

SELECTED OREGON EMPLOYMENT LEGISLATION¹

MARCH 2009 REPORT

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After a slow start, many new employment-related bills have now been introduced

If you don't like the way some employment laws work, now is your chance to take action! To avoid bad legislation, you can help inform the legislature by writing or calling. If you would like to participate in the process, see the website for the Oregon legislature (www.leg.state.or.us). If you have questions or would like to be placed on a notification list regarding bills of interest, please send an email to rsutton@sglaw.com.

BILL	DESCRIPTION	COMMENT
SB 57	This bill eliminates the word "solely" from the Oregon statute that prohibits an employer from discriminating against a person "solely" because another member of the person's family works or has worked for the employer. <i>Referred to Judiciary Committee. Public hearing held.</i>	<i>Current law requires proof that the employer's sole reason for the allegedly discriminatory action was the employee's status as a family member. The change would make it easier to prove a claim. This bill may have the effect of chilling diversity in the workplace, as employers will feel some pressure to employ family members of existing employees.</i>
SB 60	This bill would allow the BOLI commissioner to charge attorney fees against the respondent employer when collecting a judgment on a wage claim. <i>Has passed in the Senate and has now been referred to the Business & Labor Committee on the House side.</i>	<i>The current statute allows BOLI to charge these fees against the claimant's recovery only.</i>
SB 358	This bill relates to an employer's liability for punitive damages. The employer would not be liable for the wrongdoing of an employee unless the employer knew that the employee intended to commit the wrong, and the employer failed to take action to prevent it from happening. <i>Referred to Judiciary Committee.</i>	<i>Although the bill would limit liability of employers, the employer would be required to act on any knowledge that an employee intended harm.</i>

¹ Randy Sutton is a shareholder with the SAALFELD GRIGGS law firm (www.sglaw.com). This summary was prepared with the firm's assistance. The information contained herein is current as of March 17, 2009. This summary is not intended to cover every employment-related bill. The status of particular bills will change rapidly during legislative session. This information is considered accurate but is not guaranteed. Additional information is available at www.leg.state.or.us. The above comments are not legal advice and do not necessarily reflect the views of SHRM or the Oregon State Council, its board or members, or any affiliated organization. The purpose of this report is to provide information and is not intended to lobby one position over another.

BILL	DESCRIPTION	COMMENT
SB 427	<p>The bill allows an employer to refuse to accommodate medical use of marijuana, regardless of where the use occurs. The bill would also allow employers to establish drug-free workforce policies.</p> <p><i>Referred to Commerce and Workforce Development.</i></p>	<p><i>See also HB 2497</i></p>
SB 463	<p>The bill would authorize payment of unemployment Insurance benefits to part-time workers even if they are only willing to accept part-time work.</p> <p><i>Referred to Commerce and Workforce Development Committee. Public Hearing held.</i></p>	<p><i>Current law requires workers to search for, and accept, full time work, regardless of the number of hours previously worked. The proposed legislation would modify that restriction for those individuals with a history of part-time work. The Employment Department estimates that this bill would cause approximately 7,000 additional workers per year to receive UI benefits.</i></p>
SB 519	<p>This “captive audience” legislation would make it unlawful to discharge, discipline or otherwise penalize an employee who declines to attend an employer-sponsored meeting, if the primary purpose of the meeting is to communicate the employer’s opinion about religious or political matters. The bill defines “political matters” to include discussions about supporting or joining labor unions.</p> <p><i>Referred to Commerce and Workforce Development. Public Hearing held.</i></p>	<p><i>The National Labor Relations Act (NLRA) preempts certain state laws relating to unfair labor practices. If passed, it is possible that this bill would face legal challenge.</i></p>
SB 638	<p>This bill would require that employers subject to OFLA also allow use of OFLA leave for an employee to attend and participate in K-12 school activities. The bill limits use of this leave to five hours per calendar month and 35 hours per year. The bill requires seven days notice before leave is taken.</p> <p><i>Referred to Commerce and Workforce Development Committee.</i></p>	<p><i>This bill would further expand Oregon’s family medical leave law, which is significantly broader than federal law.</i></p>
SB 707	<p>This bill would increase employer protections in providing employment references. Employers would be entitled to a presumption of good faith with greater burden on former employees to show that the reference was given in bad faith.</p> <p><i>Referred to Commerce and Workforce Development Committee.</i></p>	<p><i>Employers must be cautious when providing employment references. This bill would give employers additional peace of mind when providing truthful references about former employees.</i></p>
SB 727	<p>This bill would make it an unlawful employment practice to subject employees to “an abusive work environment.” Abuse is defined to include acts and omissions that a reasonable person would find hostile, based on the severity, nature, and frequency of the conduct.</p> <p><i>Referred to Judiciary Committee.</i></p>	<p><i>This bill, if passed into law, would likely result in an explosion of employment litigation. The definition of abuse is very broad.</i></p>

BILL	DESCRIPTION	COMMENT
SB 786	<p>This bill imposes additional duties to accommodate religious observances and practices. Employer would need to show undue hardship, which the bill defines as “significant difficulty or expense.”</p> <p><i>Referred to Judiciary Committee.</i></p>	<p><i>Employers already need to make some effort to accommodate religious beliefs and practices under existing civil rights law. This bill would increase the employer’s burden to show that allowing the practice causes an undue hardship.</i></p>
SB 805	<p>This bill would require that an employer provide 15 days of unpaid leave to military spouses after notice of an impending call to active duty and when the spouse is on leave from deployment. Applies to all employers regardless of size.</p> <p><i>Referred to Commerce and Workforce Development Committee.</i></p>	<p><i>Federal law already imposes a duty to provide leave to employers of sufficient size. This bill would extend this requirement to Oregon employers of any size.</i></p>
SB 928	<p>This bill would make it an unlawful employment practice for an employer to discriminate against a victim of domestic violence, sexual assault or stalking, and would require that the employer make reasonable safety accommodations unless there is an undue hardship. These accommodations can include reassignment, modified schedule, leave, changed work station, installation of locks, and other remedies.</p> <p><i>Referred to Judiciary Committee.</i></p>	<p><i>This bill increases the potential liability for failure to provide accommodations requested by the employee, and will put additional burden on employers to explain why a particular accommodation was not provided.</i></p>
HB 2038	<p>This bill requires that every person driving a vehicle use a hands-free cell phone feature. Also requires that any person under the age of 18 not talk or text message while driving.</p> <p><i>Referred to Transportation Committee. Public Hearing held.</i></p>	<p><i>The bill would require employers to install hand-free phones in company vehicles or make sure that employees are using hands-free devices while driving.</i></p>
HB 2319	<p>This bill generally incorporates changes that were recently made to the Americans with Disabilities Act into Oregon’s state law version of the ADA.</p> <p><i>Referred to Judiciary Committee.</i></p>	<p><i>Effective January 1, 2009 Congress amended the ADA to prohibit employers from considering mitigating measures when determining whether an individual has a disability and loosened the definition of “impairment.” This bill would incorporate those changes into Oregon law and make state and federal law more consistent.</i></p>
HB 2377	<p>This bill would require that every person driving a vehicle use a hands-free cell phone feature. Would allow drivers under 18 to use a cell phone while driving so long as it was hands free.</p> <p><i>Referred to Transportation Committee. Public Hearing held.</i></p>	<p><i>See comments re: HB 2038</i></p>

BILL	DESCRIPTION	COMMENT
HB 2497	<p>The bill allows an employer to refuse to accommodate medical use of marijuana, regardless of where the use occurs. The bill would also allow employers to establish drug-free workforce policies.</p> <p><i>Referred to Business & Labor Committee. Public Hearing held.</i></p>	<p><i>Because of the time marijuana stays in a person's system, it is difficult to determine whether a medical marijuana user is presently under the influence. Recent court cases have made it difficult for employers to impose zero-tolerance policies in the workplace. This bill would give employers more flexibility to enforce their drug policies.</i></p> <p><i>The SHRM Oregon State Council has taken a position in support of this bill.</i></p>
HB 2503	<p>This bill would restrict employers from making employment decisions based upon medical marijuana use, except where the employer could show that the use occurred on the employer's property or during work hours. Exception for "safety sensitive" positions.</p> <p><i>Referred to Business & Labor Committee. Public Hearing scheduled.</i></p>	<p><i>This pro-medical marijuana bill would broadly expand the rights of medical marijuana users and limit an employer's ability to enforce its zero-tolerance drug policies.</i></p>
HB 2692	<p>This bill would allow an employer to return an employee from family leave to an available equivalent position instead of being restored to same position of employment held before taking leave.</p> <p><i>Referred to Business & Labor Committee. Public Hearing held.</i></p>	<p><i>This bill would give employers more flexibility in managing family leave absences.</i></p>
HB 2821	<p>This bill would prohibit an employer from requiring eligible employees to use accrued vacation leave when taking family leave.</p> <p><i>Referred to Business and Labor Committee. Public Hearing held and possible work session scheduled.</i></p>	<p><i>This bill would reduce the ability of employers to manage their paid leave programs and would allow employees who have taken family leave to still bank time off for paid vacation leave.</i></p>
HB 2890	<p>This bill would significantly restrict those individuals who may be classified as independent contractors. Individuals performing personal services would be classified as employees unless BOLI determined that the individual meets specific independent contractor requirements.</p> <p><i>Referred to the Business and Labor Committee.</i></p>	<p><i>This bill would reduce the flexibility of business to hire contractors and would add confusion when a business is hiring any kind of contract labor for personal services (plumber, website developer etc.) The bill even imposes <u>felony criminal</u> penalties on employees and officers of the company. An unintentional misclassification is "only" a misdemeanor!</i></p>
HB 2903	<p>This bill allows an employer to execute a valid noncompete or agreement to arbitrate with only 72 hours prior notice, rather than the two weeks that is currently required.</p> <p><i>Referred to the Business and Labor Committee.</i></p>	<p><i>Currently, an employee must be informed of the requirement to sign an agreement containing a geographical noncompete or agreement to arbitrate in an offer letter received by the employee two weeks prior to start of work. This bill would lower the notice period to 72 hours.</i></p>

BILL	DESCRIPTION	COMMENT
HB 3045	<p>This bill would increase the unemployment benefit by \$25 for each dependent child living in the employee's household.</p> <p><i>Referred to the Business and Labor Committee.</i></p>	<p><i>This bill places a significant increased burden on the unemployment insurance trust fund.</i></p>
HB 3135	<p>This bill would allow employees on strike, who have not been replaced by permanent replacements, to obtain unemployment benefits.</p> <p><i>Referred to the Business and Labor Committee.</i></p>	<p><i>This bill shifts the balance of power towards the union in a strike, by allowing striking employees to obtain wage replacement, and lessening the need for the unions to use their own funds to help striking workers.</i></p>
HB 3140	<p>This bill would temporarily eliminate the one week waiting period on unemployment benefits eligibility.</p> <p><i>Referred to the Business and Labor Committee.</i></p>	<p><i>This bill would not extend an employee's amount of UI benefits, just shift when the employee is first allowed to receive those benefits.</i></p>
HB 3160	<p>This bill would provide for paid family leave of \$300 per week for employees on parental leave or employees who are caring for a family member with a serious health condition. Employees could not take benefits for partial week absences. The paid leave is funded through a 2 cent per hour premium charged to all employees.</p> <p><i>First reading. Referred to Speaker's desk.</i></p>	<p><i>This bill does not provide paid family leave benefits for employees on leave for their own serious health condition. The bill also does not appear to limit the number of weeks that the employee can collect paid benefits. The bill would also allow employees to bank their employer-provided paid leave while they use the UI funded paid family leave.</i></p>
HB 3162	<p>This bill would make it an unlawful employment practice for an employer to discharge or otherwise penalize an employee for reporting in good faith a violation of a state or federal law, rule or regulation.</p> <p><i>First reading. Referred to Speaker's desk.</i></p>	<p><i>Whistleblowers already enjoy a number of protections. This bill would expand these protections to cover "whistleblowing" relating to the violation of <u>any</u> law or regulation, regardless of its severity or societal importance.</i></p>
HB 3256	<p>This bill would make it an unlawful employment practice to discriminate against a person because he or she has an obligation to perform service in the uniformed service.</p> <p><i>First reading. Referred to Speaker's desk.</i></p>	<p><i>The bill would provide protections at initial employment reemployment, retention, promotion, and for other terms and conditions of employment. There is an exception for bona fide occupational requirements arising from normal business needs. The bill is similar to obligations already imposed on employers by federal law.</i></p>