

## LABOR AND EMPLOYMENT

## SOCIAL MEDIA PRIVACY

## ORS 659A.330

## 2015 OREGON LAWS CH. 229 (SB 185)

Senate Bill 185 amends ORS 659A.330 to also make it unlawful for an employer to:

- Require applicants or employees to establish or maintain a social media account as a condition of employment (e.g., employers cannot refuse to hire an applicant for the sole reason that he or she does not have a social media account); or
- Demand that applicants or employees allow the employer to advertise on their “personal social media account.” Personal social media accounts are those that are used solely for personal purposes unrelated to any business purpose of the employer and are not paid for or otherwise provided for by the employer.

Employers may continue to view the public portions of an employee’s or applicant’s social media content without violating the law. Second, employers do not violate the law if they inadvertently come across information that would provide them access to personal social media content (e.g., during the monitoring of sites an employee accesses from a work computer). Third, the law also provides that an employer may direct an employee to share his or her social media as part of an investigation into alleged misconduct or harassment involving social media.

*Effective date: January 1, 2016.*

## OVERPAID UNEMPLOYMENT INSURANCE BENEFITS

## ORS 657.315, 657.320

## 2015 OREGON LAWS CH. 530 (SB 243)

Senate Bill 243 amends ORS 657.315 and 657.320 by providing that an individual who receives unemployment benefits to which he or she is not entitled may, in certain circumstances, have that amount deducted from future benefits that the individual would otherwise receive under the law of another state. Additionally, the bill also increases the period of time in which the Oregon Employment Department has to uncover overpayments due to false statement, misrepresentation, or non-disclosure of a material fact to five years.

*Effective date: June 22, 2015. The amendments apply to amounts paid to individuals as benefits (1) for which the individual is found liable under ORS 657.310, on or after the effective date, to repay or to have deducted from benefits payable; or (2) for which the three-year period described in ORS 657.320 has not elapsed on the effective date.*

## INJURED STATE WORKER RIGHT TO REINSTATEMENT

## ORS 659A.052

## 2015 OREGON LAWS CH. 232 (SB 291)

Senate Bill 291 amends ORS 659A.052 to clarify that the injured state worker has a right to reinstatement or reemployment at any available and suitable position in another agency within the same branch of government when all permanent restrictions are known.

*Effective date: June 2, 2015.*

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**PAID SICK LEAVE**  
**ORS 653.256, 659A.885**  
**2015 OREGON LAWS CH. 537 (SB 454)**

Senate Bill 454 requires Oregon employers to provide up to 40 hours of sick leave to employees per year beginning January 1, 2016, and, in most cases, that leave time must be paid.

Under the new law, which amends ORS 653.256 and ORS 659A.885, employers with 10 or more employees (six or more for Portland employers) will be required to provide their employees who work in Oregon with up to 40 hours of paid sick leave per year. Employers with fewer than 10 employees (fewer than six for Portland employers) will also be required to provide employees with up to 40 hours of sick leave, but this bank of leave time can be unpaid. The law applies to the vast majority of Oregon's workforce, including full-time, part-time, temporary, and seasonal employees.

Employers are prohibited from interfering with an employee's right to use sick leave or from retaliating against an employee who requests or uses sick leave. In addition to enforcement by the Oregon Bureau of Labor and Industries (BOLI), employees who believe their rights under this act have been violated will have a private right of action to sue.

Employers must provide notification at least once per quarter to each employee of the amount of accrued and unused sick time available for use by the employee; this obligation can be satisfied by including the information in employee pay statements. Employers are also required to provide written notice to employees regarding the requirements of the law, and BOLI will soon make available to employers a template that meets the required notice provisions under the law.

*Effective date: January 1, 2016. The bill applies to hours worked and sick time accrued or used on or after the effective date.*

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**WARRANTS FOR BACK WAGES OR FINES**  
**ORS 18.854**  
**2015 OREGON LAWS CH. 294 (SB 468)**

Senate Bill 468 provides BOLI with the authority to issue a warrant for unpaid amounts due resulting from a final order or judgment. The bill allows 30 days from the date that amount becomes due prior to issuing the warrant. It requires the warrant to include principal, interest, and costs. The warrant may be filed with the county clerk.

*Effective date: January 1, 2016. The amendments apply to all debts owed to BOLI on or after the effective date.*

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**SUPPLEMENTING DOMESTIC VIOLENCE LEAVE**  
**ORS 659A.285**  
**2015 OREGON LAWS CH. 352 (SB 492)**

Since 2007, Oregon law, via ORS 659A.270-280, has required covered employers (those with six or more employees) to provide victims of domestic violence, sexual assault, harassment, or stalking with unpaid leave. A 2014 amendment requires covered employers to provide employees with such leave starting with the first day of his or her employment.

Senate Bill 492 amends the law to clarify that an employee taking leave for reasons related to domestic violence, sexual assault, harassment, or stalking is entitled to use accrued sick leave or personal business leave when taking that leave. The prior version of the statute only provided that employees may use any paid accrued vacation leave or other paid leave offered in lieu of vacation leave.

*Effective date: January 1, 2016.*

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**DOMESTIC WORKERS' PROTECTION ACT**  
**ORS 659A.885**  
**2015 OREGON LAWS CH. 457 (SB 552)**

Senate Bill 552 provides various workplace protections for domestic workers, including those who provide care in private homes (e.g., nannies) and/or maintain private homes and their premises (e.g., housekeepers). SB 552 requires that domestic workers receive overtime pay at 1.5 times the employee's base wage for hours worked in excess of 40 hours a week or, in the case of workers living in an employer's home, 44 hours a week. Additionally, an employer of a domestic worker is now required to provide written notice (prior to employment) of expected hours worked, regular rates of pay (including overtime), and regular paydays.

Domestic workers are also now required to receive at least 24 consecutive hours of rest in each workweek. If domestic employees work on that day of rest, they will be entitled to overtime pay. Along those same lines, qualifying domestic workers will also be entitled to at least three personal days of paid leave after one year of employment.

Employers of domestic workers are required to keep accurate records of daily and weekly hours worked by the domestic worker. Such employers are also prohibited from requiring that they retain the workers' passport, making unwelcome sexual advances, harassing a worker based on a protected classification, or unlawfully retaliating against a worker.

*Effective date: January 1, 2016.*

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## **WAGE TRANSPARENCY**

### **ORS CH. 659A**

#### **2015 OREGON LAWS CH. 307 (HB 2007)**

House Bill 2007 amends ORS Chapter 659A to make it an unlawful employment practice for employers to discipline, discriminate, or otherwise retaliate against employees for:

- Inquiring about wage information;
- Disclosing or discussing wage information (related to themselves or other employees); or
- Making a complaint based on the disclosure of such wage information.

The bill applies to all employees (including supervisors) and, moreover, will cover "any manner" of inquiries, discussions, or disclosures related to wages. Workers will be able to bring suit alleging unlawful retaliation if they are fired, disciplined, or otherwise impacted by an adverse employment action after having inquired about wage issues if they believe that the two actions are related.

HB 2007 explicitly does not apply to situations where an employee who has access to other employees' wages as part of his or her job function (e.g., a payroll manager) discloses the wages of those employees to unauthorized individuals. However, there is an exception if the disclosure was made in response to a charge or complaint or in furtherance of an investigation, including an employer's own internal investigation.

*Effective date: January 1, 2016.*

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## **UNEMPLOYMENT BENEFITS HEARING**

### **ORS 657.270**

#### **2015 OREGON LAWS CH. 69 (HB 2439)**

House Bill 2349 amends ORS 657.270 to state that, after the issuance of a written decision by an Administrative Law Judge regarding an unemployment claim, any party requesting a rehiring must file a request to reopen the hearing with the Office of Administrative Hearings while simultaneously providing a copy of that request to the Oregon Employment Department.

*Effective date: May 14, 2015. The amendments apply to requests for hearings and requests to reopen hearings filed on or after the effective date.*

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## **REDUCTION OF UNEMPLOYMENT BENEFITS**

### **ORS 657.115, 657.150**

#### **2015 OREGON LAWS CH. 103 (HB 2440)**

House Bill 2440 amends ORS 657.115 and 657.150 by requiring that unemployment benefits paid to a claimant must be reduced for any claimant who receives an award of back pay during the time period in which the unemployment benefits were received.

*Effective date: May 20, 2015. The amendments apply to weeks beginning on or after the effective date.*

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## **CONTINUATION COVERAGE FOR OFLA LEAVE**

### **ORS 659A.171**

#### **2015 OREGON LAWS CH. 323 (HB 2600)**

House Bill 2600 amends ORS 659A.171 to require that group health insurance coverage for an employee who is on leave under the Oregon Family Leave Act (OFLA) be provided on the same terms as when the employee is not on leave (including any coverage provided to spouses or dependents).

This amendment brings OFLA into close alignment with the federal Family Medical Leave Act (FMLA), which already requires that covered employers (i.e., employers with 50 or more employees) provide continuation coverage. Therefore, the primary employers affected by this amendment will be those employers that are covered by OFLA but not FMLA (i.e., employers with between 25 and 49 employees) and those that offer group health plans.

*Effective date: January 1, 2016.*

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**PAY FOR PUBLIC SECTOR EMPLOYEES  
ON MILITARY LEAVE  
ORS 408.240**

**2015 OREGON LAWS CH. 42 (HB 2763)**

House Bill 2763 amends ORS 408.240 to permit a public employer to establish a program that allows employees to receive pay from the employer for the purpose of supplementing the compensation that they otherwise receive from the military. The amendment clarifies that the amount “received by” the employee under this law cannot exceed “the amount of the base salary” that the employee was earning on the date he or she began the military leave of absence. Before this amendment passed, ORS 408.240 explicitly barred public employers from offering supplemental pay to its employees. Offering supplemental pay for employees out on military leave is optional. Public employers are not obligated by HB 2763 to offer such pay.

*Effective date: April 22, 2015.*

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**CRIMINAL HISTORY INQUIRIES  
2015 OREGON LAWS CH. 559 (HB 3025)**

House Bill 3025 “bans the box” on application forms that inquire into an applicant’s criminal history. Employers will be generally barred from asking a job applicant to disclose his or her criminal conviction history prior to the initial job interview or, if no job interview is conducted, prior to a conditional offer of employment.

HB 3025 does not apply to employers who are required by federal, state, or local laws to consider an applicant’s criminal history (e.g., schools) or to positions in law enforcement or the criminal justice system.

The law explicitly states that it is not intended to “prevent an employer from considering an applicant’s conviction history when making a hiring decision.” Therefore, the law does not impede an employer’s ability to explore an applicant’s criminal history during the initial interview (where it can ask the applicant about his or her criminal convictions) or at an appropriate point thereafter.

**Practice Tip:** That said, certain enforcement agencies, such as the Equal Employment Opportunity Commission (EEOC), may still consider such practices unlawful. The EEOC has historically argued that general pre-employment criminal background checks or blanket exclusionary policies are unlawful due to the disproportionate impact on certain protected classes.

*Effective date: January 1, 2016.*

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**ENFORCEABILITY OF NONCOMPETITION  
AGREEMENTS  
ORS 653.295**

**2015 OREGON LAWS CH. 429 (HB 3236)**

House Bill 3236 amends ORS 653.295 to reduce Oregon’s limit on the enforceability of noncompetition agreements from two years following the employee’s termination to 18 months after the termination. This law is not retroactive.

Additionally, HB 3236A does not change the other restrictions that ORS 653.295 imposes on noncompetition agreements. Therefore, in order for the 18-month period to even come into play, there first has to be an enforceable noncompetition agreement. Also, it should be noted that the 18-month limit does not affect nonsolicitation agreements, as such agreements are treated differently under Oregon law.

*Effective date: January 1, 2016. The amendments apply only to noncompetition agreements entered into on or after the effective date.*

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