

2009 OREGON LEGISLATIVE SESSION

Labor and Employment Laws

Final Report

The 2009 Oregon legislative session has ended. What follows is a summary and analysis of new labor and employment laws, followed by a list of bills that did not pass. If you are interested in reading the full-text of a particular bill, follow the link provided. For more information about how you or your business may be affected, please send an e-mail to our Labor and Employment attorneys, Andy Lewis (alewis@hershnerhunter.com) and Amanda Walkup (awalkup@hershnerhunter.com).

Bill	Summary	Comments	Status
<p>HB 2059 (Health Care Professionals)</p>	<p>This bill requires individuals who are licensed by any one of numerous health-related regulatory boards to report conduct by any other licensee that the reporting licensee reasonably believes constitutes grounds for discipline.</p>	<p>This bill requires counselors, massage therapists, dentists, nurses, physicians, physical therapists and other health care providers to report suspected misconduct to whatever board licensed the professional who is suspected of that misconduct.</p>	<p>HB 2059 has been signed into law and takes effect January 1, 2010.</p>

This summary provides general information and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you have specific legal questions, you are urged to consult with your attorney concerning your own situation.

Brought to you by the Labor and Employment attorneys at Hershner Hunter, LLP

<p>HB 2118</p> <p>(Health Care Professionals)</p>	<p>This bill imposes on health care licensees an affirmative duty to report professionals who may be impaired by the excessive use of drugs or alcohol, other chemical dependency or a mental health condition, and confers civil immunity on any licensee who makes such a report in good faith.</p>	<p>This bill also allows licensing boards to require fingerprinting for background check purposes.</p>	<p>HB 2118 has been signed into law and takes effect January 1, 2010.</p>
<p>HB 2201</p> <p>(Unemployment Insurance Administration)</p>	<p>Under Oregon law, an LLC could elect to exempt members from unemployment compensation insurance coverage, and a corporation could also do so for corporate officers who: (i) are also directors; (ii) have a substantial ownership interest in the business; and (iii) are members of the same family. Traditionally the decision to exempt such individuals must be in writing, and would be effective on the first day of the calendar quarter in which the request was submitted to the Employment Department. This bill also changes the effective date to the current calendar quarter <u>or</u> the preceding calendar quarter.</p> <p>This bill also makes officers, directors, members, partners and employees personally liable for a company's failure to properly classify officers and members as exempt, or otherwise comply with the statutory requirements regarding the payment of unemployment insurance premiums.</p>		<p>HB 2201 has been signed into law and takes effect January 1, 2010.</p>
<p>HB 2377</p> <p>(Cell Phone Use)</p>	<p>This bill prohibits individuals from using a cell phone for any non-emergency purpose while operating a motor vehicle, unless the individual is using the device in hands-free mode.</p>		<p>HB 2377 has been signed into law and takes effect January 1, 2010.</p>

<p>HB 2744</p> <p>(Military Leave)</p>	<p>This bill requires employers to provide 14 days of unpaid leave to employees who are spouses of members of the Armed Forces (including the National Guard) who are on active duty during periods of military conflict. The leave would be available if the service member faced an “impending call or order to active duty,” or if the member is on leave from deployment. The employee is entitled to restoration of the employee’s job without loss of benefits.</p>	<p>This bill is similar, but not identical, to the military leave revisions to the FMLA.</p>	<p>HB 2744 has been signed into law and took effect upon passage.</p>
<p>HB 2826</p> <p>(Child Labor)</p>	<p>This bill increases the hours that children under 16 years of age can work during the summer period. The previous law prohibited children under 16 from working past 7:00 p.m. This bill changes that time to 9:00 p.m.</p>		<p>HB 2826 has been signed into law and takes effect January 1, 2010.</p>
<p>HB 3140</p> <p>(Unemployment Benefits)</p>	<p>This bill extends the period during which an eligible individual may receive unemployment insurance benefits from 26 weeks to 52 weeks.</p>		<p>HB 3140 has been signed into law and took effect on passage.</p>
<p>HB 3162</p> <p>(Whistleblowing)</p>	<p>This bill prohibits an employer from discharging or otherwise discriminating or retaliating against an employee if the employee in good faith reported information that the employee believes is evidence of a violation of state or federal law.</p>	<p>Under previous law, whistleblowing protections were limited. This bill significantly expands those protections.</p>	<p>HB 3162 has been signed into law and takes effect January 1, 2010.</p>
<p>HB 3256</p> <p>(Discrimination)</p>	<p>This bill prohibits an employer from discriminating against an individual because of the person’s service in the military.</p>		<p>HB 3256 has been signed into law and takes effect January 1, 2010.</p>

<p>SB <u>60</u> (Wage Claims)</p>	<p>This bill allows the BOLI Commissioner to assess and collect attorney’s fees against an employer when collecting a judgment on a wage claim.</p>		<p>SB 60 has been signed into law and takes effect January 1, 2010.</p>
<p>SB <u>277</u> (Public Accommodations)</p>	<p>This bill requires places of accommodation to permit customers to use employee toilet facilities if the customer uses an “ostomy device” or has a “diagnosis of Crohn’s Disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome or other medical condition that can cause a person to require access to a toilet facility without delay.”</p>	<p>Under this bill, in order for the customer to be able to use the employee bathroom: (i) the public bathroom must not be “immediately available;” (ii) there must be three or more employees working at the time of the request; and (iii) the employee toilet must be reasonably safe and not located in an area that would pose an obvious health or safety risk to employees or the customer, or a security risk to the place of public accommodation. This law imposes a maximum fine of \$90 against any merchant who denies a customer with any of the above conditions use of the employee bathroom.</p>	<p>SB 277 has been signed into law and takes effect January 1, 2010.</p>
<p>SB <u>373</u> (Child Support)</p>	<p>This bill holds an employer liable to the beneficiary of a child support order if the employer withholds employee wages in response to a support order, but then fails to pay those withheld funds to the beneficiary within the timeframe set out in the support order. The employer is also liable to the employee if the employer withheld more than was required by the support order. The beneficiary and employee are entitled to recover all damages arising out of the employer’s failure to comply with the support order, plus attorney’s fees. The employer is subject to a fine of \$250 per violation.</p> <p>SB 373 also makes it unlawful for an employer to discharge, refuse to hire, or discriminate or retaliate against any employee who is subject to a support order, or because the support order imposes obligations on the employer.</p>		<p>SB 373 has been signed into law and takes effect January 1, 2010.</p>

<p><u>SB 519</u> (Retaliation)</p>	<p>This bill prohibits all employers from retaliating against an employee because the employee refused to attend an employer-sponsored meeting or participate in a communication regarding the employer's opinion about religious or political matters. The bill creates exceptions for certain religious and political organizations, and for meetings that are strictly voluntary.</p>	<p>Aggrieved employees are entitled to file a civil lawsuit against their employer no later than 90 days after the date of the alleged violation, and may recover three times' the amount of actual damages, plus attorney's fees.</p>	<p>SB 519 has been signed into law and takes effect January 1, 2010.</p>
<p><u>SB 786</u> (Religious Discrimination)</p>	<p>This bill (i) requires employers to accommodate an employee's religious observances and practices unless doing so caused an undue hardship; (ii) permits employees to use paid leave as an accommodation; and (iii) restricts an employer's ability to place limitations on an employee's desire to wear religious clothing or participate in religious activities. The new law shall be known and may be cited as the "Oregon Workplace Religious Freedom Act."</p>	<p>Although employers were already required to reasonably accommodate religious practices and observances, this bill makes it more difficult to establish that accommodating a practice would constitute an undue hardship.</p>	<p>SB 786 has been signed into law and takes effect January 1, 2010.</p>
<p><u>SB 874</u> (ADA)</p>	<p>This bill essentially adopts the recent amendments that were made to the ADA, making Oregon law more consistent with its federal counterpart.</p>		<p>SB 874 has been signed into law and takes effect January 1, 2010.</p>
<p><u>SB 928</u> (Domestic Violence)</p>	<p>This bill (i) prohibits an employer from discriminating against an employee or applicant who is a victim of domestic violence, sexual assault or stalking; and (ii) requires an employer to implement "reasonable safety accommodations" (such as transfers, reassignments "or any other adjustment") requested by a victim of domestic violence, sexual assault or stalking.</p>		<p>SB 928 has been signed into law and takes effect January 1, 2010.</p>

The following is a table of employment related bills that were introduced in the 2009 Oregon legislative session but were not passed into law.

<p>HB <u>2031</u></p> <p>(Military Personnel Tax Credit)</p>	<p>This bill would allow employers to receive a state income tax credit for compensation paid to an employee who is also a member of the military reserves or the Oregon National Guard, if the payments are for periods in which the employee is engaged in military service under federal law. The legislation, if passed, would be effective on the 91st day after the legislative session ends.</p>	<p>HB <u>2038</u></p> <p>(Cell Phone Use)</p>	<p>This bill, like HB 2377, would prohibit individuals from using a cell phone for any non-emergency purpose while operating a motor vehicle, but unlike HB 2377, this version would limit the hands-free exception only to those drivers who are 18 years of age or older. (See also HB 2526).</p>
<p>HB <u>2044</u></p> <p>(Injured Workers Medical Services)</p>	<p>This bill would prohibit self-insured employers and worker's compensation insurers from directing or requiring an injured worker to obtain non-emergency medical care from a specific medical care provider. If enacted, the law would assess civil penalties of up to \$2,000 for each violation.</p>	<p>HB <u>2089</u></p> <p>(Business Regulation)</p>	<p>This bill would require corporations and limited liability companies to maintain specific, detailed information concerning officers, directors, members, managers and shareholders, and to verify the identities of non-U.S. resident shareholders, owners, members and managers. Corporations and LLCs would also be required to appoint a records custodian to maintain the company's meeting minutes and records of corporate actions taken by the company without a meeting, and to provide the Secretary of State with the records custodian's name and address.</p>
<p>HB <u>2279</u></p> <p>(Child Support)</p>	<p>This bill would hold an employer liable to the beneficiary of a child support order if the employer withholds employee wages in response to a support order, but then fails to pay those withheld funds to the beneficiary within the timeframe set out in the support order. The employer would also be liable to the <i>employee</i> if the employer withheld more than was required by the support order. The beneficiary and employee would be entitled to recover all damages arising out of the employer's failure to comply with the support order, plus attorney's fees. The employer would also be subject to a fine of \$250 per violation.</p> <p>This bill also makes it unlawful for an employer to discharge, refuse to hire, or discriminate or retaliate against any employee who is subject to a support order, or because the support order imposes obligations on the employer. This bill is identical to SB 373.</p>	<p>HB <u>2282</u></p> <p>(Child Support)</p>	<p>This bill would make an employer liable for an employee or contractor's child support obligations if the employee or contractor has a controlling interest in the employer's business and is paid less than the reasonable value for the services provided by that employee or contractor.</p>

<p>HB 2319</p> <p>(ADA)</p>	<p>This bill incorporates changes that were recently made to the Americans with Disabilities Act into Oregon’s state law version of the ADA.</p>	<p>HB 2364</p> <p>(Business Regulation)</p>	<p>This bill, like HB 2089, would require corporations and limited liability companies to maintain specific, detailed information concerning officers, directors, members, managers and shareholders, and to verify the identities of non-U.S. resident shareholders, owners, members and managers. Corporations and LLCs would also be required to appoint a records custodian to maintain the company’s meeting minutes and records of corporate actions taken by the company without a meeting, and to provide the Secretary of State with the records custodian’s name and address.</p>
<p>HB 2497</p> <p>(Medical Marijuana)</p>	<p>This bill exempts employers from any obligation to accommodate off-duty medical marijuana use and makes clear that private health insurers have no obligation to reimburse medical marijuana users for costs associated with that use. (See also HB 2503, SB 285, SB 426 and SB 427).</p>	<p>HB 2503</p> <p>(Medical Marijuana)</p>	<p>This bill prohibits an employer from discriminating against an individual with respect to hire or tenure or any term or condition of employment because the individual engages in the medical use of marijuana outside of the workplace and during non-work hours, unless the employee is in a safety-sensitive position. (See also HB 2497, SB 285, SB 426 and SB 427).</p>
<p>HB 2526</p> <p>(Cell Phone Use)</p>	<p>This bill would impose a fine of \$360 on any individual who is cited for text messaging while operating a motor vehicle. (See also HB 2038 and HB 2377).</p>	<p>HB 2545</p> <p>(Public Employers)</p>	<p>This bill would include temporary employees in the definition of “appropriate bargaining unit” for purposes of collective bargaining between public employers and public employees.</p>
<p>HB 2546</p> <p>(Public Employers)</p>	<p>This bill would prohibit a public employer from hiring permanent replacement workers for public employees engaged in a lawful strike.</p>	<p>HB 2633</p> <p>(Collective Bargaining)</p>	<p>This bill would modify the definition of “supervisory employee” for purposes of public employee collective bargaining to require the individual to have “independent” authority to act on behalf of the employer. It also specifically addresses whether charge nurses in hospitals may be classified as “supervisory” employees.</p>

<p><u>HB 2663</u> (Employee Memorials)</p>	<p>This bill would require public employers to create a memorial for employees killed while working on a public works project.</p>	<p><u>HB 2692</u> (OFLA)</p>	<p>This bill would expand the OFLA to permit an employer to restore an employee returning from leave to the employee's prior position or to any available equivalent position.</p>
<p><u>HB 2709</u> (Expedited Collective Bargaining)</p>	<p>This bill would repeal the expedited bargaining process in collective bargaining between public employers and employees.</p>	<p><u>HB 2717</u> (Public Employer Whistleblowers)</p>	<p>This bill would subject a public employer to liability for punitive damages and attorney's fees in any case brought under ORS171.120, 476,574, 659a.203 and 659a.218.</p>
<p><u>HB 2730</u> (Wages)</p>	<p>This bill prohibits an employer from adjusting an employee's wage based on the city, county or state in which the employee resides (commonly known as residency pay differentials).</p>	<p><u>HB 2748</u> (Public Employees)</p>	<p>This bill would prohibit public employers from laying off or terminating an employee who does not speak Spanish, and would make such action an unlawful employment practice.</p>
<p><u>HB 2821</u> (Family Leave)</p>	<p>This bill would prohibit an employer from requiring eligible employees to use accrued vacation leave when taking family leave.</p>	<p><u>HB 2903</u> (Non-Competition)</p>	<p>Under this bill, the period for notifying applicants of the requirement that they enter into a non-competition agreement as a condition of employment would be reduced from two weeks to three days.</p>
<p><u>HB 2890</u> (Independent Contractors)</p>	<p>This bill would significantly restrict those individuals who could qualify as independent contractors, and imposes criminal penalties on employees and officers of a company for misclassifying an employee as an independent contractor.</p>	<p><u>HB 2979</u> (Public Restrooms)</p>	<p>This bill, like SB 277 and SB 706, would require places of public accommodation to allow customer access to employee bathrooms under certain circumstances.</p>

<p>HB 3052 (Medical Marijuana)</p>	<p>This bill would allow an employer to refuse to accommodate the medical use of marijuana regardless of where such use occurs. The bill would also allow employers to establish drug free workplace policies. See also HB 2497, HB 2503, HB 3052, SB 285, SB 426 and SB 893.</p>	<p>HB 3130 (Public Employees)</p>	<p>This bill, like HB 2633, would modify the definition of a supervisory employee for collective bargaining purposes.</p>
<p>HB 3131 (Replacement Workers)</p>	<p>This bill would prohibit a public employer from using replacement workers to perform the duties of a striking public employee.</p>	<p>HB 3135 (Striking Workers)</p>	<p>This bill would allow employees on strike (who have not been permanently replaced) to obtain unemployment compensation benefits.</p>
<p>HB 3160 (Paid Family Leave)</p>	<p>This bill, like SB 966, would establish a “Family Leave Benefits Insurance Program.” As part of that program employers would be required to withhold \$.02 from each employee’s hourly wage, and pay that amount into an insurance fund. Employees could then use those funds for six weeks of paid parental leave and leave to care for a family member with a serious health condition, even if the employees had available vacation and sick leave. Benefits would approximate \$300 per week.</p>	<p>HB 3171 (Jury Duty Leave)</p>	<p>This bill would prohibit an employer from requiring an employee serving on jury duty to use accrued paid leave for that purpose.</p>
<p>HB 3215 (Immigration)</p>	<p>This bill would prohibit employers from knowingly or intentionally hiring or retaining unauthorized aliens, require employers to verify immigration status using the federal government’s E-Verify program, and revoke the business license of companies that violate the statute.</p>	<p>HB 3403 (Payment of Wages)</p>	<p>This bill would extend the deadline for the payment of wages upon an employee’s discharge or termination by mutual agreement from the end of the next business day to five working days from the cessation of employment.</p>
<p>HB 3449 (Discrimination)</p>	<p>This bill would prohibit discrimination against an individual based on the individual’s height or weight.</p>		

<p>SB <u>57</u> (Discrimination)</p>	<p>This bill provides that an employer commits an unlawful employment practice if the employer discriminates against an employee or job applicant based on the fact that a member of the employee's or applicant's family works or worked for the employer.</p>	<p>SB <u>126</u> (DOT Drug Tests)</p>	<p>This bill would require motor carriers to notify the state Department of Transportation when an employee who holds a commercial driver's license tests positive for drugs or refuses to take a drug test (other than a pre-employment test). The DOT would be required to suspend the person's license, but could reinstate it if the employee met certain reinstatement qualifications.</p>
<p>SB <u>285</u> (Medical Marijuana)</p>	<p>This bill would require the state of Oregon to classify marijuana as a Schedule II controlled substance. (See also HB 2497, HB 2503, SB 426 and SB 427).</p>	<p>SB <u>358</u> (Punitive Damages)</p>	<p>This bill would restrict a third party's ability to recover punitive damages against an employer for actions taken by one or more of the employer's workers unless the employer knew the worker intended to engage in the act and failed to take reasonable action to prevent the act from occurring; or (ii) the employer later approved of the act. In addition, where punitive damages are awardable, the bill would limit those damages to a specified amount depending on the nature of the claim asserted against the employer and the employer's net worth.</p>
<p>SB <u>426</u> (Medical Marijuana)</p>	<p>This bill is identical to HB 2497 and would expand the ability of an employer to prohibit the use of medical marijuana in the workplace. (See also HB 2503, SB 285 and SB 427).</p>	<p>SB <u>427</u> (Medical Marijuana)</p>	<p>Of the numerous bills relating to medical marijuana currently before the legislature, this one is the most comprehensive. Among other things, the bill would: (i) permit all private employers to enact a comprehensive drug-free workplace program (including drug and alcohol testing policies) but impose protocols on the collection of samples and testing; (ii) make clear that employers are not obligated to accommodate the medical use of marijuana, regardless of where the use occurs (meaning that any detectable level of the drug in an employee's system could be a violation); (iii) require medical marijuana cardholder applicants to notify their employer before using marijuana; (iv) specify that current users of illegal drugs are not protected by Oregon's disability discrimination laws; and (v) exempt employers from civil actions if the employer has enacted a comprehensive drug-free workplace program and taken action against an applicant or employee consistent with that policy. (See also HB 2497, HB 2503, SB 285 and SB 426).</p>

<p>SB 463</p> <p>(Unemployment Compensation)</p>	<p>This bill would authorize the payment of unemployment insurance benefits to part-time workers, even if they are only willing to accept part-time work.</p>	<p>SB 568</p> <p>(Workplace Violence)</p>	<p>This bill would prohibit public employers from adopting conditions of employment that restrict the sale, storage or transportation of firearms.</p>
<p>SB 638</p> <p>(School Activity Leave)</p>	<p>This bill would expand the categories of protected family leave to include 35 hours of school activity leave within any one year period, to be used for any school-sanctioned activity. Leave would be limited to no more than five hours per month.</p>	<p>SB 706</p> <p>(Public Restrooms)</p>	<p>This bill, like HB 2979 and SB 277, would require places of public accommodation to allow customer access to employee bathrooms under certain circumstances.</p>
<p>SB 707</p> <p>(Reference Immunity)</p>	<p>Under this bill, an employer that discloses performance-based information about a current or former employee upon the request of a prospective employer will be immune from civil liability unless there is clear and convincing evidence that the information disclosed by the employer was (i) knowingly false or deliberately misleading, (ii) rendered with a malicious purpose, or (iii) otherwise unlawful.</p>	<p>SB 727</p> <p>(Bullying)</p>	<p>This bill would hold employers and individual employees liable if an employee was subjected to repeated derogatory remarks or insults, threatening, intimidating or humiliating conduct, or exploitation of the employee’s known psychological or physical vulnerabilities. Liability would be strict if the employee suffered an adverse employment action that was not performance-based. If there was no adverse employment action, the employer could avoid liability by establishing (i) that the employer took prompt remedial action to end the conduct, or (ii) the complaining employee unreasonably failed to take advantage of corrective opportunities.</p>
<p>SB 805</p> <p>(Military Leave)</p>	<p>This bill would require all employers to provide 15 days of unpaid leave to employees who are spouses of members of the Armed Forces (including the National Guard) who are on active duty during periods of military conflict. The leave would be available if the service member faced an “impending call or order to active duty,” or if the member is on leave from deployment. The employee would be entitled to restoration of the employee’s job without loss of benefits. (See also HB 2744).</p>	<p>SB 893</p> <p>(Medical Marijuana)</p>	<p>This bill would prohibit discrimination against a medical marijuana cardholder on the basis of such status or the use of marijuana off premises and during non-work hours. The bill clarifies that employers may discipline employees for on-premises use of marijuana, or use during work hours, and exempts from the prohibition on discrimination actions taken against employees in safety-sensitive positions.</p>

<p>SB <u>966</u> (Paid Family Leave)</p>	<p>This bill, like HB 3160, would establish a “Family Leave Benefits Insurance Program.” As part of that program employers would be required to withhold \$.02 from each employee’s hourly wage, and pay that amount into an insurance fund. Employees could then use those funds for six weeks of paid parental leave and leave to care for a family member with a serious health condition, even if the employees had available vacation and sick leave. Benefits would approximate \$300 per week.</p>		
--	---	--	--