
- Advisory committee and workgroup meetings (ongoing)

Sign up for alerts:

<https://www.oregon.gov/employ/PFML/>

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Oregon Paid Family and Medical Leave

Workgroups

- Contributions – focus on timeline and procedures for setting the rate, logistics of remitting payment
- Equivalent plans – focus on procedures for applying for approval of plan + department review
- Small employers – focus on counting employees, assistance grants for small companies
- Self-employed/independent contractors – focus on contribution amount and method, election process/fee
- Benefits – focus on determining benefit year, verification and required documentation

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Oregon Paid Family and Medical Leave

Highlights from first draft of proposed rules

- Things that are “wages”
 - Commissions (or draws)
 - Severance, vacation, sick, holiday pay
 - Room and board/non-cash compensation
- Things that are not “wages”
 - Pension payments
 - Meal/travel reimbursement
 - Workers’ comp payments

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Oregon Paid Family and Medical Leave

What’s still TBD?

- Amount of contribution (or rate for calculating contribution)
- How to calculate employee count
- Contents of required notice
- Logistics of actually claiming benefits

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Tips Rule

- Trump DOL rule clarified several aspects of the Tip Income Protection Act, which allowed tip-sharing between FOH and BOH employees except when the employer takes the FLSA tip credit (not allowed in Oregon or Washington)
- Biden DOL announced delay, then withdrawal/delay of other aspects of the rule in March
- Portions of the Trump DOL rule (a) prohibiting supervisors and managers from participating in tip pools and (b) allowing non-tip-credit employers to require tip sharing will go into effect April 30
- Biden DOL reconsidering portions of Trump DOL rule concerning civil penalties for violations and “dual job” employees

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Independent Contractor Rule

- Trump DOL rule would have arguably made it easier to classify individuals as independent contractors under the FLSA, particularly gig economy workers
- Biden DOL announced its intent to formally withdraw the rule effective later this month
- Biden DOL hedging its bets on whether it will propose a replacement rule

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Federal DOL update

Joint Employer Rule

- Trump DOL rule significantly tightened the standards for finding 2+ entities to be joint employers, in particular temp agency-based relationships (“vertical” relationships)
- Biden DOL announced its intent to formally rescind the rule effective later this month
- Biden DOL does not plan to engage in additional rulemaking at this time

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Oregon Workplace Fairness Act

By now, you should have:

- Updated your handbook to include an OWFA-compliant anti-harassment policy
- Prepared a standalone copy of the policy to give to new hires or people who complain of violations
- Reviewed your employment, severance, and settlement agreement forms for non-disclosure, non-disparagement, and rehire provisions

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OR OSHA infectious disease rules

- OR OSHA temporary rules effective Nov. 16, 2020 – May 4, 2021
- Proposed final rules already released in Jan. 2021
- Key similarities to temporary rules:
 - Mandatory physical distancing and face coverings
 - Exposure risk assessment, infection control plan and posting requirement
 - Employee training
 - “Exceptional risk” workplaces and industry-specific rules

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OR OSHA infectious disease rules

Key differences from temporary rules: COVID-19 vaccine

- Vaccine administration
 - Employer must make employees and adequate space available when a local public health agency or OHA determines it's necessary to administer the vaccine in the workplace
- Employer-mandated vaccines
 - Employer must cover vaccine costs and pay employees for time associated with receiving it

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OR OSHA infectious disease rules

Key differences from temporary rules: COVID-19 vaccine (cont.)

- Time period – permanent until repealed
- Documenting declination
 - Employers are not required to mandate the vaccine
 - Proposed rules state that if the employees decline the vaccine, the employer must document the declination

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