

## Significant Changes for Employers Doing Business in Oregon

April 18, 2016

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Employers should be aware of several recent changes to various employment laws in Oregon. These laws affect how the majority of private employers in Oregon do business.

### Oregon's Sick Leave Law

Oregon is the fourth state to require employers to provide paid sick leave, along with California, Connecticut, Massachusetts, and now Vermont.<sup>1</sup> [Senate Bill 454](#), more commonly known as Oregon's Sick Leave Law ("Sick Leave Law"), took effect on January 1, 2016.

Under the Sick Leave Law, employers with 10 or more employees working anywhere in the state are required to implement a sick time policy that will allow employees to accumulate up to 40 hours of *paid* sick days annually. Employees will accrue time off at a rate of one hour of paid sick leave for every 30 hours worked. Employers with fewer than 10 employees must implement a similar sick time policy providing *unpaid* sick leave. Existing employees began to accrue time off on January 1, 2016, and employees hired thereafter will begin to accrue time off on the date of hire. Alternatively, the [Sick Leave Rules](#) permit employers to frontload 40 hours of sick time per year.

Oregon employees must be permitted to use sick leave in hourly increments, unless it would cause an "undue hardship" to the employer, in which case, the employer must provide employees with 56 hours of paid leave per year, and employees must be permitted to use sick leave in minimum increments of four hours.

Under the Sick Leave Law, employees can carry over up to 40 hours of unused sick time from year to year. Employers can, however, implement their own policies to cap accrual at 80 hours per year or usage at 40 hours of sick time per year.

Employers must provide [notice](#) to all Oregon employees of the requirements of the Sick Leave Law and [quarterly notification](#) of the accrued and unused sick time available to each employee. Once available, employers must also post a state-provided paid sick

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<sup>1</sup> Vermont's sick leave law becomes effective on January 1, 2017.

leave poster. Employers may require employees to provide advance notice prior to absences or comply with the employer's usual and customary notice and procedural requirements.

The Sick Leave Law allows employees to use accrued time off for a variety of purposes, other than just their own illness, including:

- for an employee's or family member's mental or physical illness, injury, or health condition;
- to care for an infant, newly adopted child, or a newly placed foster child;
- to grieve for, attend the funeral of, or make funeral arrangements for a family member who has died; and
- to take certain actions relating to domestic violence, harassment, sexual assault, or stalking.

Employers that already have sick leave policies, paid vacation policies, paid personal time off policies, or other similar paid time off ("PTO") programs for their employees in Oregon are deemed to be in compliance with the Sick Leave Law, so long as the current policy is substantially equivalent or more generous than the Sick Leave Law.

The Sick Leave Law applies statewide, except in Portland, which will continue to be governed by the city's ordinance, which took effect January 1, 2014.<sup>2</sup> Oregon's new Sick Leave Law preempts the city of Eugene's sick leave ordinance.

### **Oregon's Ban-the-Box Law**

Oregon is the seventh state to pass a law removing criminal history inquiries on job applications for private employers. [House Bill 3025](#), Oregon's ban-the-box law, went into effect on January 1, 2016. Under this law, employers are prohibited from inquiring into an applicant's criminal history until the initial interview or, if no interview is conducted, until a conditional offer of employment is made.

The new law applies to all Oregon employers, except for those that are required by federal, state, or local law to consider an applicant's conviction history; law enforcement agencies; employers in the criminal justice system; and employers seeking a nonemployee volunteer.

### **Portland's Ban-the-Box Law**

The City Council of Portland recently passed its own [ban-the-box law](#), which is more restrictive than Oregon's statewide ban-the-box law. Effective July 1, 2016, Portland's ban-the-box ordinance will require private employers with six or more employees to

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<sup>2</sup> Portland's [Protected Sick Time Ordinance](#) requires employers with more than six employees to provide paid sick time and employers with fewer than six employees to provide unpaid sick time.

delay the timing of criminal background checks until a job applicant has been given a conditional offer of employment.

Furthermore, employers are prohibited from considering an arrest not leading to a conviction (except where a crime is unresolved or charges are pending), convictions that have been judicially voided or expunged, or charges not involving physical harm or attempted physical harm that have been resolved through the completion of a diversion or deferral of judgment program.

An employer that elects to rescind a conditional offer based on an applicant's criminal convictions will be required to provide the applicant with written notification, identifying the relevant criminal conviction(s) on which the decision was based.

### **Minimum Wage Law**

On March 2, 2016, Governor Kate Brown signed [Senate Bill 1532](#) ("Minimum Wage Law"), which raises the minimum wage in the state—with specific increases for Portland and for non-urban counties—over a six-year period. The Minimum Wage Law will increase the minimum wage in most of the state on July 1, 2016, to \$9.75 with the following yearly increases until 2022: \$10.25 on July 1, 2017; \$10.75 on July 1, 2018; \$11.25 on July 1, 2019; \$12 on July 1, 2020; \$12.75 on July 1, 2021; and \$13.50 on July 1, 2022. After June 30, 2023, the minimum wage will be adjusted yearly for inflation. For additional information on minimum wage increases in specific counties, see the Epstein Becker Green *Wage and Hour Defense Blog* post titled "[Oregon Creates Three New Minimum Wage Rates.](#)"

### **Pay Statements and Recordkeeping**

On April 6, 2016, [Senate Bill 1587](#) ("Wage Theft Law") went into effect. The Wage Theft Law requires Oregon employers to provide itemized pay statements to their employees. These pay statements must include the date of the payment, the dates of work covered by the payment, the name of the employee, the rate of pay, the overtime rate of pay, the amount and purpose of each deduction made during the respective period of service that the payment covers, [detailed information](#) about the employer, allowances, and gross and net wages.<sup>3</sup>

Employers must keep employees' time and pay records for at least three years and provide records to employees, if requested.

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<sup>3</sup> The Wage Theft Law also prohibits contractors and subcontractors from failing to pay an employee the prevailing wage rates and to intentionally avoid paying the required prevailing wage by reducing the rate of wage for work that is not subject to the prevailing wage in order to recoup prevailing wages; withholding, deducting, or diverting employee's wages other than as provided by law; entering into agreement under terms of which an employee receives less than the prevailing rate of wage for work that is subject to the prevailing rate of wage; or otherwise permanently or indefinitely depriving an employee of a certain amount of prevailing wages due. A violation of this law is punishable by \$125,000 fine, up to five years imprisonment, or both.

## **Social Media Policy Law**

[Senate Bill 185](#) amended House Bill 2654, which was enacted in 2013 and prohibited employers from accessing employees' or applicants' private social media sites. The amendment, which became effective January 1, 2016, extends the reach of this law, so as to prohibit an employer from requiring employees or applicants to (i) establish and maintain personal social media accounts or (ii) authorize the employer to advertise on their personal social media accounts.

## **Non-Compete Agreements**

[House Bill 3236](#) amended Oregon's law, which had limited the enforceability of employment non-compete agreements to two years. The amendment, which became effective January 1, 2016, shortens the period of enforceability to 18 months.

## **Domestic Violence Leave Law**

[Senate Bill 492](#), which took effect January 1, 2016, expands the types of paid leave available to employees who are victims of domestic violence. Initially, the law permitted employees to use (i) any accrued paid vacation leave or (ii) any other paid leave that is offered by the employer in lieu of paid accrued vacation leave. This amendment requires employers to permit employees who have been victims of domestic violence the option of using accrued sick leave or personal business leave to take time off of work for purposes related to domestic violence.

## **Pay Transparency Law**

[HB 2007](#), Oregon's pay transparency law, makes it unlawful for employers to discriminate, retaliate, or discipline an Oregon employee who has (i) inquired about, discussed, or disclosed his or her wages or the wages of another employee, or (ii) brought charges, filed a complaint, or caused to be instituted an action based on the disclosure of wage information made by the employee. This law took effect on January 1, 2016, and exempts employees who, as part of their job function, have access to wage information.

## **What Oregon Employers Should Do Now**

### *Oregon's Sick Leave Law:*

- Once available, post the new state-provided paid sick leave poster.
- Provide employees with [notice](#) of the Sick Leave Law's provisions.
- Review your PTO policies to ensure compliance with the Sick Leave Law and circulate any updated policies.
- Track the accrual and use of employees' paid sick time (or PTO that may be used for paid sick time purposes).

- Provide employees with quarterly notice of accrued, unused sick time available.

*Oregon's and Portland's Ban-the-Box Law:*

- Revise job applications used in Oregon to remove questions concerning an applicant's criminal convictions, and, if a multistate application is used, clarify that applicants for a position in Oregon should not respond to questions seeking criminal background information.
- Train recruiters, hiring managers, and human resources personnel to request criminal conviction information only after a conditional offer of employment has been made (or after an initial interview if outside Portland).
- Advise recruiters, hiring managers, and human resources personnel to consult with counsel when determining whether to rescind an offer based on an applicant's criminal background.

*Wage Theft, Social Media Policy, Non-Competes, Domestic Violence Leave, and Pay Transparency:*

- Review employees' wages based on the counties in which you do business.
- Revise wage statements and/or pay stubs to include all required information.
- Establish procedures to maintain pay and time records during an employee's employment and for a period of at least three years after termination of employment.
- Review social media policies or practices to confirm that no employees are required to maintain social media accounts, provide their usernames or passwords to you, or authorize you to advertise on their personal social media accounts.
- Review non-compete agreements used in Oregon to ensure that the duration of the non-competition period is no longer than 18 months.
- Review any domestic violence leave policies or procedures to make sure that employees may use vacation, personal, PTO, or sick days during such time off.

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