

## *Retaliation Laws Protect More Than Just Employees*

*By: Shane P. Swilley, Employment Law Group*

The Washington State Court of Appeals recently ruled that an independent contractor can bring a claim of unlawful retaliation under Washington's Law Against Discrimination. The contractor (an independent truck driver) had complained to the trucking company he drove for that some of its employees were making racist slurs and jokes in the work place. The trucking company later terminated his contract. He sued, claiming his contract had been cancelled in retaliation for opposing unlawful discrimination. The trucking company tried to get the claim dismissed, arguing that the law only protects employees. The Court disagreed, finding that the law, RCW 49.60.210, is not limited to the employer-employee relationship.

RCW 49.60.210(1) states that: "It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under [the Law Against Discrimination] (italics added)." The terms "or other person" and "any person" indicate that the law goes far beyond the employer-employee relationship. It theoretically applies to any situation where a person discriminates against another person, at work or elsewhere, because that person has opposed unlawful discrimination.

### ● *What About Oregon?*

Oregon courts have not yet addressed whether its anti-retaliation law would apply outside the employer-employee context. It may.

ORS 659A.030(1)(f) states: "It is an unlawful employment practice \* \* \* For any person to discharge, expel or otherwise discriminate against any other person because that other person has opposed any unlawful practice, or because that other person has filed a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so (italics added)." As you can see, Oregon's law, like Washington's, uses the term "person" instead of employer and employee. Thus, it also may not be limited to the employer-employee relationship.

### ● *What You Should Do?*

You should review your policies and procedures against retaliation to ensure they go beyond protecting just employees. This would include contractors, vendors, and customers. You should also train your employees and supervisors that it is unacceptable for them to retaliate against any person, not just coworkers, who complain about discrimination.



# Minority Member/Shareholder Oppression Claims

By Charles J. Huber, Business Practice Group

If you own a closely-held company and have an employee who is also a minority owner of the company, you need to be aware of potential exposure to what are known as “oppression claims”. In Oregon, business owners are owed certain fiduciary duties by their fellow owners, including the duty of good faith and fair dealing and the duty of loyalty. Oppression claims are normally brought by minority business owners and are based primarily on a breach of a fiduciary duty. Typical oppression claims allege that the majority owner engaged in conduct that violates the rules of fair play on which every business owner who entrusts his/her money to a company relies. While there is no specific statutory or common law definition of “oppression,” Oregon courts look to the facts of a given case to determine if certain “badges” of oppression exist, and whether, in total, such “badges” show a pattern of oppressive conduct by a controlling owner. See *Hayes v. Olmsted & Assocs, Inc.*, 173 Or App 259 (2001) (Oregon’s seminal case on minority oppression claims). Examples of conduct amounting to “badges of oppression” include the following:

- Providing secret payouts and bonuses to majority owners;
- Conducting secret meetings without the full participation of all owners;
- Failing to consult with all owners on key decisions affecting the company;
- Engaging in conduct outside the guidelines of owner agreements or bylaws;
- Excluding minority owners from the ongoing financial benefit of ownership in the company;

- Forcing minority owners to sign onerous employment contracts as a condition of employment; or
- Issuing threats during buy-out negotiations with minority owners, such as threatening financial or legal consequences if the minority owner does not accept the majority’s buy-out terms.

The above are examples of conduct indicative of a majority owner’s desire to “squeeze-out” the minority owner from company ownership on unfair terms.

If oppression is established, a court can choose from a wide variety of remedies. These remedies range from forcing a buy-out of the minority owner’s interest based on the fair value of the company to possibly dissolving the company and liquidating its assets.

Majority ownership of a closely-held company allows the majority owner a great degree of control with respect to the operation and direction of the company. However, in exercising such control, a majority owner should be cognizant of the rights of any minority owners and the downside of failing to do so.



## EMPLOYMENT LAW UPDATES

### ● *City Of Eugene Passes Sick Time Ordinance*

On July 28, 2014, the Eugene City Council voted 3-2 to pass an ordinance that allow employees working within the Eugene city limits to accrue paid sick time at work. The ordinance goes into effect on July 1, 2015. In the meantime, the City Manager will be developing regulations to clarify ambiguities in the ordinance. Also, we may see a legal challenge to the ordinance from Lane County, which earlier this year banned municipalities within the County (including Eugene) from passing sick time laws.

### ● *President Expands Discrimination Protections For LGBT Employees of Federal Contractors*

On July 21, 2014, President Obama issued an executive order amending Executive Order 11246 to immediately prohibit discrimination against employees and applicants based on “sexual orientation” and “gender identity”. Prior to this amendment, Executive Order 11246 prohibited discrimination based on race, color, religion, sex, or national origin. Executive Order 11246 only applies to employers who are federal contractors or federally-assisted construction contractors or subcontractors who perform more than \$10,000 in Government business in one year. This amendment will likely have minimal impact in Oregon and Washington, where state law already prohibits discrimination based on sexual orientation and gender identity.

### ● *Speaking Events:*

September 22, 2014 - Shane Swilley presented at the Oregon Restaurant and Lodging Association (ORLA) Annual Conference on navigating Oregon Employee Leave Laws.

October 3, 2014 - Shane Swilley will be presenting at the Oregon Public Risk Management Association’s (PRIMA) Annual Conference on the risks of allowing employees to use their own smartphones, tablets, and other electronic devices for work.

## Cosgrave Vergeer Kester LLP *Employment Law Group*

Shane P. Swilley,  
Timothy J. Coleman



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

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](mailto:tc Coleman@cosgravelaw.com) for a consultation.

