

MEMORANDUM

DATE: January 11, 2023

RE: Employment Law Updates

Summarized below are newly effective laws and important reminders for Oregon employers. Employers should review their current policies, practices and procedures to ensure they are aligned with these changes.

OFLA - You might recall that the [Oregon Family Leave Act \(OFLA\) expanded](#) in a few important respects at the beginning of last year (2022). One of those changes was that during a “public health emergency” employee eligibility for any qualifying reason (including parental leave) is reduced from the usual 180 days to 30 days for employees who have (a) been employed for at least 30 days before the leave begins, and (b) worked an average of at least 25 hours per week during that same timeframe. We’re reminding you of that change because it is relevant right now: on November 14, 2022, Governor Brown [declared a public health emergency](#) in response to an increase in respiratory viruses in children, including RSV. The declaration extends to March 6, 2023, unless extended or terminated earlier by the governor.

Oregon Employment Agreements - In 2019 the Legislature enacted a law that prohibits employers from requiring prospective and current employees to sign confidentiality agreements as a condition of employment if the effect of the provision is to prevent the employee from disclosing or discussing discrimination or sexual assault that occurred in the workplace. The law also prohibits employers from including confidentiality and non-disparagement provisions when settling discrimination and sexual assault claims unless the employee has requested confidentiality. SB 1586 clarifies that law in several important ways:

- It specifies that the law also applies to *former* employees (not just applicants and current employees);
- It clarifies that whenever a former, current or prospective employee settles a discrimination or sexual assault claim that has been brought against an employer, the agreement can include a confidentiality and/or non-disparagement provision only if the applicant, employee or former employee requests it;
- It requires the employer to provide the settling employee with a copy of the employer's non-discrimination policy at the time of settlement;
- It prohibits an employer from conditioning the settlement on the employee requesting confidentiality/non-disparagement (i.e., the request for confidentiality/non-disparagement must originate with the employee, not the employer);
- It broadens the definition of a confidentiality provision to include information regarding the settlement amount; and

- It clarifies that the above limitations on confidentiality and non-disparagement provisions only apply to discrimination and sexual assault claims, and not to other circumstances in which the employee may be asked to sign a confidentiality agreement.

PLO - As a reminder, important aspects of the Paid Leave Oregon (PLO) benefit—a new family and medical leave insurance program for Oregon employees that is funded by employee and employer contributions—went into effect January 1, 2023. The required [Model Notice](#) should have been posted no later than January 1, 2023, and as of January 1, 2023, employers must be withholding employee contributions and holding those funds in trust until they are paid to the Oregon Employment Department (or, for employers awaiting approval of their equivalent plans, returned to their employees or used for administrative costs upon approval). The [Paid Leave Oregon Employer Guidebook](#) is a valuable resource that can help you determine what your obligations under the PLO are, including information regarding the amounts of employee contributions you should be withholding and whether you must also pay contributions (which depends on your size).

Overtime for Agriculture Workers - Starting January 1, 2023, Oregon employers are now required to pay overtime to agriculture workers. The number of hours worked to be eligible for overtime pay will be phased-in over the next several years. Effective January 1, 2023, agriculture workers who work more than 55 hours in a workweek are eligible for overtime pay; effective January 1, 2025, agriculture workers who work more than 48 hours in a workweek are eligible for overtime pay; and effective January 1, 2027, agriculture workers who work more than 40 hours in a workweek are eligible for overtime pay. Some exceptions apply. More information is available on the [Oregon Bureau of Labor & Industries website](#).

For more information, please contact our attorneys, [Amanda Walkup](#), [Andy Lewis](#), and [Mario Conte](#).

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.