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2025 Employment Law Update

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May 21, 2025

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2025 Oregon Legislative Session Passed Bills

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SB 69: PLO and Sick Leave

- Paid Leave Oregon (PLO)
  - Eff. January 1, 2026, BOLI is responsible for oversight of PLO's job protection, discrimination, and retaliation provisions, and will adopt related rules
  - ED can disclose benefit amounts to employers to calculate other paid leave to top up to 100% of full wage
    - Employers can require return-to-work certificate from employee's health care provider
    - Employers can require employee to report periodically on status and intent to return to work
- Oregon Sick Leave
  - Employees can use sick leave for purposes that are covered by PLO (family, medical, safe)
- Gov. signed; eff. 91 days after session adjourns

SB 1176: Cash Accepted Here

- In 2022, Oregon passed ORS 659A.410, which requires most places of public accommodation to accept cash as payment for goods and services
- Many such places and Oregonians don’t know about the law
- This law requires BOLI to publicize and explain those obligations
- Not yet signed by Gov.; when it is, eff. on 91st day after legislature adjourns

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HB 2248: 1-800-FAQ-BOLI

- Establishes the Employer Assistance Division (EAD) within BOLI
- Makes communications between employers and EAD confidential
- Prohibits BOLI from imposing a penalty on an employer that relied on EAD advice in taking any good faith action
  - Note: penalties do not include an employee's damages, wages, or attorney fees
  - ALJ must consider if employer relied on opinion when assessing penalties (but judges and juries do not)
- Permits the bureau to issue advisory opinions
  - Can be requested by employers or issued by BOLI on its own
- Makes confidential communications during settlement discussions held through BOLI's ADR processes
- Gov. signed; eff. on 91st day after legislature adjourns

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HB 2541: Expression of Milk in Ag

- Existing Oregon law entitles most employees to take reasonable unpaid rest periods to express milk for their child
- This law extends that right to individuals employed in agriculture who are paid on a piece-rate basis
- Eff. May 7, 2025, day Gov. signed

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HB 3187: Applicants of a Certain Age

- Employer cannot request disclosure of an applicant's age, date of birth, or when they graduated from any school, before completing in initial interview or making a conditional job offer (if no interview)
- Exceptions:
  - Confirming applicant meets bona fide job qualification
  - To comply with federal, state, or local law
- Not yet signed by Gov.; when signed, eff. 91 days after session ends

SB 906: Paystubs, explained

- At hire, employer must provide employee a written explanation of earnings and deductions shown on paystubs
- Must include (among other things):
  - Pay period and pay rates
  - Benefit deductions/contributions
  - All deductions
  - Payroll codes with a detailed description
- Must be updated each year by January 1
- $500 penalty for noncompliance
- Passed both chambers May 20, 2025; awaiting signatures

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SB 1108: Leave for Blood Donors

- Adds blood donation as a permitted use of Oregon sick leave
- Needs to be part of a voluntary program that is approved by American Association of Blood Banks or American Red Cross
- Passed both chambers May 20, 2025; awaiting signatures

SB 1148: PLO, STD, and LTD

- Prohibits a disability income insurer from requiring an insured to use or apply for Paid Leave Oregon benefits before being eligible for benefits under the disability policy
- Applies to policies offered, issued, or renewed after January 1, 2026
- Passed both chambers May 20, 2025; awaiting signatures

Pending Bills

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SB 916: UI for Strikes

- Current Oregon law denies unemployment benefits to workers unemployed because of an active labor dispute (strike or lockout)
- Provides unemployment benefits for workers whose unemployment is because of a labor dispute at their place of employment

SB 951 & 957: A Cure for Noncompetes

- Current Oregon law allows enforcement of non-competition agreements against physicians (if the agreement complies with ORS 653.295)
- If either of these bills become law, non-competes will be enforceable against physicians in very limited circumstances
- Intended to allow greater mobility and, therefore, increase access to health care
- Some employers fear loss of significant investment in recruitment, training, and retention efforts

SB 1193: Pay to Play

- If passed, will allow colleges and universities to pay student athletes for the use of the athletes' name, image, or likeness (NIL)
- Currently, NIL payments are made by booster-created entities
- GO RAIDERS!

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HB 2545: At-Will a No-Go for Agro

- If passes, an agricultural employer cannot terminate an agricultural worker unless the worker is terminated “for cause”
- “For cause” includes a fair and objective investigation of the employee’s job performance or misconduct and use of a progressive discipline system
- Exception for bona fide layoffs
- Creates employee right of action, including emotional distress damages and attorney fees

HB 2746: Full Disclosure

- Would require general description of wage/wage range and benefits in any external or internal job posting
- Would require employer to provide each employee the current wage/wage range and benefits of other employees with the same or equivalent positions
  - At time of hire; and
  - Upon transfer/promotion; and
  - Once per year upon request of employee
- Applies to positions performed in whole or in part in Oregon
- $1,000 penalty per violation
- Applies to all employers, except federal government

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HB 2957: Time's Not on Your Side

- Currently, if BOLI dismisses a complaint, employee has 90 days to file a lawsuit against the employer
- This bill would extend the time to sue to whatever is left on the applicable statute of limitations
  - Most state discrimination, harassment, and retaliation claims have a 5-year SOL
  - Wage and hour laws have 2, 3, and 6-year SOLs
- Would also make it unlawful for an employer to enter into an agreement with an employee that shortens a statute of limitations for any law that BOLI enforces

Case Law Update

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Title VII Discrimination Standards – *Muldrow v. City of St. Louis*

- April 17, 2024, opinion by SCOTUS
- Female police officer transferred from Intelligence Division to a uniformed position—same rank and pay but less prestigious duties, loss of FBI credentials, a take-home vehicle, and a change to a less regular work schedule.
- Trial court dismissed the claims explaining that the officer must show a significant change in working conditions producing a material employment disadvantage.
- Eighth circuit affirmed the heightened standard.

Muldrow v. City of St. Louis Cont.

- SCOTUS disapproved and emphasized that Title VII prohibits discrimination with respect to compensation, terms, conditions, or privileges of employment based on sex, without imposing a heightened threshold of harm.
- Takeaway: plaintiff of Title VII must show some harm from a forced transfer but does not need to show that the injury is significant.

Title VII Discrimination Standards– *Okonowsky v. Garland*

- July 25, 2024, opinion by Ninth Circuit
- Female employee of Bureau of Prisons (BOP) brought Title VII hostile work environment claim for social media posts made by coworker.
- Trial court held the posts were not severe or frequent harassment in the physical workspace because the five posts were made on a staff's personal page and none were sent to plaintiff, displayed in the workplace, shown to plaintiff in the workplace, or discussed with plaintiff in the workplace without her consent.
- Court also said BOP took prompt remedial action when it ultimately investigated, reassigned staff, convened the Threat Assessment Team, and issued cease and desist letter.

Okonowsky v. Garland Cont.

- Ninth Circuit reversed, explaining “Even if discriminatory or intimidating conduct occurs wholly offsite, it remains relevant to the extent it affects the employee’s working environment.”
- Ninth Circuit explained “Social media posts are permanently and infinitely viewable and re-viewable by any person with access to the page or site on which the posts appear” both in and outside of the workplace.
- Court rejected idea BOP took prompt and effective remedial action—which should include temporary steps to deal with the situation, permanent remedial steps once investigation is completed, and some form of disciplinary measures.
- Takeaway: employers should investigate and take remedial action of online harassment done outside of workplace if it is impacting work.

FLSA Compensable Time – *Cadena v. Customer Connexx LLC*

- July 25, 2024, opinion by Ninth Circuit
- Call-center workers allege that their employer violated the FLSA by failing to pay overtime wages for time spent booting up and shutting down their computers each day.
- Trial court decided time not compensable because employer does not have to pay wages for work performed before or after scheduled work hours where the amount of time in question is "de minimis."
- Ninth Circuit clarified "de minimis" standard: turns on the regularity of the additional work, the aggregate amount of compensable time, and the practical administrative difficulty of recording the additional time.
- No bright line rule, although most courts have found daily periods of approximately ten minutes de minimis.

Rounding Time Clock Reminder

- Historically, very common for employers to round employees' work time up or down.
  - For example, minutes 0-7 are rounded to 0 minutes, 8-15 minutes rounded up to 15 minutes.
  - Assumption was that it all washed out at the end of a pay period.

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Rounding Is Risky In Oregon

- In *Eisele v. Home Depot*, federal judge found de minimus doctrine did not apply and that rounding unlawful in Oregon when it works against the employee because Oregon statutes require payment for “all hours worked.”
- Takeaway: if using rounding, seriously consider changing your practices or ensure adjustments are being done at the end of every pay period.

Notice Required to Record In-Person Conversations – *Project Veritas v. Schmidt*

- January 7, 2025, opinion by Ninth Circuit
- ORS 165.540(1)(c) makes it a crime to record an in-person conversation without specifically informing all participants of the recording.
- July 2023, Ninth Circuit found that the law violates the First Amendment's right to free speech.
- On rehearing, Ninth Circuit upheld the statute finding Oregon had significant interest in ensuring its residents knew when their conversations were being recorded; statute was narrowly tailored to such governmental interest; statute left open ample alternative channels of communication; and statute was not facially overbroad.
- Takeaway: notice must be given for in-person oral conversations, so employers should review current practices.

Deference to Federal Agencies – *Loper Bright Enterprises v. Raimondo*

- June 28, 2024, opinion by SCOTUS
- The case arose from a challenge by Atlantic herring fishermen to a National Marine Fisheries Service rule requiring them to pay for onboard observers, which they argued was not authorized by the Magnuson-Stevens Fishery Conservation and Management Act.
- Historically: Under “Chevron doctrine,” courts defer to federal agency interpretations of ambiguous statutes they administer if the interpretation is reasonable.
- SCOTUS overruled Chevron, explaining courts must independently interpret statutes and may consider agency interpretations for their persuasive value but not as binding authority.

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Loper Bright Enterprises v. Raimondo Cont.

- Potential Implications for Employers:
  - Increased scrutiny from federal agencies
  - Employers may have better position to challenge federal agency decisions
  - Uncertainty in regulatory environment
  - Inconsistent rulings across different jurisdictions

Court Strikes Down Rule Changing Salary Minimum for Exempt Employees

- Effective July 1, 2024, DOL issued a rule that increased the minimum salary requirement for executive, administrative, and professional employees.
- Changed salary from $684 per week ($35,568 per year) to $844 per week ($43,888 per year), with additional increases on January 1, 2025; July 1, 2027; and automatically every three years.
- On November 15, 2024, a federal judge in Texas set aside the rule because it exceeded DOL's authority.
- Outcome: salary threshold reverted back to $684 per week ($35,568 per year).
- Check with counsel regarding implications (Oregon's Equal Pay Act and employee morale and retention) of reversing any increases.

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Court Strikes Down FTC Rule Banning Non-Competes

- FTC issued rule that would ban nearly all non-compete agreements nationwide and require employers to give notice to employees regarding the unenforceability of existing non-competes.
- August 20, 2024, federal judge in Texas decided that the rule was unlawful because it exceeded the FTCs authority and set aside the rule so it would not take effect on September 4, 2024.
- FTC originally appealed the ruling to the Fifth Circuit, but now the FTC is considering whether to defend the rule and continue the appeal.
- The appeal is currently suspended with an update to the court expected July 2025.
- No compliance with FTC rule in the interim but must comply with the laws of the applicable states regarding the enforceability of non-compete.

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Executive Orders

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Executive Order Eliminates Some Affirmative Action Obligations of Federal Contractors

- January 21, President Trump signed an Executive Order that rescinded an Executive Order signed by President Lyndon Johnson.
- For 60 years, the Johnson Order prohibited employment discrimination by federal contractors and required them to take certain affirmative actions to prevent such discrimination, including creating affirmative action programs.
- Effective April 21, 2025, Trump Order ended federal contractors' obligations under the Johnson Order.
- Trump Order did not affect federal contractors' affirmative action obligations related to veterans and individuals with disabilities, which were created by federal statutes.

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Federal Fund Recipients' DEI Policies Under Scrutiny Following Trump Executive Order

- January 21, President Trump signed Executive Order called "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."
- The Order is focused on ending diversity, equity, and inclusion ("DEI") by
  - Instructing federal agencies to develop a plan and strategies to "encourage the private sector to end illegal DEI discrimination and preferences," including litigation and potential regulatory action.
  - Requiring every federal contract or grant award recipients to agree to comply in all respects with federal anti-discrimination laws and certify that they do not operate any programs promoting DEI that violate such laws.
- Takeaway: participants in federal programs should review their DEI policies and practices with legal counsel and stay abreast of guidance and developments in this area.

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EEOC/ DOJ Guidance Excerpts Regarding Compliance with Title VII

- [U]nlawful segregation can include limiting membership in workplace groups, such as Employee Resource Groups (ERG), Business Resource Groups (BRGs), or other employee affinity groups, to certain protected groups.
- Unlawful limiting, segregating, or classifying workers related to DEI can arise when employers separate workers into groups based on race, sex, or another protected characteristic when administering DEI or any trainings, workplace programming, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.
- Employers instead should provide "training and mentoring that provides workers *of all backgrounds* the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs." Employers also should ensure that "employees *of all backgrounds* . . . have equal access to workplace networks."

Executive Order Seeks to Eliminate Disparate Impact Liability

- April 23, 2025, President Trump signed executive order called “Restoring Equality of Opportunity and Meritocracy.”
- Order aimed at repealing disparate impact liability– liability where a facially neutral employment practice (e.g., hiring practice) has an unjustified adverse impact on members of protected class.

Disparate Impact Executive Order Cont.

The executive order:

- Revokes presidential approval of Title VI regulations that prohibit criteria or methods that have a discriminatory “effect.”
- Deprioritizes agency enforcement of all statutes and regulations to the extent they include disparate-impact liability (e.g., EEOC enforcement of Title VII).
- Instructs Attorney General to take action to repeal or amend Title VI regulations based on disparate impact and review and report all existing regulations, guidance, rules, orders, other state laws and decisions, pending investigations and suits, and settlements that are based on disparate impact liability.
- Instructs the Attorney General and the EEOC to jointly formulate and issue guidance or technical assistance to employers regarding appropriate methods to promote equal access to employment regardless of whether an applicant has a college education.

Disparate Impact Executive Order Cont.

- Order signals shift in policy and federal enforcement.
- Order does not repeal or amend Title VI or Title VII or the case law interpreting those statutes that have disparate impact liability.
- Takeaway: employers should continue to comply with Title VII and should check with counsel before making any changes to their current methods for internally assessing disparate impact.

Notice

- *This presentation provides general information and updates regarding rights and obligations under Oregon law. These materials are not intended to provide legal advice. You should consult with your attorney to determine how to comply with the applicable federal and state laws and regulations.*

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