



**2007 OREGON LEGISLATIVE SESSION**

**Final Report**

**Labor and Employment Laws**

The 2007 legislative session has ended, and Oregon employers have a number of new laws to contend with. What follows is a summary, analysis and status update on each of these laws. If you would like more information, please send an email to our Labor and Employment attorneys, Andrew Lewis ([alewis@hershnerhunter.com](mailto:alewis@hershnerhunter.com)) and Amanda Walkup ([awalkup@hershnerhunter.com](mailto:awalkup@hershnerhunter.com)).

Statute	Summary	Comments	Status
<b>ORS 659A.030</b>	This statute makes it unlawful for an employer to discriminate against an applicant or employee based on the applicant's or employee's "actual or perceived heterosexuality, homosexuality, bisexuality or gender identity." Exclusions exist for certain churches and religious institutions.	The law permits an employer to enforce an "otherwise valid dress code or policy," as long as the employer reasonably accommodates the individual employee's health and safety needs.	This statute became effective on January 1, 2008.

*This summary provides general information and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you have specific legal questions, you are urged to consult with your attorney concerning your own situation.*

*Brought to you by the Labor and Employment attorneys at Hershner Hunter, LLP*

Statute	Summary	Comments	Status
<b>ORS 653.295</b>	This statute makes non-competition agreements and arbitration agreements enforceable only if the employer informs the employee of the terms of those agreements at least two weeks before the employee starts work. It also limits the enforceability of non-competition agreements to two years, and to white collar exempt employees. However, employers will be able to enforce non-competition agreements against non-exempt employees if the employer pays the employee a specified level of post-employment compensation. Excluded from the scope of the statute are agreements not to solicit a former employer's employees and customers.	This statute was the legislature's first significant overhaul of the non-competition statute since the original law was enacted in 1977. It essentially limits the use of non-competition agreements to a specified subset of professional employees, but also removes from the statute's scope non-solicitation agreements.	This statute became effective on January 1, 2008, and applies to all agreements entered into after that date.
<b>ORS 414.312</b>	This statute, referred to as the Oregon Better Health Act, creates the Oregon Health Fund program, which would administer basic health care in the state to residents who have no employer health care and are not eligible for publicly funded medical assistance. Any other resident or employer in the state may participate in the program.	The Oregon Health Fund would collect various public and private funds and contract with health benefit plans to provide essential health services. Premiums for employers would presumably be decreased by the larger risk pool. There is no discussion of secondary insurance in this statute.	This statute became effective on January 1, 2008.
<b>ORS 243.650(7)(f)</b>	This statute modifies the definition of "employment relations" for emergency and public safety bargaining units that are prohibited from striking. The statute specifically includes staffing levels and safety issues that have a potential impact on the on-the-job safety of the employees."		This statute became effective on January 1, 2008.

Statute	Summary	Comments	Status
<b>ORS 653.261(5)(b)</b>	This statute permits an employee who serves food or beverages, receives tips and reports those tips to the employer to waive the employee's meal period.	Under Oregon law, any employee who works at least six hours is required to be relieved of all duties for a 30 minute (paid or unpaid) break. However, the middle of a shift is often a server's most profitable time. Accordingly, this statute will permit servers to waive their meal periods.	This statute became effective on January 1, 2008.
<b>ORS 433.850</b>	This statute expands the prohibition on smoking to all enclosed public places and places of employment.		This statute became effective on January 1, 2009.
<b>ORS 646.600 et seq.</b>	This statute provides identity theft protection to employees and customers, and requires employers to adopt measures to safeguard personal information.	This statute requires employers to give notice to customers and employees if their personal information is disclosed for other than legitimate business reasons. It prohibits employers from publicly posting or displaying consumers' and employees' social security numbers, and requires employers to maintain reasonable safeguards to protect personal information, including its disposal. A \$1,000 fine is imposed for each violation.	This statute became effective on October 1, 2007.
<b>ORS 659A.270 et seq.</b>	This statute provides employees with unpaid leave for legal proceedings and services or treatment relating to domestic violence, sexual assault or stalking.	Employers with six or more employees will be subject to this statute. Eligible employees may take leave on behalf of their dependents as well. There is an exemption for undue hardship on the part of the employer.	This statute became law on May 25, 2007.

Statute	Summary	Comments	Status
<b>ORS 654.176</b>	This statute requires every employer to establish and administer a safety committee or hold safety meetings. It also requires the state Department of Consumer and Business Services to implement rules governing the functions of those committees and the conduct of those meetings. This statute also authorizes the agency to make special rules for smaller employers who may be unduly burdened if required to develop and maintain a formal safety committee.	Current law requires that employers with more than 10 employees establish safety committees. This statute expands that requirement to all Oregon employers.	This statute became effective on January 1, 2008.
<b>ORS 654.005(5)(c)</b>	This statute expands the definition of “employer” for purposes of the workers’ compensation laws to include successor employers who are owned by substantially the same individuals and performing substantially the same operations as the predecessor.		This statute became effective on June 27, 2007.
<b>ORS 652.750(2)</b>	This statute imposes a 45-day deadline (from the date the employer receives a request) to (i) provide personnel records to an employee or former employee for inspection, and (ii) if requested, supply the employee or former employee with a certified copy of those records. The employer and employee may agree to extend those deadlines. The statute also imposes a \$1,000 fine for violating the statute.	Under current law, an employer is obligated to provide access to and copies of an employee’s or former employee’s records within a “reasonable time.” While the specific deadline imposed by this statute will not be a problem in most cases, the fine imposed for non-compliance could be construed as excessive.	This statute became effective on January 1, 2008, and applies to requests made on or after that date.

Statute	Summary	Comments	Status
<b>ORS 652.355</b>	This statute makes discrimination against an employee for making wage-related claims an unlawful employment practice, and permits the employee to file a complaint with BOLI. Compensatory damages of at least \$200 may be awarded, in addition to punitive damages and other remedies that are already allowed (reinstatement, back pay and attorney's fees for the prevailing party).	This statute creates an additional protected class for purposes of Oregon's discrimination laws, and greatly expands the scope of remedies available to an employee who complains about unpaid wages.	This statute became effective on January 1, 2008, and applies to discriminatory acts occurring on or after that date.
<b>ORS 652.120(5)</b>	This statute imposes a deadline for an employer who discovers that an employee has been underpaid to correct that mistake. If the underpayment represents 5% or more of the employee's gross wages, the underpayment is due within three days after the employer has notice of the unpaid amount. If the unpaid amount is less than 5%, it must be paid no later than the next scheduled payday.		This statute became effective January 1, 2008.
<b>ORS 654.062(6)</b>	This statute increases the statute of limitations for filing retaliation claims arising out of workplace safety complaints from 30 to 90 days.	ORS 654.0062 makes it an unlawful employment practice for an employer to bar or discharge from employment or discriminate against an employee for opposing unsafe working conditions. This statute extends the 30-day period the employee has to file a complaint with BOLI to 90 days (from the date the employee had reasonable cause to believe that a violation occurred).	This statute became effective June 4, 2007.

Statute	Summary	Comments	Status
<b>ORS 659A.885(6)</b>	This statute expands Oregon’s discrimination law to allow the recovery of compensatory and punitive damages.	Federal law (primarily Title VII) applies to most employers. Under Title VII, employers are liable for compensatory damages, but the amount is capped based on the number of employees the employer has. In the past, Oregon law entitled prevailing employees to recover back pay, but not compensatory damages. This statute dramatically expands the employer’s potential liability.	This statute became effective on January 1, 2008, and applies to actions commenced on or after that date.
<b>ORS 653.077</b>	This statute requires employers with 25 or more employees to provide their employees with an unpaid 30 minute rest period for every four hours of work to express milk, unless an undue hardship results. This statute also requires employers to “make reasonable efforts” to provide a suitable location for the employee to express milk.	In 2005 the legislature passed a law suggesting that employers make “reasonable efforts” to accommodate an employee’s desire to express milk at work. This statute makes that duty mandatory.	This statute became effective on January 1, 2008.
<b>ORS 659A.162(6)</b>	This statute prevents the concurrent use of Oregon family leave during an absence that results from an on-the-job injury. The statute does not impact the use of federal family leave, which will continue to run concurrently.	Under current law, an employer can require that family leave run concurrently with leave to recover from a disabling on-the-job injury. This statute would prohibit the use of family leave for such absences, effectively preserving the employee’s leave bank for other permitted uses. The effect will be an increased burden on employers due to lengthy employee absences, and more favorable treatment to injured workers.	This statute became effective on January 1, 2008. The law applies to employer refusals occurring after that date.

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		Also, although an injured worker's refusal of a <i>bona fide</i> light duty offer can cut off an employee's reinstatement rights, it will automatically trigger OFLA protection, whether or not the employer realizes it.	
<b>ORS 659A.174</b>	This statute requires employers to allow employees to use paid sick leave for any OFLA qualifying purpose (serious health condition leave, pregnancy disability leave, parental leave and sick child leave).	Under current law, an employee must be permitted to use accrued sick leave for parental and pregnancy leave, but whether sick leave can be used for other purposes depended on the employer's policy.	This statute became effective on January 1, 2008, and applies to family leave taken on or after that date.
<b>ORS 659A.150(4); ORS 659A.183</b>	This statute allows eligible employees to take serious health condition leave to care for a grandparent or grandchild. It also provides a cause of action for discrimination on the basis that an employee has inquired about or submitted a request for family leave.	Under Oregon law, an eligible employee is entitled to take up to twelve weeks of unpaid leave to care for the employee's spouse, parent, parent-in-law, biological, adopted or foster child, and same-sex domestic partner. This law expands those categories under state law (but not federal law), resulting in more complicated tracking procedures.	This statute became effective on January 1, 2008 and applies to all employer acts occurring on or after that date.
<b>ORS 652.610(4)</b>	This statute requires employers to pay to the intended recipient, as required by law or by agreement, amounts deducted from employees' wages for that purpose.		This statute became effective on January 1, 2008, and applies to deductions made on or after that date.

<b>Statute</b>	<b>Summary</b>	<b>Comments</b>	<b>Status</b>
<b>ORS 243.682(2)</b>	This statute requires the Employment Relations Board to certify a labor organization as the exclusive representative of employees when a majority of employees in a unit sign an authorization designating the labor organization as the bargaining representative.	The current investigative process by the Board, which is prompted by a showing of support from 30% of employees, does not change under this statute. However, with this statute, if a majority of employees agree to form a unit, the Board cannot deny the request.	This statute became effective on July 27, 2007.