

# HERSHNER HUNTER<sup>LLP</sup> ATTORNEYS

## 2009 OREGON LEGISLATIVE SESSION

### Labor and Employment Laws

As of June 15, 2009

The 2009 Oregon legislative session will adjourn no later than June 30, 2009. With the exception of the Ways and Means, Finance and Revenue, Rules and joint committees, May 28, 2009 was the deadline for committees to close. Any bills left in committee as of that date are effectively dead. What follows is a summary, analysis and status update of employment related bills. Periodic updates can be found at [www.hershnerhunter.com](http://www.hershnerhunter.com). If you would like more information, please send an e-mail to our Labor and Employment attorneys, Andy Lewis ([alewis@hershnerhunter.com](mailto:alewis@hershnerhunter.com)) and Amanda Walkup ([awalkup@hershnerhunter.com](mailto:awalkup@hershnerhunter.com)).

Bill	Summary	Comments	Status	Action
<p><b>HB</b> <a href="#">2059</a></p> <p>(Health Care Professionals)</p>	<p>This bill requires individuals who are licensed by any one of numerous health-related regulatory boards to report conduct by any other licensee that the reporting licensee reasonably believes constitutes grounds for discipline.</p>	<p>This bill would require counselors, massage therapists, dentists, nurses, physicians, physical therapists and other health care providers to report suspected misconduct to whatever board licensed the professional who is suspected of that misconduct.</p>	<p>HB 2059 passed in the House and the Senate, and is awaiting formal passage.</p>	

*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*

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<p style="text-align: center;"><b>HB</b> <u><a href="#">2118</a></u></p> <p style="text-align: center;">(Health Care Professionals)</p>	<p>This bill would impose on health care licensees an affirmative duty to report professionals who may be impaired by the excessive use of drugs or alcohol, other chemical dependency or a mental health condition, and confers civil immunity on any licensee who makes such a report in good faith.</p>	<p>This bill would also allow licensing boards to require fingerprinting for background check purposes.</p>	<p>HB 2118 has been referred to Ways and Means. The committee recommended passage of the bill with amendments. HB 2118 was then assigned to the Subcommittee on Education and then referred back to the full Ways and Means committee. On June 10 the committee recommended passage with amendments.</p>	<p style="text-align: center;"><a href="#">Contact committee chairpersons.</a></p> <p style="text-align: center;"><a href="#">Send a message to your legislator.</a></p>
<p style="text-align: center;"><b>HB</b> <u><a href="#">2201</a></u></p> <p style="text-align: center;">(Unemployment Insurance Administration)</p>	<p>Under Oregon law, an LLC could elect to exempt members from unemployment compensation insurance coverage, and a corporation could also do so for corporate officers who: (i) are also directors; (ii) have a substantial ownership interest in the business; and (iii) are members of the same family. Traditionally the decision to exempt such individuals must be in writing, and would be effective on the first day of the calendar quarter in which the request was submitted to the Employment Department. This bill would also change the effective date to the current calendar quarter <u>or</u> the preceding calendar quarter.</p> <p>This bill would also make officers, directors, members, partners and employees personally liable for a company's failure to properly classify officers and members as exempt, or otherwise comply with the statutory requirements regarding the payment of unemployment insurance premiums.</p>		<p>The Governor signed this bill into law on May 5, 2009. HB 2201 becomes effective January 1, 2010.</p>	

<p><b>HB</b> <a href="#">2377</a></p> <p>(Cell Phone Use)</p>	<p>This bill would prohibit individuals from using a cell phone for any non-emergency purpose while operating a motor vehicle, unless the individual was using the device in hands-free mode. (See also HB 2038 and HB 2526).</p>		<p>HB 2377 passed in the House. The bill was then referred to the Senate Consumer Protection and Public Affairs Committee. A work session was held on May 28. The bill has been referred to the Rules Committee without a recommendation as to passage but with amendments.</p>	<p><a href="#">Contact committee members.</a></p> <p><a href="#">Send a message to your legislator.</a></p>
<p><b>HB</b> <a href="#">2633</a></p> <p>(Collective Bargaining)</p>	<p>This bill would modify the definition of “supervisory employee” for purposes of public employee collective bargaining to require the individual to have “independent” authority to act on behalf of the employer. It also specifically addresses whether charge nurses in hospitals may be classified as “supervisory” employees.</p>	<p>This bill, if passed, would reduce the number of employees excluded from a collective bargaining unit.</p>	<p>HB 2633 passed in the House. The bill has been referred to the Senate Commerce and Workforce Development Committee. The committee recommended passage with amendments. HB 2633 was then referred to the Rules Committee by order of the President.</p>	<p><a href="#">Contact committee members.</a></p> <p><a href="#">Send a message to your legislator.</a></p>
<p><b>HB</b> <a href="#">2740</a></p> <p>(Wages)</p>	<p>This bill would prohibit an employer from adjusting an employee’s wage based on the city, county or state in which the employee resides (commonly known as residency pay differentials).</p>		<p>HB 2740 passed in the House, and has been assigned to the Ways and Means Subcommittee on Transportation and Economic Development.</p>	<p><a href="#">Contact committee members.</a></p> <p><a href="#">Send a message to your legislator.</a></p>

<p><b>HB</b> <a href="#">2744</a></p> <p>(Military Leave)</p>	<p>This bill would require employers to provide 14 days of unpaid leave to employees who are spouses of members of the Armed Forces (including the National Guard) who are on active duty during periods of military conflict. The leave would be available if the service member faced an “impending call or order to active duty,” or if the member is on leave from deployment. The employee would be entitled to restoration of the employee’s job without loss of benefits. (See also SB 805).</p>	<p>This bill is similar, but not identical, to the military leave revisions to the FMLA.</p>	<p>HB 2744 passed in the House and the Senate, and is awaiting formal passage.</p>	
<p><b>HB</b> <a href="#">2821</a></p> <p>(Family Leave)</p>	<p>This bill would prohibit an employer from requiring eligible employees to use accrued vacation leave when taking family leave.</p>		<p>HB 2821 passed in the House. The bill was then referred to the Senate Commerce and Workforce Development Committee. A work session was held, and on June 2 the bill was referred to the Rules Committee.</p>	<p><a href="#">Contact committee members.</a></p> <p><a href="#">Send a message to your legislator.</a></p>
<p><b>HB</b> <a href="#">2826</a></p> <p>(Child Labor)</p>	<p>This bill would increase the hours that children under 16 years of age can work during the summer period. Current law prohibits children under 16 from working past 7:00 p.m. This bill would change that to 9:00 p.m.</p>		<p>The Governor signed this bill into law on May 21, 2009. HB 2826 becomes effective January 1, 2010.</p>	
<p><b>HB</b> <a href="#">2903</a></p> <p>(Non-Competition)</p>	<p>Under this bill, the period for notifying applicants of the requirement that they enter into a non-competition agreement as a condition of employment would be reduced from two weeks to three days.</p>		<p>HB 2903 did not make it out of committee and is effectively dead.</p>	

<p><b>HB</b> <a href="#">3162</a></p> <p>(Whistleblowing)</p>	<p>This bill would prohibit an employer from discharging or otherwise discriminating or retaliating against an employee if the employee in good faith reported information that the employee believes is evidence of a violation of state or federal law.</p>	<p>Under current law, whistleblowing protections are limited. This bill would significantly expand those protections.</p>	<p>HB 3162 passed in the House and the Senate, and is awaiting formal passage.</p>	
<p><b>HB</b> <a href="#">3171</a></p> <p>(Jury Duty Leave)</p>	<p>This bill would prohibit an employer from requiring an employee serving on jury duty to use accrued paid leave for that purpose.</p>		<p>HB 3171 did not make it out of committee and is effectively dead.</p>	
<p><b>HB</b> <a href="#">3256</a></p> <p>(Discrimination)</p>	<p>This bill would prohibit an employer from discriminating against an individual because of the person's service in the military.</p>		<p>HB 3256 passed in the House and the Senate, and is awaiting formal passage.</p>	
<p><b>SB</b> <a href="#">60</a></p> <p>(Wage Claims)</p>	<p>This bill would allow the BOLI Commissioner to assess and collect attorney's fees against an employer when collecting a judgment on a wage claim.</p>		<p>SB 60 has been signed into law and becomes effective January 1, 2010.</p>	
<p><b>SB</b> <a href="#">126</a></p> <p>(DOT Drug Tests)</p>	<p>This bill would require motor carriers to notify the state Department of Transportation when an employee who holds a commercial driver's license tests positive for drugs or refuses to take a drug test (other than a pre-employment test). The DOT would be required to suspend the person's license, but could reinstate it if the employee met certain reinstatement qualifications.</p>		<p>The Senate Judiciary Committee has recommended passage of SB 126 with amendments. On May 4, the bill was assigned to the Ways and Means Subcommittee on Transportation and Economic Development.</p>	<p><a href="#">Contact committee members.</a></p> <p><a href="#">Send a message to your legislator.</a></p>

<p style="text-align: center;"><b>SB</b> <u><a href="#">277</a></u></p> <p style="text-align: center;">(Public Accommodations)</p>	<p>This bill would require places of accommodation to permit customers to use employee toilet facilities if the customer uses an “ostomy device” or has a “diagnosis of Crohn’s Disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome or other medical condition that can cause a person to require access to a toilet facility without delay.”</p>	<p>Under this bill, in order for the customer to be able to use the employee bathroom: (i) the public bathroom must not be “immediately available;” (ii) there must be three or more employees working at the time of the request; and (iii) the employee toilet must be reasonably safe and not located in an area that would pose an obvious health or safety risk to employees or the customer, or a security risk to the place of public accommodation. If enacted, this bill would impose a maximum fine of \$90 against any merchant who denies a customer with any of the above conditions use of the employee bathroom.</p>	<p>SB 277 passed in the Senate and the House, and is awaiting formal passage.</p>	
<p style="text-align: center;"><b>SB</b> <u><a href="#">373</a></u></p> <p style="text-align: center;">(Child Support)</p>	<p>This bill would hold an employer liable to the beneficiary of a child support order if the employer withholds employee wages in response to a support order, but then fails to pay those withheld funds to the beneficiary within the timeframe set out in the support order. The employer would also be liable to the employee if the employer withheld more than was required by the support order. The beneficiary and employee would be entitled to recover all damages arising out of the employer’s failure to comply with the support order, plus attorney’s fees. The employer would also be subject to a fine of \$250 per violation.</p> <p>This bill also makes it unlawful for an employer to discharge, refuse to hire, or discriminate or retaliate against any employee who is subject to a support order, or because the support order imposes obligations on the employer.</p>		<p>SB 373 passed in the Senate and the House, and is awaiting formal passage.</p>	

<p><b>SB</b> <b><a href="#">519</a></b>  (Retaliation)</p>	<p>This bill would prohibit all employers from retaliating against an employee because the employee refused to attend an employer-sponsored meeting or participate in a communication regarding the employer's opinion about religious or political matters. The bill creates exceptions for certain religious and political organizations, and for meetings that are strictly voluntary.</p>	<p>Aggrieved employees would be entitled to file a civil lawsuit against their employer no later than 90 days after the date of the alleged violation, and may recover three times' the amount of actual damages, plus attorney's fees.</p>	<p>SB 519 passed in the Senate and was then referred to the House Rules Committee. A work session was held June 12.</p>	<p><a href="#">Contact committee members.</a></p> <p><a href="#">Send a message to your legislator.</a></p>
<p><b>SB</b> <b><a href="#">786</a></b>  (Religious Discrimination)</p>	<p>This bill would (i) require employers to accommodate an employee's religious observances and practices unless doing so caused an undue hardship; (ii) permit employees to use paid leave as an accommodation; and (iii) restrict an employer's ability to place limitations on an employee's desire to wear religious clothing or participate in religious activities.</p>	<p>Although employers are already required to reasonably accommodate religious practices and observances, this bill would make it more difficult to establish that accommodating a practice would constitute an undue hardship.</p>	<p>SB 786 passed in the Senate and the House, and is awaiting formal passage.</p>	
<p><b>SB</b> <b><a href="#">874</a></b>  (ADA)</p>	<p>This bill would essentially adopt the recent amendments that were made to the ADA, making Oregon law more consistent with its federal counterpart.</p>		<p>SB 874 passed in the Senate and the House, and is awaiting formal passage.</p>	

<p style="text-align: center;"><b>SB</b> <b><a href="#">928</a></b></p> <p style="text-align: center;">(Domestic Violence)</p>	<p>This bill would (i) prohibit an employer from discriminating against an employee or applicant who is a victim of domestic violence, sexual assault or stalking; and (ii) require an employer to implement “reasonable safety accommodations” (such as transfers, reassignments “or any other adjustment”) requested by a victim of domestic violence, sexual assault or stalking.</p>		<p>SB 928 passed in the Senate and the House, and is awaiting formal passage.</p>	
<p style="text-align: center;"><b>SB</b> <b><a href="#">966</a></b></p> <p style="text-align: center;">(Paid Family Leave)</p>	<p>This bill, like HB 3160, would establish a “Family Leave Benefits Insurance Program.” As part of that program employers would be required to withhold \$.02 from each employee’s hourly wage, and pay that amount into an insurance fund. Employees could then use those funds for six weeks of paid parental leave and leave to care for a family member with a serious health condition, even if the employees had available vacation and sick leave. Benefits would approximate \$300 per week.</p>	<p>This bill would impose an added administrative burden on employers, and would make individual business owners and employees personally liable for failing to comply with the program. In addition, there are serious questions about whether the \$.02 charge will be sufficient to fund the program.</p>	<p>The Commerce and Workforce Development Committee has recommended passage of SB 966 with amendments. The bill has been assigned to the Ways and Means Subcommittee on Human Services. A public hearing was held on May 20.</p>	<p><a href="#">Contact committee members.</a></p> <p><a href="#">Send a message to your legislator.</a></p>