OREGON LEGAL UPDATES

LEGISLATION, REGULATIONS & NOTABLE CASES

OREGON LEGISLATION

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House Bill 3187: Limiting Employers' Ability to Request or Require Disclosure of Certain Information Regarding an Applicant's Age

Currently, Oregon law provides that it is an unlawful employment practice to treat an individual 18 years of age or older differently in compensation or in terms, conditions, or privileges of employment on the basis of their age. Effective September 26, 2025, Oregon law will be amended to prohibit an employer, prospective employer, or employment agency from requesting or requiring disclosure of the following information prior to completing an initial interview or, if there is no initial interview, prior to making a conditional offer of employment:

- The applicant's age or date of birth; or
- When the applicant attended or graduated from any educational institution.

Oregon law will permit an employer, prospective employer, or employment agency to obtain the above information when such information is required to (1) affirm that the applicant meets bona fide occupational qualifications; or (2) comply with any provision of applicable law.

KEY TAKEAWAYS

Employers should review their application and interview materials to confirm whether they solicit information about an applicant's age, date or birth, or dates of attendance and/or graduation at an educational institution. If such information is solicited, employers should evaluate whether the reason for requesting or requiring such information fits within one of the enumerated exceptions above. For example, information about an applicant's age may be lawfully required to determine the applicant's qualification to perform certain occupations that have been declared "hazardous" by applicable law or to determine the applicant's qualification to perform work that applicable law states cannot be performed by individuals under a certain age. Employers should also provide training to all employees involved in the hiring process, to prevent requesting or requiring disclosure of prohibited information during an interview.

Note that the changes in the law only prohibit an employer, prospective employer, or employment agency from requesting or requiring the prohibited information. Nothing in the amended statute will prohibit an employee from affirmatively providing age-related information in their application materials or interview.

House Bill 2541: Expands Lactation Break Entitlements to Agricultural Workers

Effective May 7, 2025, certain agricultural workers may be entitled to lactation breaks under Oregon law. House Bill 2541 expressly requires employers with more than 10 employees to provide reasonable unpaid rest periods to accommodate certain individuals employed in agriculture who need to express milk for up to 18 months after the child's birth. Employers with 10 or fewer employees must also provide such lactation breaks, unless doing so would impose an undue hardship on the operation of the organization's business.

These expanded entitlements apply to individuals who:

- Are employed as a hand harvest or pruning laborer;
- Are paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;
- Commutes daily from a permanent residence to the farm on which the individual is so employed; and
- Has been employed in agricultural labor less than 13 weeks during the preceding calendar year.

KEY TAKEAWAYS

Employers that employ individuals in the agricultural industry should review their policies and procedures to confirm whether these expanded entitlements apply to their operations and/or employees and, if so, make necessary adjustments to ensure compliance.

House Bill 2688: Expands the Scope of Oregon's Prevailing Wage Law

In general, Oregon's prevailing wage laws require that a standard wage and benefit rate be paid to construction workers on certain public works projects. The relevant rates differ by occupation and region and are generally updated on a quarterly basis.

Historically, contractors and subcontractors have been subject to the prevailing wage requirements, only if the project qualified under one of the following five definitions of "public works" described in ORS 279C.800 (subject to certain exceptions).

Effective September 26, 2025, House Bill 2688 expands the definition of public works projects to include "fabrication, assembly, preconstruction or construction" that is (i) bespoke, (ii) performed offsite, (iii) performed specifically for, and in accordance with the specifications of, a particular public works project; and (iv) performed on systems or components.

Although the above changes take effect September 26, 2025, the amendments will apply to procurements that a contracting agency solicits or enters into on or after July 1, 2026.

KEY TAKEAWAYS

Employers that contract or subcontract with public agencies and/or on public works projects—particularly those that are solicited or entered into after July 1, 2026—should evaluate whether prevailing wage requirements may apply to future projects to ensure compliance with applicable wage, hour, and benefit requirements. Due to the possible assessment of penalty wages and attorney fees, wage and hour claims can accrue more quickly than others. Employers with questions about whether prevailing wage laws may apply to a particular project(s) are encouraged to reach out to our team for additional guidance.

House Bill 3789: Creates a New Cause of Action for Union Representatives Against Individuals Who Falsely Impersonate a Union Representative

House Bill 3789 creates a new civil cause of action for union representatives alleging that a person has falsely impersonated a union representative. Effective January 1, 2026, the new statute will expressly prohibit the use of fraud or misrepresentation to make a verbal or written communication that purports to be authorized or otherwise approved by a labor organization, with the intent to undermine or interfere with the operations of the labor organization, or otherwise negatively impact the labor organization.

In addition to other damages that may be claimed, a union representative who successfully asserts a claim under the new law will be entitled to statutory damages in an amount of $6,250 per incident.

KEY TAKEAWAYS

The new statute affirms that, to protect public employees who are members of a labor organization from fraud or misrepresentation, a labor organization shall have the sole authority to identify and designate union representatives. While this change does not directly impact an employer's operations, because this new law and cause of action may impact the workplace, including unionized workplaces and/or employees who serve as union representatives, employers should be aware of this forthcoming change in Oregon law.

Senate Bill 951 / House Bill 3410: Limits the Ability of Management Service Organizations and Other Corporate Entities to Direct or Manage Professional Medical Entities

Together, Senate Bill 951 and House Bill 3410 generally limit the ability of management service organizations (MSOs) to own or control a professional medical entity. More specific to the employment relationship, absent an applicable exception, the new legislation voids noncompetition agreements entered into by medical licensees. In this context, a "medical licensee" generally includes individuals licensed in Oregon to practice medicine and naturopathic medicine, as well as nurse practitioners and physician associates.

As a result of the new legislation, noncompetition agreements between a medical licensee and another person that restrict the practice of medicine or the practice of nursing are only valid and enforceable under the following circumstances:

- The medical licensee has an ownership or membership interest in the employer equivalent to 1.5 percent.
- The agreement is with a professional medical entity that provides the medical licensee with documentation of the entity's recruitment investment and the agreement has a term not longer than **either**:
  - Five years after the date the medical licensee was hired (if the medical licensee engages directly in providing medical services, health care services or clinical care in a county of the state that is designated as a health professional shortage area); or
  - Three years after the date on which the medical licensee was hired (if the medical licensee does not engage directly in providing medical services, health care services, or clinical care).
- The medical licensee does not engage directly in providing medical services, health care services, or clinical care.

In addition, the new legislation voids the enforceability of certain nondisclosure or nondisparagement agreements with a medical licensee, except in the following two circumstances: (1) the employment relationship ended; or (2) the agreements are included as part of a negotiated settlement.

KEY TAKEAWAYS

Employers that employ medical licensees should evaluate whether these new limitations on restrictive agreements (e.g., noncompetition, nondisclosure, or nondisparagement provisions) apply to their work forces and, if so, evaluate whether and how they may continue to be enforceable under applicable law. Moving forward, these employers should also consult with counsel prior to proposing or entering into an agreement that includes one of these restrictive provisions.

SB 906: Requires Employers to Provide Employees, at the Time of Hire, a Written Explanation of Earnings and Deductions Included on Wage Statements

Effective January 1, 2026, Oregon employers will be required to provide employees, at the time of hire, with a written explanation of the earnings and deductions listed on itemized wage statements. This includes a written explanation of the following:

- The employer's established regular pay period;
- A comprehensive list of
  - All types of pay rates that employees may be eligible for, including hourly pay, salary pay, shift differentials, piece-rate pay, and commission-based pay,
  - All benefit deductions and contributions, and
  - Every type of deduction that may apply;
- The purpose of deductions that may be made during a regular pay period;
- Allowances, if any, claimed as part of minimum wage;
- Employer-provided benefits that may appear on the itemized statements as contributions and deductions; and
- All payroll codes used for pay rates and deductions, along with a detailed description or definition of each code.

An employer may accomplish this by sharing a link to a website that stores this information for the employer, a physical document posted in a central location, a shared electronic file, or delivery over email. The employer must review and update the information by January 1 of each year.

Oregon's Bureau of Labor and Industries (BOLI) will develop a model written guidance document that includes commonly used statewide deductions, which employers may use and amend to satisfy the requirements under this new law. SB 906 authorizes $500 fines against any person who violates this new law.

KEY TAKEAWAYS

While employer policies and/or practices may already provide most, if not all, of the detail required by this new law, employers should review their payroll-related policies to confirm compliance with these changes. We anticipate that BOLI will publish model language that employers may adapt and implement to ensure compliance, which we intend to share with you via Miller Nash's Employment Law in Motion blog once the model guidance becomes available.

SB 968: Establishes Guidelines for Public Employers to Make Deductions After an Employee Has Been Erroneously Overpaid

Effective January 1, 2026, Senate Bill 968 permits public employers to deduct the amount of an erroneous overpayment from wages paid to certain public employees, so long as the employer provides the employee with a written statement that (1) itemizes the overpayment amount and purpose of each deduction, (2) provides that in no event may the total amount of a deduction exceed five percent of the employee's gross pay each pay period, unless the employee otherwise requests and specifies that a greater percentage or amount be deducted, and (3) informs the employee that, if the employee is terminated or otherwise separates from employment, the employer can recoup the balance owed from the employee's final paycheck. This written statement must be provided at least 10 calendar days before the deduction is made. The deduction may be for an overpayment that occurred during the 364-day period immediately before the date the employer provides written notice of the deduction.

KEY TAKEAWAYS

This new law provides a lawful mechanism for certain public employers to correct employee wages, when the employee was erroneously overpaid. Nonetheless, covered employers should continue to exercise caution when considering any deduction from wages and ensure that wages are only deducted in the appropriate circumstance and after appropriate notice is provided to the employee.

SB 1108: Employees May Use Protected Sick Leave to Donate Blood in Connection with a Voluntary Program Approved or Accredited by the American Association of Blood Banks or the American Red Cross

Senate Bill 1108 expands the qualifying reasons for which an employee may use their accrued sick time. Effective January 1, 2026, an Oregon employee may also use protected sick time for blood donation that is made in connection with a voluntary program for the donation of blood that is approved or accredited by the American Association of Blood Banks or the American Red Cross.

KEY TAKEAWAYS

Employers should ensure their policies and practices permit employees to use their accrued and available sick time (or paid time off, for those with joint sick and vacation time policies) to include time off for the donation of blood in connection with an approved or accredited program.

SB 1148: Prohibits Insurers That Offer, Issue, or Renew a Disability Income Insurance Policy from Requiring Individuals to Use or Apply for Paid Leave Oregon Benefits Prior to Eligibility

Senate Bill 1148 prohibits disability income insurers from requiring that insureds (employees) apply for or use their benefits under Paid Leave Oregon prior to being eligible for benefits under the disability income insurance policy. These changes apply to any policies offered, issued, or renewed after January 1, 2026.

KEY TAKEAWAYS

This change most directly impacts third-party disability insurance providers. While this will not directly impact an employer's operations, employers should be aware that, effective January 1, 2026, disability insurance policies cannot require an employee to have applied for or taken leave under Paid Leave Oregon to become eligible for disability insurance benefits.

OREGON REGULATIONS

OAR 839-005-0010 and OAR 839-005-0030

Effective February 1, 2025, BOLI introduced new rules that impact an employer's burden to prove that it took appropriate measures following an allegation of workplace harassment.

In general, an employer may be liable for workplace harassment by a supervisor, coworker, agent, or non-employee. An employer may assert, as a legal defense, that it took immediate and appropriate corrective action, unless the employee was subject to an adverse action by a supervisor, someone with successively higher authority, or an employee that is essentially a proxy for the employer, such as the employer's president or owner.

The recent rule changes do not eliminate this possible legal defense. However, as of February 1, 2025, an employer must satisfy the following criteria to show that it took "appropriate corrective action" and/or "promptly correct[ed] any harassing behavior":

- Intervene immediately with actions reasonably designed to effectively halt harassing behavior;
- Conduct a prompt and adequate investigation and ascertain the extent of the harassing behavior;
- Take appropriate remedial measures proportionate to the seriousness of the harassing behavior;
- Place no burden, or make every reasonable effort to minimize any burden placed, on the reporting employee or aggrieved party;
- Do not retaliate against the reporting employee, the aggrieved party, or a participant in the investigation; and
- Take steps that are reasonably calculated to prevent retaliation and future harassment.

The rule amendments clarify that the "success or failure of corrective action in stopping future harassment is relevant, but not dispositive, as to employer ability." In addition, the rule acknowledges that the "reasonableness" of an employer's actions will depend "on the particular facts and circumstances at the time the actions are taken."

KEY TAKEAWAYS

Following the enactment of Oregon's Workplace Fairness Act in 2019, most—if not all—employers have already implemented policies and procedures for responding to complaints about workplace harassment. Nonetheless, employers should review their internal procedures to ensure they are conducting sufficient investigations into allegations of misconduct and/or putting necessary guardrails in place to mitigate any risk of possible retaliation. Tools and resources, such as a checklist for internal use, may be helpful to ensure that those who may be involved in addressing and/or resolving employee complaints are consistently following the appropriate processes.

OREGON CASES

Trainor v. Vigor Marine, LLC, 340 Or. App. 501, 571 P.3d 1121 (2025)

Plaintiff, a former employee of defendant, alleged he was wrongfully discharged in retaliation for testifying against defendant in a former coworker's discrimination case. Plaintiff worked as an "on-again, off-again" employee for the defendant, and was not employed by defendant when he provided testimony.

Prior to testifying in support of his coworker's lawsuit against defendant, plaintiff had engaged in a "minor" violation of defendant's workplace rules and had received two suspensions for insubordinate conduct. Approximately nine months after plaintiff testified, defendant placed plaintiff on a last chance agreement due to plaintiff's insubordinate and/or unsafe conduct. Two months later, plaintiff engaged in conduct evidencing that he had failed to follow his supervisor's instructions, and defendant subsequently terminated his employment.

Plaintiff argued that his employment was terminated because he testified in support of his former coworker. The circuit court disagreed and granted summary judgment to defendant. On appeal, the Oregon Court of Appeals affirmed the lower court's decision. The Court acknowledged that it was the plaintiff's burden to establish that his protected activity (testifying against defendant) was a "substantial factor in the decision to terminate his employment." Although this connection may be established by indirect evidence that shows the protected activity "was followed closely by discriminatory treatment," the Court held "that a gap of 13 months between the plaintiff's protected activity and an alleged retaliatory treatment" was insufficient to establish the requisite connection in this case. Additionally, the Court emphasized that defendant actually re-hired plaintiff after he had provided testimony, indicating that the testimony had no negative effect on his employment.

KEY TAKEAWAYS

Recent Oregon Court of Appeals decisions have reinforced the importance of considering whether an employee has engaged in protected activity when evaluating possible employee discipline. In 2024, the Oregon Court of Appeals clarified in McClusky v. City of North Bend, 332 Or App 1, 549 P3d 557 (2024), that adverse actions taken against an employee within one month of protected activity may be sufficient to independently establish a causal link between an adverse employment action and a protected activity.

Now, in this case, the Oregon Court of Appeals has clarified that a period of 13 months between the protected activity and subsequent alleged adverse employment action, without more, is not enough to show that the adverse employment action was retaliatory.

While these recent cases are helpful in establishing possible limits on an employee's ability to show a connection between protected activity and an adverse action, employers should continue to evaluate each circumstance on a case-by-case basis, including taking into account the particular conduct at issue and past practices.

Cooper v. Rust, 343 Or. App. 390, __ P.3d __ (2025)

Plaintiff, a former employee of defendant dental practice, was diagnosed with breast cancer only weeks after being hired by defendant. After a period of extended leave, plaintiff returned to work. Shortly after returning to work, plaintiff developed complications, which required her to undergo necessary emergency surgery. When the plaintiff requested additional time off work, she alleged that defendant pressured her to quit. Later that same week, she received a text that stated: "[w]e're sorry for the way things have gone but for your recovery we have decided to let you go." Plaintiff later sued defendant for wrongful termination, alleging that defendant retaliated against her for (1) requesting sick time and (2) requesting an accommodation.

The trial court granted the employer's motion for summary judgment and dismissed the complaint, finding that plaintiff failed to show evidence of "malice, reckless, or outrageous indifference" to plaintiff's medical hardship in support of her retaliation claim, and that plaintiff failed to establish that she had requested an accommodation or that she was a qualified individual. On appeal, the court of appeals overturned the trial court's decision, because the trial court applied the wrong standard or misapplied the law.

With respect to plaintiff's claim for sick time retaliation, the court of appeals identified the trial court referred to the wrong standard and remanded the issue. Most interesting, the court of appeals also addressed defendant's argument that, at the relevant time, the "plaintiff was out of sick time, could not have used any more sick time, and therefore [could not] be protected" under Oregon's sick time law. The court of appeals clarified that the law prohibits an employer from retaliating against an employee for merely requesting sick time, even if the employee has no more protected sick leave.

With respect to plaintiff's claims that defendant treated her differently because she requested an accommodation, the court held that no formal language is required to trigger the interactive process for purposes of disability accommodation. Informing a supervisor of a medical condition that could impact the employee's ability to perform their job is sufficient.

In addition, in response to defendant's argument that plaintiff was not adequately performing her job, the court of appeals acknowledged that plaintiff had presented evidence that any performance issues were related to her medical condition. The court noted that "an employee is not unqualified for the position merely because their disability has affected their performance." If a reasonable accommodation may permit the employee to perform the essential functions of the job, they are "qualified" under the law.

KEY TAKEAWAYS

Employers should continue to thoughtfully evaluate any circumstance in which an employee discloses a need for time off or accommodation, including as a result of a medical condition, to understand whether employee protections may apply. This decision clarifies that, even if an Oregon employee may not have accrued any available sick time at the time they request time off relating to a medical condition, Oregon law provides that an employer cannot treat them differently because of their request. In addition, other protections—such as protections under the ADA or its Oregon equivalent—may be triggered.
