

The Latest Employment Law Issues – Oregon, Fall 2019

Presented by

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Overview

- Topics Covered:
 - Noncompetition Agreements
 - Immigration Notice
 - Settlement/Separation Agreements
 - Paid Family Leave
 - Rest Period for Nursing Moms



Noncompetition Agreements



- **HB 2992** / Effective January 1, 2020
- Bill Places Extra Restrictions on the Validity/Enforceability of Noncompetition Agreements:
 - Employer must provide employee with a signed copy of the terms of the agreement within 30 days after the termination date.
- Other Restrictions:
 - Employer must tell employee in a written job offer at least two weeks before employee starts that the noncompete is required, or the noncompete is entered into upon a bona fide advancement;
 - Employee must be exempt from Oregon minimum wage and overtime laws;
 - Employer must have a “protectable interest” (access to trade secrets or competitively sensitive confidential information);

Noncompetition Agreements (continued)

- The employee must make more than the median family income for a family of four as calculated by the Census Bureau;
- The agreement is cannot be effective for longer than 18 months from the date of the employee's termination.



Immigration Notice



- **SB 370** / Effective June 6, 2019
- This Bill requires employers to notify employees soon after employer receives notice that a federal agency is seeking to inspect documents and other information relating to the “identity and employment eligibility” of employees.
 - Within 3 business days of receiving notice from a federal agency, Oregon employers must:
 - Post the notice in a conspicuous and accessible location (in English and any other language used to communicate with employees); and
 - Make reasonable attempts to individually distribute notifications to employees in each employee’s preferred language.

Immigration Notice (continued)

- The notice must include:
 - A copy of the federal agency notice of inspection;
 - The date of the inspection;
 - The scope of the inspection (to the extent known); and
 - A telephone number, prescribed by the Oregon Bureau of Labor and Industries (BOLI), for a hotline operated by an organization that provides “information and advocacy related to immigrant and refugee workers’ rights.”



Immigration Notice (continued)

- BOLI created a template notice (Chinese, English, Korean, Russian, Spanish, and Vietnamese) that meets these requirements, and selected the Portland Immigrant Rights Coalition (1-888-622-1510) as the hotline for employees to call.
- According to BOLI's FAQs, a "reasonable attempt" to distribute the notice individually can vary depending on the specifics of the workplace and how the employer normally communicates with its employees.
 - Examples include emails, paystubs (if they are going to be issued within the three-day period), text messages with the documents attached, or a notice to employees asking them to pick up the notice in a designated office.

Settlement/Separation Agreements

- SB 726 / Effective October 1, 2020
- This Bill makes it an unlawful employment practice for employer to enter into an agreement that would prevent employee from disclosing or discussing conduct that constitutes unlawful discrimination.
- Other specifics:
 - Expands the statute of limitations for most discrimination claims to five years after the occurrence of the alleged violation.



Settlement/Separation Agreements (continued)

- Employers must have written policies that must:
 - Provide a process for an employee to report prohibited conduct;
 - Identify the individual and alternate who are responsible for receiving reports of prohibited conduct;
 - Include the statute of limitations period applicable to an employee's right of action for alleging unlawful conduct;
 - Include a statement that an employer may not require or coerce an employee to enter into a nondisclosure or nondisparagement agreement, including a description of the meaning of those terms;

Settlement/Separation Agreements (continued)

- Include an explanation that an employee claiming to be aggrieved by prohibited conduct may voluntarily request to enter into an agreement that has nondisparagement, no-rehire and/or nondisclosure agreement and that employee has at least seven days to revoke the agreement; and
- Include a statement that advises employers and employees to document any incidents involving prohibited conduct.



Settlement/Separation Agreements (continued)

- Employer may enter into a settlement, separation, or severance agreement that includes a nondisclosure, nondisparagement, or no-rehire provision only when an employee claiming to be aggrieved by discrimination requests to enter into the agreement. Such agreement must provide employee at least **seven days to revoke**, and the agreement may not become effective until after the expiration of the revocation period.



Paid Family Leave



- HB 2005 / Operative January 1, 2022 – payroll contributions begin and written notice to employees required / January 1, 2023 – employees can start taking leave.
- This Bill creates a medical leave insurance program to compensate covered individuals with family leave, medical leave or safe leave.
 - Available to those who made at least \$1,000 in a calendar year.
 - 12 weeks of paid time off to recuperate for employee's own serious illness, assist a family member, care for kids (new, adopted and foster), and/or deal with domestic violence.
 - Payroll tax split 60-40 between workers and employers.
 - Low income workers (pay equal to or less than 65 percent of the state average weekly wage) will get full wage replacement, and other works will get partial wage replacement.

Expressing Milk in the Workplace

- HB 2593 / Effective 91 days after the close of the legislative session
- This Bill requires all employers, regardless of size to provide nursing mothers with a reasonable rest period to express milk as needed.
 - Employers with 10 or fewer employees are excepted if this imposes an undue hardship.
 - (Note - ORS 653.077 already provided that employers with 25 or more employees had to provide nursing mothers with a 30-minute unpaid break to express milk.)



Reasonable Accommodation for Pregnancy-Related Conditions – HB 2341

- Requires reasonable accommodation of pregnancy-related conditions (e.g. lactation, childbirth)
 - Reasonable Accommodation may include equipment, longer/more frequent breaks, assistance with manual labor and/or work modification
- Prohibits discrimination/retaliation, forced leave, forced reasonable accommodation and denial of employment opportunities based on need for reasonable accommodation
- Employers of 6+ employees must provide notice of these protections:
 - To new employees at time of hire
 - To current employees within 180 days of Act's implementation (Jan 1, 2020)
 - By posting signs in conspicuous/accessible location

What Issues Are You Concerned About?



Questions

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**THANK
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