

The Oregon Legislature Has Been Hard At Work With New Employment Laws

During the first half of the year, the Oregon legislature has amended existing laws and passed new laws that will affect many Oregon employers. A few of these laws took effect immediately, but most don't kick in until January 1, 2014. You should begin revising your policies and procedures, and training your managers and employees, to comply with the new laws. If you have any questions, don't hesitate to contact our employment law department.

● *Veterans Can Now Take Veterans Day Off*

Employers must now give eligible employees Veterans Day off upon request. Employees are eligible if they served on active duty in the Armed Forces for at least 6 months and received a discharge under honorable conditions. Military service in a reserve or National Guard qualifies if the employee was deployed or served on active duty for at least 6 months. The employer may request documents establishing the employee's veteran status.

Eligible employees seeking Veterans Day off must make the request at least 21 days before Veterans Day. Employers must then respond to the request at least 14 days prior to Veterans Day. The response must inform the employee whether he or she will receive time off on Veterans Day, and whether the time off will be paid or unpaid. Whether the time off is paid or unpaid is at the discretion of the employer.

Employers may deny a request only if they can demonstrate that granting the request would cause a significant economic or operational disruption or an undue hardship to the company. In those circumstances, the employer must allow

the employee a day off before the next Veterans Day. That day off must be in addition to time off to which the employee is already entitled.

The new law is effective immediately, so be ready for this Veterans Day, Monday, November 11, 2013.



● ***Interns Now Protected From Discrimination and Retaliation***

Previously, interns did not have a legal right to bring claims of employment discrimination or retaliation. Now, effective immediately, interns are “considered to be in an employment relationship with an employer” for purposes of Oregon’s laws protecting against certain unlawful employment practices, including:

- Discrimination and harassment (including sexual harassment) based on race, color, religion, gender, sexual orientation, national origin, marital status or age;
- Discrimination based on military service;
- Disability discrimination, including impermissible medical inquiries and examinations;
- Whistleblower retaliation;
- Requiring breathalyzer, polygraph, psychological stress or brain-wave tests;
- Limits on obtaining or using genetic information; and
- Discrimination based on tobacco use during non-work hours.

Similar to the definition of intern under Oregon’s wage and hour laws, an intern is defined as a person who performs work for an employer for the purpose of training if:

1. The employer is not committed to hire the person performing the work at the conclusion of the training period;
2. The employer and the person performing the work agree in writing that the person performing the work is not entitled to wages for the work performed; and
3. The work performed:
 - a. Supplements training given in an educational environment that may enhance the employability of the intern;
 - b. Provides experience for the benefit of the person performing the work;

- c. Does not displace regular employees;
- d. Is performed under the close supervision of existing staff; and
- e. Provides no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer.

The new law does not extend all employment protections to interns. For example, employee protections for violations of wage and hour, occupational safety and health, worker’s compensation, and unemployment laws remain unchanged. Additionally, interns are not eligible for leave under Oregon’s Family Leave Act.

● ***Most Employees Will Be Eligible For Domestic Violence Leave***

Oregon law requires that businesses employing six or more persons for 20 or more workweeks in a year (a “covered employer”) provide leave for employees who are victims of domestic violence, sexual assault, harassment, or stalking, or who are the parent or guardian of a minor victim. Eligible employees are entitled to use accrued paid leave or take unpaid leave to seek legal or law enforcement assistance or remedies, to seek medical treatment, to obtain counseling or other victim services, or to relocate or take other steps to obtain a safe home.

Under the current law, an employee is eligible to take domestic violence leave only if he or she has worked an average of more than 25 hours per week for the 180 days before the date the employee would begin the leave. Starting January 1, 2014, this minimum work hours requirement is abolished. Employees of a covered employer will be entitled to take domestic violence leave from the moment they start employment.

Also, covered employers will need to post a summary of the law in a conspicuous and accessible location in or about the workplace. Placing the posting with your posters explaining wage and hour laws and other employee rights should suffice. Employers should be able to obtain approved posters from Oregon’s Bureau of Labor and Industries (BOLI).

● ***Employers Will Be Able To Use Direct Deposit For Payroll Without Employee Consent***

Starting January 1, 2014, Oregon employers will be able to pay employees via direct deposit without the employee's agreement. However, if an employee requests (verbally or in writing) to be paid by check, the employer must do so. The law remains unchanged in prohibiting employers from charging the employee, or deducting a fee from their wages, to process payment through direct deposit. Employers and employees may still agree that wages be paid through an ATM card, payroll card or other means of electronic transfer. Also, employers must continue to provide employees an itemized statement of wages and deductions each payday. The itemized statement may be provided electronically if the employee agrees and if the employee has the ability to print or store the electronic statement at the time of receipt.

● ***OFLA Expanded To Include Bereavement Leave***

Starting January 1, 2014, the Oregon Family Leave Act ("OFLA") will allow eligible employees of covered employers to take leave to:

1. Attend the funeral (or funeral alternative) of a family member;

2. Make arrangements necessitated by the death of a family member; or
3. Grieve the death of a family member.

The definitions of key terms are the same as for other types of OFLA leave. "Family member" includes the spouse of an employee, the biological, adoptive or foster parent or child of the employee, the grandparent or grandchild of the employee, and a parent-in-law of the employee or a person with whom the employee was in a relationship of *in loco parentis*. A "covered employer" is anyone who employs 25 or more employees in the state of Oregon during each working day of 20 or more calendar workweeks of the calendar year in which leave is to be taken or the preceding calendar year. An "eligible employee" is one who worked an average of 25 hours per week during the 180 days immediately preceding the date when the leave would begin.

An eligible employee is entitled to take a maximum of two weeks of bereavement leave per death of a family member, up to a maximum of 12 weeks per leave year. The leave must be completed within 60 days after the date on which the employee receives notice of the death of the family member. The leave is counted against the employee's total 12 weeks of OFLA leave entitlement. Employees may take separate blocks of leave for each family member when multiple family members die at the same time. Employers cannot prohibit employees who lose a shared family member from taking leave at the same time.

An employee is allowed to commence leave without prior notice to the employer, but is required to provide oral notice within 24 hours of taking leave. An employee may have someone else provide oral notice on the employee's behalf. However, the employee must provide written notice within three days of returning to work. Unlike other types of OFLA leave, an employer may not shorten the length of bereavement leave when an employee fails to provide notice.



● ***Employers Restricted From Accessing Employee Social Media Accounts***

Effective January 1, 2014, it will be unlawful for Oregon employers to compel employees or applicants for employment to provide access to their personal social media accounts. Employers may still access information that is publicly available.

“Social media” is broadly defined as any “electronic medium that allows users to create, share and view user-generated content, including, but not limited to, uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet website profiles or locations.” This definition includes email accounts, standard social media sites such as Facebook, Twitter and LinkedIn, and bulletin board-type sites like Pinterest.

Under the new law, employers, including employment agencies, are prohibited from requiring or requesting that an employee, or an applicant for employment, disclose their user name, password, or other information that provides access to a personal social media account. Employers also cannot compel an employee or applicant to access their personal social media account in the presence of the employer. And, employers cannot compel an employee or applicant to add the employer to

the employee’s list of contacts associated with a social media account. Finally, employers cannot retaliate or threaten to retaliate against employees or applicants, including not hiring someone, because the employee or applicant refused to provide the employer with access to a social media site. The law provides some limited exceptions. It does not prohibit employers from complying with state and federal laws, rules and regulations, and the rules of self-regulatory organizations. Also, if the employer provided the social media account, or if the account was provided on behalf of the employer to be used for the benefit of employer, then the employee can be required to disclose his or her user name and password. If an employer inadvertently gains knowledge of an employee’s access information by monitoring usage of the employer’s network or employer-provided electronic devices, the employer is not liable for having the information, but the employer may not use the information to access the employee’s social media accounts.

In addition, when conducting an investigation to ensure compliance with laws, regulatory requirements or prohibitions against work-related employee misconduct, employers can require an employee to share content from a social media site that has (a) been reported to the employer and (b) is necessary for the employer to make a factual determination about the matter. However, the employer still cannot require the employee to disclose a username and/or password, or otherwise allow access to his or her social media accounts.



UPCOMING SEMINARS AND PRESENTATIONS

- ***ALFA International Labor and Employment Seminar, Half Moon Bay, California***

On October 2-4, 2013, Tim Coleman will be a panel speaker discussing recent changes in employment law and trending issues including recent Supreme Court decisions, new federal regulations, and evolving court issues, such as legalization of marijuana.

- ***Public Risk Managers Association (PRIMA) Annual Conference, Salishan Lodge, Gleneden Beach, OR***

On October 2-4, 2013, Shane Swilley will present the Annual Employment Law Update at the PRIMA Annual Conference.

Cosgrave Vergeer Kester LLP ***Employment Law Group***

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If you have any questions about the content of this newsletter, please contact Shane P. Swilley at (503) 276-6074 or swilley@cosgravelaw.com.

Given these changes in the law, you need to review and update your employment policies and practices. Take advantage of our free consultation to review the current state of their employment policies and procedures. This service is invaluable to ensure compliance with current employment laws. For more information or to schedule an appointment, contact Shane Swilley.

If you or your company has been threatened with litigation, or a lawsuit or complaint has been filed, then contact the head of Cosgrave's Employment Law Group, Tim Coleman, at (503) 219-3810 or tc Coleman@cosgravelaw.com for a consultation.