

What's On the Horizon for Employers? Recent Changes in Oregon Employment Law.

It's been a busy year for the Oregon legislature. Here is a summary of new laws that take effect January 1, 2016.

● ***Oregon Paid Sick Leave (Oregon Senate Bill 454)***

All private employers and covered public employers will have to provide up to 40 hours of sick leave per year to eligible employees. This is in addition to any leave the employee may have under other federal or state laws. The new law preempts local sick leave laws, such as those in the cities of Portland and Eugene.

The leave is unpaid unless (a) the employer has 6 or more employees in Oregon and the employer is located in a city with a population exceeding 500,000, or (b) the employer has 10 or more employees in Oregon, regardless of where the employer is located. If the employer meets one of those criteria, then the leave must be paid at the employee's regular hourly wage.

Employers need to implement a policy that allows employees to accrue up to 1 hour of sick time for every 30 hours worked or front-loads 40 hours of sick time at the beginning of each leave year. Sick time begins to accrue on the first day of employment. The maximum amount of sick time accrued can be pro-rated for new employees who only work a partial year.

Employees can carry over up to 40 hours of unused sick time into the next leave year. Employers may adopt a policy that limits employees' maximum accrual of sick time to 80 hours, or prohibits employees from using more than 40 hours of sick time in a year. Employers are not required to pay employees for unused sick time.

Employees are eligible to use accrued sick time after 90 days of employment. However, employees cannot use sick time for any absence they wish. The law dictates specific circumstances when sick time can be used. This includes circumstances other than the employee's own illness. To avoid liability, employers need to familiarize themselves with when employees can and cannot use sick time.

The law dictates when and how the employer can require notification that an employee will need to use sick time. Employers can require a doctor's note only if the employee uses 3 or more consecutive days of sick leave, unless the employer suspects a "pattern of abuse." Employers cannot require employees to find a replacement as a condition of using sick time, or make them work an alternate shift to make up for the use of sick time. However, the employer and employee can mutually agree that the employee can work additional hours as an alternative to using accrued sick time.

Employers who have a sick leave, paid time off or paid vacation policy that meets or exceeds the minimum requirements of the law will be deemed in compliance with the law.

● ***"Ban the Box" (Oregon House Bill 3025)***

Oregon employers will be prohibited from asking job applicants about their criminal history on job applications, before the initial interview, or, if no initial interview is conducted, prior to making a conditional offer of employment. Employers are also prohibited from denying an applicant an initial interview because of a past criminal conviction. The law provides exceptions for when the inquiry is required by law, when the employer

is a law enforcement agency or in the criminal justice system, and for volunteer positions. That said, the law does not prevent employers from asking about criminal history during an interview, from requiring criminal background checks as a condition of employment, or from considering criminal history when making a hiring decision.

- ***Protections for Employees Discussing Wages (Oregon House Bill 2007)***

It will be an illegal employment practice in Oregon to discriminate or retaliate against employees who (1) inquire, discuss or disclose in any manner the wages of the employee or of another employee, or (2) make a complaint or cause an investigation to be instituted based on disclosure of wage information. There is an exception for employees who, as part of their job duties, have access to wage information of employees and disclose that information to individuals who are not authorized to have that information, unless the disclosure is in response to an investigation (including an investigation by the employer), legal action, or legal process.

- ***Employee Social Media Accounts (Oregon Senate Bill 185)***

Employers will be prohibited from requesting that employees and applicants establish or maintain a “personal social media account,” or allow the employer to advertise on their personal social media accounts. The law also prohibits discrimination against applicants or employees who refuse an employer’s unlawful requests.

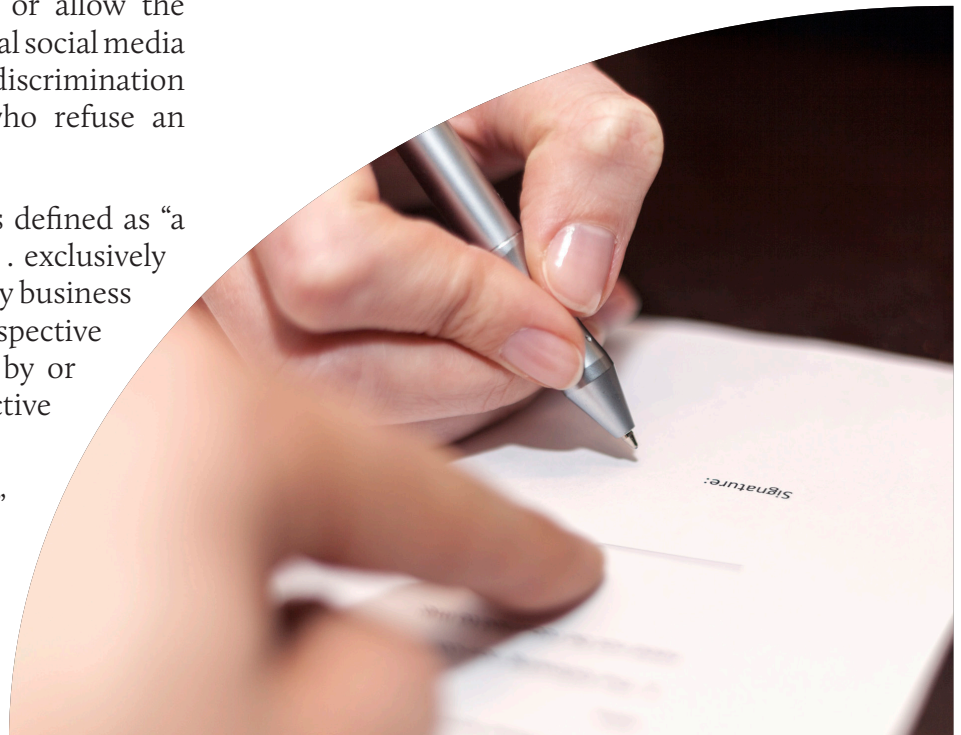
A “personal social media account” is defined as “a social media account that is used . . . exclusively for personal purposes unrelated to any business purpose of the employer or prospective employer and that is not provided by or paid for by the employer or prospective employer.”

The law broadly defines “social media” as “an 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 much more than what most people commonly consider to be “social media” (FaceBook, Twitter, SnapChat and LinkedIn, etc.) It arguably encompasses any means of transmitting electronic information, such as e-mail, web blogs, instant messaging, Skype, text messaging, etc.

- ***Domestic Workers Protection Act (Oregon Senate Bill 552)***

Eligible “domestic workers” will be eligible for overtime, rest periods, paid time off and protections against sexual harassment and retaliation. This includes domestic workers employed in private homes. So, if you employ a nanny to take care of your children while you’re at work, or a housekeeper to tidy up on a regular basis, you should familiarize yourself with the new law.



DOES YOUR FINANCING STATEMENT COMPLY WITH THE NEW LAWS?

By Nate L. Funk – Business Practice Group

If you are a business owner (or attorney who works with any business owner) who regularly files UCC financing statements in Oregon as a secured party, you should be aware that the requirements for how you identify an individual debtor will change as of January 1, 2016. The changes result from Senate Bill 462, which amends ORS 79.0502 and ORS 79.0503. SB 462 was signed into law on June 22, 2015 and takes effect on January 1, 2016.

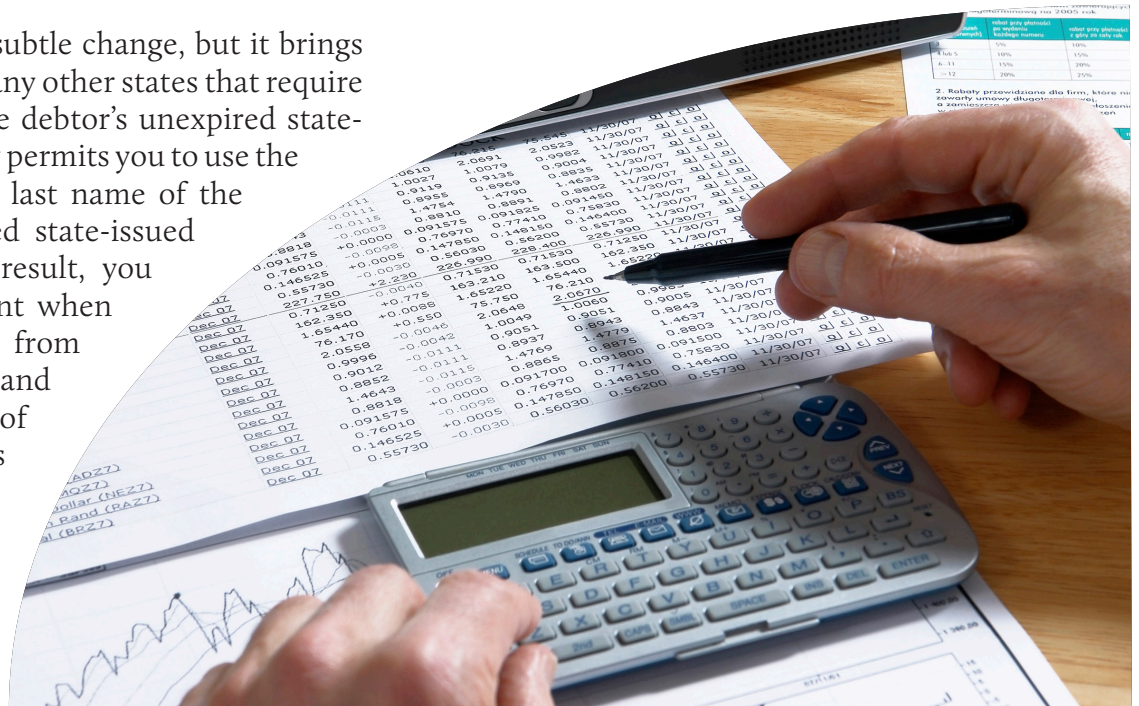
Under the current law, you can identify an individual debtor on a financing statement using *either* (a) the individual name of the debtor, (b) the debtor's first and last name, or (c) the debtor's name as it appears on an unexpired Oregon driver's license or other Oregon ID card. In other words, you have a number of options, any one of which is sufficient.

However, as of January 1, 2016, you *must* identify an individual debtor using the debtor's name exactly as it appears on the debtor's unexpired Oregon driver's license or other Oregon ID card, unless one does not exist, in which case you may provide either the individual name of the debtor or the debtor's first and last name.

This amendment is a subtle change, but it brings Oregon in line with many other states that require you to look first to the debtor's unexpired state-issued ID card and only permits you to use the unconfirmed first and last name of the debtor if no unexpired state-issued ID card exists. As a result, you will need to be diligent when obtaining information from the individual debtor and should make a copy of any applicable ID cards (expired or otherwise) for your records.

The new requirements apply to all new financing statements filed on or after January 1, 2016. Existing financing statements (those filed before January 1, 2016) will remain effective even after January 1, 2016 without any further action by you as the secured party. However, if you plan to continue an existing (but non-complying) financing statement, you must file an amendment to bring it into compliance before the next lapse date after January 1, 2016.

As a result, you should review your existing financing statements to determine if they comply with the new requirements. If any of your existing financing statements do not comply, and you plan to continue these financing statements after January 1, 2016, you should file an amendment to update the name of the debtor. You do not have to wait until after January 1, 2016 to do this. In fact, you should start this process sooner rather than later to protect yourself in the event that you encounter any difficulties obtaining the necessary information from the individual debtor.



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.

Take advantage of our free consultation to review the current state of your 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 tcoleman@cosgravelaw.com for a consultation.