



SALEM SHRMA CHAPTER
SELECTED OREGON EMPLOYMENT LEGISLATION¹
2007 – END OF SESSION REPORT



RANDY SUTTON, ATTORNEY AT LAW
 2007 Salem Chapter Legislative Affairs Director

The session is over! Although it could have been worse, this session brings many new challenges for Oregon employers to contend with. The following is a summary of bills that passed and a selected list of bills, for better or worse, which did not. Although the Governor has not signed all of these bills into law yet, the expectation is that he will do so.

Employment Discrimination	
SB 2	<p><u>Sexual Orientation & Gender Identity</u></p> <p>The “Oregon Equality Act” modifies Oregon discrimination law to give protection to a person’s “actual or perceived heterosexuality, homosexuality, bisexuality or gender identity.” The law has certain exemptions for churches and religious institutions. The law also expressly prohibits discrimination on the basis that a person’s appearance, expression or behavior differs from that traditionally associated with the person’s sex at birth.</p> <p><i>COMMENT: The law specifically allows employers to enforce “an otherwise valid dress code or policy.” It is unclear what would be considered a “valid” dress code or policy, and the extent to which an employer’s appearance policy will need to accommodate individuals who wish to dress in a manner not consistent with their actual gender.</i></p>
HB 2255	<p><u>Wage Claim Discrimination</u></p> <p>Makes discrimination against an employee who has made a wage claim an unlawful employment practice. Employees may recover compensatory and punitive damages.</p> <p><i>COMMENT: This bill expands the remedies available to employees who have complained about unpaid wages and allows the employee to file a complaint with BOLI.</i></p>
HB 2260	<p><u>Expansion of Remedies for Discrimination Claims</u></p> <p>This new law will expand Oregon’s employment discrimination law to allow recovery of compensatory and punitive damages.</p> <p><i>COMMENT: The federal employment discrimination law (Title VII) applies to most employers. Under federal law, an employee can recover compensatory damages, but the amount of damages is capped based on the size of the employer. In the past, the comparable Oregon version of Title VII allowed for back pay but not compensatory or punitive damages. This bill dramatically expands the potential liability of Oregon employers, while not imposing any caps based on an employer’s size.</i></p>

¹ **Randy Sutton** is a partner with the SAALFELD GRIGGS_{pc} law firm (www.sglaw.com). This summary was prepared with the firm’s assistance. The information contained herein is current as of July 9, 2007. This information is considered accurate but is not guaranteed. Additional information is available at www.leg.state.or.us. The above comments are not legal advice and do not necessarily reflect the views of the Salem SHRM Chapter, its board or members, or any affiliated organization. This report is available online at: www.shrmsalem.org. Randy can be contacted at rsutton@sglaw.com.

Family Leave & Employee Benefits

SB 329	<p><u>Health Insurance Pool</u></p> <p>Known as the “Healthy Oregon Act,” this legislation will allow businesses and individuals to join and “pool” their health care dollars to increase their buying power and share the risks across a larger spectrum.</p> <p><i>COMMENT: According to the proponents of this legislation, everyone who joins the pool receives an Oregon Health Card with an affordable benefits package and can purchase additional benefits. These benefits include the ability to obtain coverage from the insurer of their choice, and with no denial of coverage based on pre-existing conditions or loss of a job.</i></p>
SB 946	<p><u>Domestic Violence Leave</u></p> <p>This law, which is already in effect, requires an employer with six or more employees to allow eligible employees to take unpaid leave to obtain services or treatment relating to domestic violence, sexual assault or stalking. The law allows an employer to limit the amount of leave if leave creates undue hardship to employer’s business. Employees are eligible for this benefit if they have worked an average of 25 or more hours per week for a 180 day period prior to the leave.</p> <p><i>COMMENT: Unlike OFLA, this law applies to even very small employers. The law provides protection for absences taken for domestic violence, sexual assault or stalking, whether suffered by the employee, or by the minor child or dependent of the employee. The employee may take leave for purpose of seeking legal or law enforcement assistance, medical treatment, to obtain counseling, to relocate or take other steps to ensure health and safety. An employer may withhold leave in the event of an undue hardship, which is defined as significant difficulty and expense to the employer’s business in light of the size of the business and “critical need” for the employee.</i></p> <p>NOTE: This law has been in effect since May 25.</p>
HB 2007	<p><u>Domestic Partner Benefits</u></p> <p>The law allows domestic partnerships between individuals of the same sex. To be eligible for benefits under the law, same-sex couples must complete a Declaration of Domestic Partnership and Certificate of Domestic Partnership and file the forms with the county in which they reside.</p> <p><i>COMMENT: Although the new law impacts benefits granted under Oregon law, the bill does not affect rights granted and regulated under federal law. For example, the federal Family and Medical Leave Act (“FMLA”) does not recognize same-sex domestic partners, so any family leave granted to care for a domestic partner would not count against the employee’s 12 week FMLA entitlement. Likewise, the new law should not impact the operation of qualified retirement plans (such as 401(k), profit sharing, and defined benefit plans), or self-funded welfare benefit plans. Both types of plans are governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), which specifically preempts attempted regulation by state law.</i></p>

<p>HB 2372</p>	<p><u>Nursing Mothers</u></p> <p>Requires employers with 25 or more employees to provide unpaid rest periods to employees to express milk if no undue hardship is caused.</p> <p><i>COMMENT: The last legislative session passed a law only suggesting that employers make “reasonable efforts” to accommodate an employee’s desire to express milk at work. The new law is mandatory. An employee is entitled to a 30 minute break for every four hours of work unless it would create an undue hardship. The employer must also provide a location to express milk, but the law is very flexible in allowing use of public restrooms and other areas.</i></p>
<p>HB 2460</p>	<p><u>Family Leave Cannot Run Concurrently with Workers’ Compensation Leave</u></p> <p>This law prevents concurrent running of family leave during an absence due to an on-the-job injury. A worker’s refusal of a bona fide light duty offer will automatically trigger family leave protections without notice to the employer.</p> <p><i>COMMENT: Currently, a workplace injury that qualifies for family leave can run concurrently with an employee’s workers’ compensation leave. The new law does not allow a reduction in the OFLA leave bank when the employee is absent due to an on-the-job injury. However, the new law has no effect on FMLA leave, so an employer can continue to dock FMLA leave for an absence due to a workers’ compensation injury that would qualify for FMLA. Although the refusal of a bona fide light duty offer can cut off reinstatement rights, it automatically triggers OFLA protection whether or not the employer realizes it.</i></p>
<p>HB 2485</p>	<p><u>Use of Paid Sick Leave for OFLA Absence</u></p> <p>Expands an employee’s ability to use paid sick leave for OFLA family leave purposes.</p> <p><i>COMMENT: Currently, an employer can prohibit an employee’s use of paid sick leave for some family leave absences. This bill allows the employee to use paid sick leave for family leave absences.</i></p>
<p>HB 2635</p>	<p><u>Grandparents & Grandchildren are OFLA Eligible</u></p> <p>This new law adds grandparents and grandchildren to the list of eligible “family members” for OFLA leave purposes.</p> <p><i>COMMENT: An employee can take OFLA leave for the serious health condition of their “family member.” Current law limits family members to immediate family in a parent or child relationship. Because of the number of grandparents and grandchildren an employee may potentially have, and the likelihood that young children and older family members will experience a serious health condition, the new law will exponentially increase the number of situations where an employee can take leave family leave. This further complicates tracking for employers covered by both OFLA and FMLA, as the federal law doesn’t cover grandparents and grandchildren.</i></p> <p><u>Expansion of OFLA Retaliation Liability</u></p> <p>This new law clarifies that there is a retaliation cause of action for discrimination on the basis that an employee has inquired about or submitted a request for family leave.</p> <p><i>COMMENT: The courts were split with regard to whether OFLA created a claim for retaliation, or whether an employee could only sue for denial of OFLA benefits. The new law resolves that issue.</i></p>

Employee Relations

HB 2222	<p><u>Safety Committees for Small Employers</u></p> <p>The bill expands the requirement to establish and administer a safety committee to all Oregon private employers. It also requires the implementation of new rules regarding alternate forms of safety committees for small employers, agricultural employers, and employers with mobile worksites.</p> <p><i>COMMENT: The current law required that employers with more than 10 employees establish safety committees. The new law expands this requirement to all Oregon employers. However, it also requires that BOLI implement new rules to meet the "special needs" of small, agricultural and mobile employers.</i></p>
HB 2254	<p><u>Request for Personnel Records</u></p> <p>This law imposes a 45 day deadline on providing employees with requested personnel records. It also imposes a \$1,000 penalty for noncompliance.</p> <p><i>COMMENT: The existing law required only that the employer provide a "reasonable opportunity" to inspect the records "at the request of the employee." This law clarifies the amount of time an employer has to produce the records.</i></p>
HB 2259	<p><u>Safety Complaints</u></p> <p>This law lengthens the statute of limitations on filing a retaliation claim arising from the voicing of concerns about workplace safety from 30 days to 90 days.</p> <p><i>COMMENT: This law significantly increases the amount of time available to an employee to file a retaliation complaint.</i></p> <p><i>NOTE: This bill has been in effect since it passed in early June.</i></p>

Employment Agreements

Noncompetition & Nonpiracy Agreements

This law significantly changes when noncompetition restrictions will be valid.

COMMENT: For a geographical restriction, an employee must qualify as an “exempt” under the administrative, executive or professional white collar exemptions, and must earn at least as much as the median for a four-person family (about \$62K). The person also needs to be exposed to trade secret or proprietary information. The agreement will only be good for two years. The agreement must be presented to the employee in a written job offer at least two weeks before the start of work. The law also creates a new exemption for non-piracy agreements. A non-piracy agreement prevents an employee from soliciting customers and employees of the former employer and prevents the employee from transacting business with the former employer’s customers.

SB 248

Arbitration Agreements

The new law also requires that any agreement to arbitrate employment disputes must be presented to the employee in a written job offer at least two weeks before the start of work.

Wage & Hour

Meal Breaks for Tipped Employees

This law permits food servers who receive and report tip compensation to voluntarily waive the required meal break. It also imposes up to a \$2,000 penalty on an employer who coerces an employer to waive the meal period.

SB 403

COMMENT: The law directs BOLI to implement regulations allowing tipped employees to waive their state mandated meal period, which often falls during the middle of high volume activity in restaurants. Currently, any employee who works at least six hours is required to be relieved of all duties for a 30 minute break (paid or unpaid). This meal period must be applied as close to the middle of a shift as possible. According to the Oregon Restaurant Association, for a server earning tips, the middle of the shift is often most profitable for the server.

Deadline for Paying Wages Owed

This new law sets a deadline on correcting an employee’s paycheck. Except where the amount owed is nominal, the law imposes a three working day deadline to pay wages to an employee when an employer realizes that an employee has been underpaid.

**HB
2258**

COMMENT: The existing law only required that regular paydays be established. The new law requires that once an employer is notice that an employee has not been paid the full amount owed, the correction must be promptly made.

SIGNIFICANT BILLS THAT DID NOT PASS

SB 294	Employers do not need to accommodate off-duty medical marijuana use. Allows employers to enforce their drug testing policies.
SB 354	Expands prohibition against smoking in the workplace to vehicles in which passengers are present and meeting rooms, elevators and stairways. Increases fine from \$1,000 to \$10,000.
SB 423	Prohibits an employer from discriminating against a person who engages in medical use of marijuana outside the workplace.
SB 465	Employers do not need to accommodate off-duty medical marijuana use. Allows employers to enforce their drug testing policies.
SB 475	Prohibits businesses from disclosing or transferring a person's SSN, except with consent of individual. Exception for credit and background checks.
SB 616	This bill would make an otherwise valid noncompete void if the employee is laid off.
SB 628	Makes discrimination on the basis of a person's arrest record an unlawful employment practice.
SB 690	Allows employers to adopt a comprehensive drug free workplace program. Employers would not be required to accommodate medical marijuana.
SB 691	Protects an employer who gives job references at the request of the former employee.
SB 1035	Would make "harassment, intimidation or workplace bullying" an unlawful employment practice. The bill defines the unlawful conduct to include "derogatory remarks, insults or epithets, physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the gratuitous sabotage or undermining of an employee's work performance.
HB 2257	This bill would not allow an employer to enforce a noncompete against an employee who is laid off.
HB 2429	Allows employer to deduct from employee's wages for cost of drug test if the drug test is positive.
HB 2441	Unemployment insurance benefits made contingent on former employee passing drug test.
HB 2575	Creates a paid family leave program through deductions from the wages of all employees.
HB 2673	Would allow BOLI to require daily overtime for employees working more than 8 hours in one day (or 10 hours under a 4/10 schedule).

HB 2715	This bill would require most Oregon employers to eventually participate in the Department of Homeland Security's basic employment verification pilot program.
HB 2893	This bill would prohibit an employer from requiring that employee attend a meeting to discuss the employer's opinions about religious or political matters, which is defined to include discussions about labor unions.
HB 3169	Exempts children under 16 years of age from limitations on hours of work during summer and any vacation period of five or more consecutive school days in school year.
HB 3397	Prohibits employers from discriminating in compensation against part-time employees and employees in contingent jobs.
HB 3398	Standardizes definitions of "employ," "employee," "employer" and "wages" for purposes of various Oregon statutes.
HB 3539	Requires employer to provide reasonable accommodation to religious observance or practices.