

Labor and Employment

PAID FAMILY LEAVE

2019 Oregon Laws Ch. 700 (HB 2005)

HB 2005 will provide 12 weeks of paid leave to just about every employee in the state, to be funded by a new payroll tax paid by both workers and employers with 25 or more employees.

Under the bill, this paid time off is available for new parents and for those who need to care for an ill family member who has a serious health condition or for the employee's own serious health condition. It will also provide the same paid leave for victims of domestic violence, harassment, stalking, or sexual assault.

Almost all workers in the state, including part-time workers, will receive paid leave once the law goes into effect. The only requirement to be eligible for leave is that the employee has earned at least \$1,000 in wages during the previous year.

Weekly benefits will be capped at the generous rate of \$1,215, which means that many lower-income workers will see no financial impact on their livelihoods if they miss work for qualifying reasons.

The new law will provide a job guarantee for workers taking leave. It will be a violation of the law for an employer to permanently replace the worker during their absence, as they must be restored to their position upon their return. Employers will be required to restore the employee to the same former position if it exists, even if

they filled it with another employee during the absence. Employers with fewer than 25 employees can provide a returning employee with a different position with similar job duties and pay. If, for large employers, the position no longer exists, the large employer will be required to restore the returning worker to any available equivalent position with equivalent levels of pay, benefits, and other terms and conditions of employment.

The bill requires that the leave must be taken concurrently with Oregon Family Leave Act (OFLA) and federal Family and Medical Leave Act (FMLA) leave, meaning that workers cannot stack their paid and unpaid leave periods one after the other.

HB 2005 took effect on September 29, 2019, for administrative purpose. However, most operative provisions of the bill do not go into effect until January 1, 2022.

OREGON PUBLIC WORKERS PROTECTION ACT

2019 Oregon Laws Ch. 429 (HB 2016)

The legislature passed HB 2016 to address collective bargaining for public employees.

Specifically, the new law requires public employers to provide reasonable paid time off upon request from a public employee who is a designated representative engaging in certain union activities. The bill also permits a public employer to deduct

union fees from an employee's pay. Finally, in response to the *Janus v. AFSCME* Supreme Court decision, the law also makes it easier for employees to opt in to union membership.

EMPLOYER ACCOMMODATION FOR PREGNANCY ACT

2019 Oregon Laws Ch. 139 (HB 2341)

HB 2341 provides that Oregon employers with at least six employees will be required to provide reasonable accommodations to employees for pregnancy-related conditions. The bill states that longer breaks, more frequent breaks, assistance with certain physical tasks, modifications of schedules, and obtaining certain equipment are all reasonable accommodations.

The bill also prevents employers from requiring an employee to take protective leave when a reasonable accommodation is available.

HB 2341 requires employers to post notices related to the protections and provided to employees through this law. The Bureau of Labor and Industries (BOLI) will create materials for employers to use (such as posted notices) to comply with these notification requirements.

UPDATES TO THE EMPLOYMENT DISCRIMINATION STATUTES

2019 Oregon Laws Ch. 71 (HB 2589)

This bill specifies that sexual orientation is not a physical or mental impairment for purposes of employment discrimination statutes. It also removes a provision that stated a failure to provide reasonable accommodation for an individual with disability arising out of transsexualism is not an unlawful employment practice.

HB 2589 took effect May 6, 2019.

NURSING MOTHER LAW

2019 Oregon Laws Ch. 118 (HB 2593)

Under this new law, all Oregon employers are

required to provide employees with lactation breaks. Smaller employers with 10 or fewer employees may qualify for an exception under the new law if they can show undue hardship.

Practice Tip: *Employers with fewer than 25 employees should likely update their employee handbook, as these breaks were not previously required. The new policies should address:*

1. How often the employee is allowed to take a lactation break (likely as often as needed);
2. The timing of those lactation breaks; and
3. The location provided for these private lactation breaks.

HB 2593 took effect on September 29, 2019.

RESTRICTIVE COVENANTS

2019 Oregon Laws Ch. 121 (HB 2992)

HB 2992 adds an additional requirement for Oregon noncompetition agreements. The bill requires employers to provide a signed, written copy of the terms of any noncompetition agreement to the employee within 30 days after the date of the termination of the employee's employment.

UNION'S FEES

2019 Oregon Laws Ch. 439 (HB 3009)

HB 3009 makes clear that a union can continue to charge police officers, sheriffs, and deputy sheriff's reasonable fees for representing them in matters unrelated to collective bargaining if the employee is not a member of the union and if the employee has not entered into a fair-share agreement with the union. This legislation was passed to address concerns following the *Janus v. AFSCME* Supreme Court decision.

HB 3009 took effect on June 20, 2019.

PAY EQUITY CLARIFICATION

2019 Oregon Laws Ch. 617 (SB 123)

This bill clarifies that an employer may not be in violation of pay equity requirements when paying a different level of compensation to an employee with a compensable workers' compensation injury who is on light duty or modified work.

PUBLIC EMPLOYEES PROHIBITED FROM STRIKING

2019 Oregon Laws Ch. 242 (SB 272)

SB 272 expands the list of public employees who are prohibited from striking to include attorney generals.

IMMIGRANT NOTIFICATION REQUIREMENTS

2019 Oregon Laws Ch. 260 (SB 370)

SB 370 requires an employer to provide notice to employees of upcoming inspections by any federal agency of employer's records regarding identity and employment eligibility of employees within three business days of employer's receipt of notice of inspection from agency.

The bill also requires employers to make reasonable attempts to individually distribute required notification to employees, as well as to post notice in an accessible and conspicuous location. SB 370 directs the Bureau of Labor and Industries to create standardized notice templates for employers to be able to comply with this law.

SB 370 took effect on June 6, 2019.

OREGON WORKPLACE FAIRNESS ACT

2019 Oregon Laws Ch. 343 (SB 726)

SB 726 – The Oregon Workplace Fairness Act (OWFA) – requires employers to implement and distribute a written antidiscrimination and harassment policy. The OWFA outlines specific requirements that must be included in the policy. It also prohibits employers from requiring an employee – as part of a settlement of a discrimination or harassment claim – to agree to neither disclose the alleged unlawful conduct

(including but not limited to sexual assault) nor disparage the employer or the alleged bad actor. These provisions are only allowed if the employee requests the provision and the employee is provided seven days to revoke the agreement after signing it.

Practice Tip: *Of particular importance to employers is the fact that, under the OWFA, employees will now have five years to file a complaint with BOLI or a court for claims of discrimination, harassment, or retaliation under Oregon laws. Although this does not affect the statute of limitations for federal claims, it is a significant expansion from the prior one-year statute of limitations on violations under Oregon laws.*

The restrictions on nondisclosure agreements and written policy requirements take effect October 1, 2020. The statute of limitations change applies to events that occur on or after the bill took effect on September 29, 2019.