

YCHRA
YAMHILL COUNTY
HUMAN RESOURCE ASSOCIATION

YAMHILL COUNTY HUMAN RESOURCE ASSOCIATION

CERTIFICATE OF COMPLETION AND ATTENDANCE

Legislative Update

PRESENTED BY

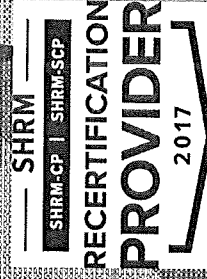
Dan Grinfas, Buchanan Angeli Altschul & Sullivan LLP

January 11, 2018
Linfield College

Attendee

[Signature]
YCHRA Representative

YCHRA is recognized by SHRM to offer Professional Development Credits (PDCs) for the SHRM-CPSM or SHRM-SCPSM
Activity ID: 18-J2TZA



Yamhill County Human Resource Association

January Meeting Announcement

Date & Time: **January 11, 2018, 7:45am – 9:30am**
 7:45 am – 8:00 am Registration & Networking
 8:00 am – 9:30 Program

Location: Linfield College, **Riley Campus Center, Room 201** (see attached map)

Price: FREE

RSVP: rebecca@westhillshealthcare.com
 Please RSVP (if possible) by January 5th, 2018

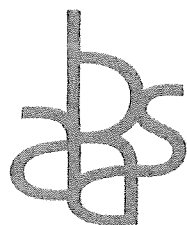
Legislative Update Speaker: Dan Grinfas

Dan Grinfas is Of Counsel with Buchanan Angeli Altschul & Sullivan LLP, an employment law firm in Portland, Oregon. He counsels employers throughout the United States and conducts management and employee training in a variety of employment-related areas, including workplace harassment, civil rights and wage laws, family and medical leave laws, disability laws, injured worker laws, legal hiring practices, policy writing, and employer record-keeping requirements. He also represents employers before state and federal administrative agencies including the Oregon Bureau of Labor and Industries (BOLI) and the U.S. Equal Employment Opportunity Commission (EEOC).

Dan previously served as Lead Program Coordinator with the Oregon Bureau of Labor and Industries' Technical Assistance for Employers program. He was also Of Counsel with the Labor & Employment Group at Stoel Rives LLP.

Dan is recognized as a leading Oregon employment lawyer in rating services including *Chambers USA*, *Best Lawyers in America*, and *Oregon Super Lawyers*. He is certified as a Senior Professional in Human Resources (SPHR) by the Human Resources Certification Institute and as a Senior Certified Professional (SHRM-SCP) by the Society for Human Resource Management. Since 2011, he has taught Employee and Labor Relations as an adjunct professor with the School of Business Administration at Portland State University.

Dan is a graduate of the University of California, Los Angeles and Willamette University College of Law, where he regularly speaks as a guest lecturer on disability laws and leave laws.



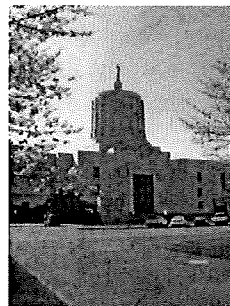
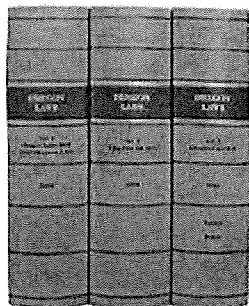
Buchanan
Angeli
Altschul &
Sullivan
LLP

Employment Lawyers

OREGON 2017 LEGISLATIVE UPDATE

BUCHANAN ANGELI ALTSCHUL & SULLIVAN LLP
Attorneys

Rev. 01-11-2018



Presented by

DAN GRINFAS, J.D., SPHR, SHRM-SCP

BUCHANAN ANGELI ALTSCHUL & SULLIVAN LLP

321 SW FOURTH AVENUE, SUITE 600

PORTLAND, OR 97204

TELEPHONE (971) 533-3912

www.baasemploymentlaw.com

dan@baaslaw.com

Dan Grinfas is Of Counsel with Buchanan Angeli Altschul & Sullivan LLP, a unique employment law firm in Portland, Oregon. The firm represents Fortune 500 companies and small businesses alike, as well as select executives and other individuals. The firm also offers mediation and arbitration services for parties to employment disputes.

Buchanan Angeli Altschul & Sullivan's employer clients include: A-dec; CH2M HILL, Inc.; FEI Company; Genentech; Hanesbrands Inc.; HealthNet Health Plans; JELD-WEN, inc.; Leupold & Stevens, Inc.; L'Oreal USA; Northwest Natural Gas; Northwest Permanente, PC; Portland General Electric; the Portland Trail Blazers; Wells Fargo Bank, N.A.; XPO Logistics; and many others.

Dan counsels employers and conducts training in a variety of employment-related areas, including workplace harassment, civil rights laws, wage and hour laws, family and medical leave laws, disability laws, injured worker laws, legal hiring practices, policy writing and employer record-keeping requirements. He also represents employers before state and federal administrative agencies.

Dan previously served as Lead Program Coordinator with the Oregon Bureau of Labor and Industries' Technical Assistance for Employers program. He was also Of Counsel with the Labor & Employment Group at Stoel Rives LLP, the largest Oregon-based law firm.

Dan is a frequent speaker on employment law issues and has presented seminars to thousands of attorneys, managers, supervisors and human resources professionals. He has given numerous presentations for organizations including the National Employment Law Institute, the Pacific Coast Labor and Employment Law Conference, the EEOC, BOLI, the Oregon State Bar, the Oregon Employer Council, the Oregon Law Institute, the Labor Education Research Center, and the Society for Human Resource Management (SHRM).

He is recognized as a leading Oregon employment lawyer in numerous attorney rating services, including *Chambers USA: America's Leading Lawyers for Business*, *Best Lawyers in America*, and *Oregon Super Lawyers*. He is also certified as a Senior Professional in Human Resources (SPHR) by the Human Resources Certification Institute and as a Senior Certified Professional (SHRM-SCP) by SHRM.

For five years, Dan authored a weekly newspaper column that ran in seven Oregon newspapers and addressed a wide range of employment law issues. He has authored numerous publications including Oregon Bureau of Labor and Industries guidance and employer compliance handbooks, and Oregon State Bar Continuing Legal Education resources on private sector and public sector employment laws. Since 2011, he has taught *Employee and Labor Relations* as an adjunct professor with Portland State University's School of Business Administration, Center for Executive and Professional Education. He has also served for 15 years as an editorial board member of and regular contributor to the Oregon Civil Rights Newsletter.

Dan is a graduate of the University of California, Los Angeles and Willamette University College of Law, where he regularly presents as a guest lecturer on disability and leave laws.

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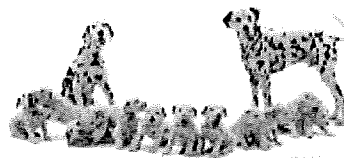
PREFACE

WHAT'S TRENDING IN EMPLOYMENT LAW

- ☐ Minimum Wage Laws
- ☐ Ban-the-Box Laws
- ☐ Paid Sick Leave Laws
- ☐ Paid Parental Leave and Family/Medical
Leave Laws
- ☐ Predictable Scheduling
- ☐ Marijuana Laws
- ☐ Salary History Inquiry Restrictions
- ☐ Pay Equity Laws



Have you ever
been convicted?



RECENT NEWS ON THE FEDERAL LEVEL

- **Marijuana**. Last week, on January 4, 2018, U.S. Attorney General Jeff Sessions announced that he intended to rescind the “Cole Memo,” an Obama-era policy of not interfering with state-approved medical and recreational marijuana use. The Cole Memo provided some legal protections for marijuana businesses operating in states that allow and regulate cannabis sales.

This move may add some confusion for employers trying to comply with both state and federal law. Most employers, including in Oregon, can still, for now, choose to maintain a zero-tolerance policy on marijuana use. Marijuana remains a Schedule 1 controlled substance under the federal Controlled Substances Act, and the Oregon Supreme Court held in 2010 that the federal law trumps state law in this area, such that Oregon employers do not have to accommodate medical marijuana use by employees. *Emerald Steel v. BOLI* (<https://law.justia.com/cases/oregon/supreme-court/2010/s056265.html>, April 14, 2010).

- **New NLRB Rulings Overturning Obama-Era Cases**. Based on new appointments to the five-member National Labor Relations Board (NLRB), the Board held a 3-2 Republican majority in as of mid-December 2017, and the Board quickly issued a series of decisions that dramatically changed interpretations that were in place during the Obama administration.

The Board is now once again split 2-2 because the term of one Republican member ended, but when the President and Senate appoint a third Republican to the Board and again obtain a Republican majority, many more employer-friendly rulings are expected.

Some of the recent changes include the following:

- **Joint Employment**. The Board ditched the prior *Browning-Ferris* joint employer test and voted along party lines to revert to the prior standard under which “direct control” over the employee is required. Now, an employer with only indirect control over an employee would generally not be viewed by the NLRB as a joint employer. This prior broad test was a concern for subcontractors and contractors, and for franchisors and franchisees. The Board had previously held that they were joint employers if they had the right to control working conditions, even if they never exercised that right. Under the new standard, there must be actual exercise of control over essential employment terms, and that must be direct and immediate and be more than just limited or routine.
- **Employer Handbook Policies**. The prior rule from the 2004 *Lutheran Heritage* case was overruled in the new *Boeing* case. The prior rule was that an employer policy would be found overbroad and unlawful if employees could reasonably construe the language in the policy to prohibit protected concerted activity under Section 7 of the NLRA. Under this standard, the NLRA had invalidated many employer policies on “civility,” working “harmoniously” with others, conducting oneself in a “positive and professional manner,” as well as policies on social media, confidentiality, at-will employment, and policies prohibiting the use of cameras or recording in the workplace. Under the new standard,

the Board will use a balancing test, considering the extent of the possible impact of the policy on NLRA rights, balanced against the employer's legitimate business justifications for the policy.

- "Quickie Election Rule." The NLRB issued a request for information as to whether it should keep the rule, modify it, or rescind it.
- Micro-Units for Collective Bargaining. Previously, the Board had held in the *Specialty Healthcare* case that if a small unit of employees had a "community of interest," the burden would shift to the employer to prove that a larger group had an overwhelming community of interest – a difficult standard to prove. In a case involving Macy's, the Board had allowed just one small unit of cosmetic and fragrance workers to unionize. The new *PCC Structurals* ruling overturns the *Specialty Healthcare* standard that had expanded bargaining units to "micro-units" that could unionize. The Board returns to the traditional analysis, under which unions will have a tougher time getting their foot in the door when there are only small groups of employees in micro-bargaining units.
- Unilateral Changes Without Bargaining. The new *Raytheon* case returns to a 50-year-old precedent that allows businesses to change policies without bargaining and obtaining a union's permission, if they've previously taken similar actions. The case holds that if an employer regularly makes a change, such as modifying a health plan every year to change covered conditions and rates, the employer doesn't have to bargain over that because it isn't a true "change." Rather, the employer is just doing what they have done before, even if it involves exercising some discretion.
- U.S. DOL Resuscitates Former FLSA Opinion Letters. On January 5, 2018, the U.S. Department of Labor reissued 17 Bush-Era FLSA opinion letters that had been issued in January 2009. These letters which had been previously rescinded when President Obama took office, provide employers guidance on a wide range of wage and hour issues under the Fair Labor Standards Act.
- New Standard for Determining Unpaid Interns and Trainees. The U.S. Department of Labor announced on January 5, 2018 that it had abandoned its prior test for determining when an individual qualifies as an unpaid intern or trainee, as opposed to an employee under the Fair Labor Standards Act. The DOL instead has adopted a seven-part "primary beneficiary" test adopted by the 2nd and 11th Circuits as to who may work as an unpaid intern or trainee. The test focuses on who obtains the primary benefit from the arrangement – the employer, or the individual in an internship/training program. (See summary charts on the following two pages.)

THE U.S. DOL'S FORMER SIX-PART TEST FOR UNPAID INTERNSHIPS
(PRIOR TO JANUARY 5, 2018):

CRITERIA FOR INTERNS/TRAINEES

When *all* of the following criteria apply, trainees or students are not employees within the meaning of wage and hour laws:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the trainees or students;
3. The trainees or students do not displace regular employees, but work under their close supervision;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students; and on occasion his operations may actually be impeded;
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

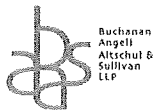
**SEVEN-PART “PRIMARY BENEFICIARY” TEST
ADOPTED BY 2ND AND 11TH CIRCUITS
(AND ADOPTED BY THE U.S. DOL AS OF JANUARY 5, 2018):**

More recently, in *Glatt v. Fox Searchlight Pictures Inc.*, No. 13-4478-cv (2nd Cir., July 2, 2015), the 2nd U.S. Circuit Court of Appeals rejected the DOL’s six-part test as being “too rigid” and adopted a more flexible seven-factor analysis. The Court held that the proper inquiry uses the following “non-exhaustive set of considerations” and weighing and balancing of all of the circumstances, with no one factor being dispositive:

CRITERIA FOR INTERNS/TRAINEES

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern’s formal education program by integrated course work or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar;
5. The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The 11th U.S. Circuit Court of Appeals adopted the *Glatt* test above in *Schumann v. Collier Anesthesia*, No. 14-13169 (11th Cir., Sept. 11, 2015). Note, however, that this test has not been adopted by the 9th Circuit.



OREGON'S 79th LEGISLATIVE ASSEMBLY 2017 REGULAR SESSION

Legislative Organizational Days began January 12, 2017 and ran through January 14, 2017.
Regular Session Convened Wednesday, February 1, 2017 and adjourned *sine die* on Friday, July 7, 2017.

(The original targeted adjournment date was June 23, 2017, with the constitutional deadline for adjournment *sine die* on July 10, 2017.)

Selected Employment-Related Legislation in Oregon's 2017 Legislative Session¹

I. WAGE & HOUR LAW

MINIMUM WAGE LEGISLATION:

TOPIC	BILL	SHORT SUMMARY
<u>Lower Minimum Wage for Work-Study Students</u> PROPOSED: In House Committee	<u>HB 2145</u>	Establishes a lower minimum wage for work-study students, adjusted annually for inflation. Provides that notwithstanding ORS 653.025, the Oregon minimum wage law, for each hour worked by a secondary or post-secondary institution student where the institution provides employment opportunities for financial aid, the employer may pay below the current minimum wage, but not less than \$9.25, adjusted annually for inflation. Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.

¹ See <https://www.oregonlegislature.gov/> for detailed measure history and full text of Oregon legislation.

<p><u>Tax Credit for Employers That Pay More Than Minimum Wage</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2375</u></p>	<p>Amends ORS 314.752 and 318.031. Creates an income tax credit for employers that pay employees wages greater than minimum wage.</p> <p>Applies to tax years beginning on or after January 1, 2018, and before January 1, 2024.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Revenue Committee on 01/17/2017. Takes effect on 91st day following adjournment <i>sine die</i>.</p>
<p><u>Lower Initial Minimum Wage for Employees Under 21 Years of Age</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2378</u></p>	<p>Provides that notwithstanding ORS 653.025 (the minimum wage statute) and ORS 659A.030 (the statute prohibiting, among other things, age discrimination), an employer may pay 85 percent of the minimum to an employee under 21 years of age for the initial 90 days of employment.</p> <p>Applies to an employee who is under 21 years of age on January 1 of the year in which the wage is initially calculated.</p> <p>Specifies that an employer may not pay the lower minimum wage if the employer has laid off, terminated or otherwise reduced the number of employees with the intention of filling a vacancy at less than the regular minimum wage.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Deferred Minimum Wage Increases in Baker and Malheur Counties</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2484</u></p>	<p>Amends ORS Chapter 653. Defers annual minimum wage increases in Baker and Malheur Counties by two years – notwithstanding ORS 653.025, the minimum wage law.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>

<p><u>Future Wage Increases for Direct Home Care Providers</u></p> <p>PASSED in House and Senate</p>	<p><u>HB 2684</u></p>	<p>Amends ORS Chapters 430, 443 and 659A.</p> <p><u>As initially introduced</u>, the bill would have established a minimum hourly wage rate of \$15 per hour for employees who provide direct care to residents of a residential training facility or residential training home; required the residential training facility or residential training home to submit an annual financial statement to the Department of Human Services; modified civil penalties for occurrences of substantiated abuse in a residential training facility or residential training home; authorized private action against a residential training facility or residential training home for retaliation for reports of abuse of adult; and directed the Director of Human Services to adopt rules requiring a residential training facility or residential training home to employ staff sufficient to meet the individual needs of resident.</p> <p><u>As amended and passed</u>, the bill expresses the intent of the Legislative Assembly that, when the Legislative Assembly approves increases in funding of services provided by residential training facilities or residential training homes, wages and benefits paid to direct support professionals be increased at a comparable rate.</p> <p>The amended bill requires residential training facilities and residential training homes licensed by the Department of Human Services to submit annual staffing data to the reporting survey organization, and increases licensure fees for homes serving individuals with intellectual or development disabilities. The amended bill also updates terminology from "mental retardation" to "intellectual or developmental disabilities."</p> <p>Introduction and first reading on 01/09/2017. Referred to House Human Services and Housing Committee with subsequent referral to Ways and Means Committee on 01/17/2017. Public hearing held on 03/07/2017. Work session held on 04/18/2017. "Do pass" recommendation and referred to Ways and Means Committee on 04/25/2017. Assigned to House Subcommittee on</p>
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<p><u>Allowing Initial Minimum Wage for Youth at FLSA Level</u></p> <p>PROPOSED: In House Committee</p>	<u>HB 2915</u>	<p>Amends ORS Chapter 653 and ORS 659A.885.</p> <p>Provides that notwithstanding ORS 653.025, the Oregon minimum wage statute, an employer may pay an employee under 20 years of age at the federal Fair Labor Standards Act minimum wage level (currently \$7.25 per hour), during the first 90 consecutive calendar days of employment.</p> <p>Prohibits an employer from laying off, terminating, displacing or otherwise reducing the number of employees with the intention of filling a vacancy with an employee paid less under this law, and allows claims for discrimination to be filed with the BOLI Commissioner for violations.</p> <p>Introduction and first reading on 02/15/2017. Referred to House Business and Labor Committee on 02/20/2017. Died in committee as of 04/18/2017.</p>
<p><u>Establishing Lower Minimum Wage for Certain Tipped Employees</u></p> <p>PROPOSED: In House Committee</p>	<u>HB 3054</u>	<p>Amends ORS Chapter 653.</p> <p>Establishes a minimum wage for a tipped employee of not less than \$10 per hour, if the employee earns in tips at least \$5 per hour more than the minimum wage otherwise required by law.</p> <p>Introduction and first reading on 02/27/2017. Referred to House Business and Labor Committee on 03/03/2017. Declares emergency; effective on passage. Died in committee as of 04/18/2017.</p>

<p><u>Repealing and Replacing Nonurban County Minimum Wage Tier; Separate Minimum Wage for Agricultural Workers</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3317</u></p>	<p>Amends ORS 653.025, the minimum wage statute.</p> <p>Effective 01/01/2018, repeals the nonurban county minimum wage tier and replaces it with the urban minimum wage tier for certain cities, increasing incrementally on an annual basis through 2023.</p> <p>Creates a separate minimum wage for agricultural workers, increasing annually through 2023.</p> <p>Modifies amounts of the current annual increases, to take place on January 1 each year beginning in 2018, and provides for adjustments based on inflation.</p> <p>Introduction and first reading on 03/06/2017. Referred to House Business and Labor Committee on 03/13/2017. Died in committee as of 04/18/2017.</p>
<p><u>Eliminating Sub-Minimum Wage Option for Disabled Employees</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 240</u></p>	<p>Amends ORS Chapter 653.</p> <p>Requires an employer of an individual with a disability to pay a rate no less than the state minimum wage, beginning on 01/01/2022.</p> <p>Creates the Wage Equity for Individuals with Disabilities Board to advise the Department of Human Services regarding issuance of grants under the Wage Equity Grant Program, established to train disabled employees and subsidize disabled employee wages.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Human Services Committee on 01/17/2017. The required minimum wage rate becomes operative on 01/01/2022. Died in committee as of 04/18/2017.</p>

<p><u>Expanding on Requirement to Provide Notice of Nonpayment of Wages</u></p> <p>PASSED in Senate; in House Committee</p>	<p><u>SB 279</u></p>	<p>Amends ORS 652.150, the statute on final pay penalty wages.</p> <p>Requires that an employee's notice of nonpayment of wages or compensation to the employer include a clear and unambiguous statement that the employer's payment of the unpaid wages or compensation to the employee within 12 days of the employer's receipt of the notice limits the final pay penalty to 100 percent of unpaid wages or compensation owed to employee.</p> <p><u>Background:</u> The formula in ORS 652.150(1) allows up to 30 days of penalty wages for late final pay, but ORS 652.150(2) provides an exception when the employer pays the full amount within 12 days after receiving the employee's written notice of nonpayment. An existing amendment to the statute requires the notice to include the estimated amount of wages allegedly owed or an allegation of facts sufficient to estimate the amount.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Public hearing held on 03/01/2017. Work session held on 04/05/2017. Passed in Senate (28-2 vote) on 04/12/2017.</p> <p>Referred to House Speaker's desk on 04/13/2017. Referred to Business and Labor Committee on 04/20/2017. Public hearing held on 05/24/2017. Work session held on 05/31/2017. Referred to House Rules Committee on 06/06/2017 without recommendation as to passage. Died in committee upon adjournment on 07/07/2017.</p>
<p><u>Extends Beyond 2017 the Preemption of Local Government Authority to Regulate Work Schedules</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 329</u></p>	<p>Relating to preemption of local governmental authority to regulate work schedule requirements.</p> <p>Extends the state preemption of local governmental authority to regulate work schedule requirements, with exceptions for public employers and in specifications for public contracts or subcontracts entered into by local government. Removes the prior provision for repeal of the preemption on 08/31/2017.</p>

		<p><u>Background:</u> During the 2015 Oregon legislative session, the legislature passed Senate Bill 968. The Governor signed it on 06/25/2015, and it became effective the same day. That bill provided that the State of Oregon preempts all authority of local governments to enact a requirement relating to work schedules prior to the adjournment of the 2017 regular session of the Legislative Assembly, with the exception of public employers and in certain public contracts. The bill also provided that it would be repealed as of 08/31/2017.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Work session scheduled on 04/17/2017. Referred to Rules Committee on 04/20/2017. Declares emergency, effective on passage.</p>
<p><u>Tax Credit for Employer Costs of Increased Minimum Wage</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 406</u></p>	<p>Amends ORS Chapters 314 and 318.</p> <p>Creates an income tax credit for certain employers to defray the costs of increases in the minimum wage above \$9.25 per hour.</p> <p>Requires the Bureau of Labor and Industries to adopt regulations on policies and procedures for providing written certifications to taxpayers that qualify for the credit.</p> <p>Applies to tax years beginning on or after January 1, 2018, and before January 1, 2024.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, then to Tax Credits Committee, on 01/17/2017. Takes effect on the 91st day following adjournment <i>sine die</i>. Died in committee as of 04/18/2017.</p>
<p><u>Limiting Tiered Minimum Wage Rate to Larger Employers</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 407</u></p>	<p>Amends ORS Chapter 653.</p> <p>Limits the application of tiered minimum wage rates to employers that employ more than 50 employees during 20 or more calendar workweeks in the year immediately preceding the effective date of the current applicable wage.</p>

		<p>Freezes the wage rate applicable to an employer that employs 50 or fewer employees at the 07/01/2016 rate, adjusted annually for inflation by September 30 of each year.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>
<p><u>Lower Minimum Wage for Agricultural Workers</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 408</u></p>	<p>Amends ORS 653.025, the minimum wage statute.</p> <p>Freezes the minimum wage rate for agricultural workers at the July 1, 2016, rate, to be adjusted annually for inflation by April 30 of each year by the BOLI Commissioner.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Ceasing Further Minimum Wage Increases</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 409</u></p>	<p>Amends ORS 653.025, the minimum wage statute.</p> <p>Repeals all prospective minimum wage increases that have not yet become operative, beginning with the increase set to occur on 07/01/2017.</p> <p>Authorizes Wasco and Josephine Counties to avoid adjustments for inflation until the date on which the rate in those counties is less than or equal to the rate applicable to nonurban counties.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>
<p><u>Allowing Local Government Employers to Opt Out of State Minimum Wage Requirement</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 410</u></p>	<p>Amends ORS Chapter 653.</p> <p>Allows local government to opt out of minimum wage increases in effect after July 1, 2016, with an annual adjustment based on the consumer price index, to be calculated by April 30 each year by the BOLI Commissioner.</p> <p>Applies to local government and employers under jurisdiction of local government.</p>

		Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.
<p><u>Allowing Certain Eastern Oregon Entities to Opt Out of State Minimum Wage Requirement</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 411</u>	<p>Amends ORS Chapter 653.</p> <p>Allows certain local governments, charter schools, school districts and education service districts in Eastern Oregon (Baker, Crook, Deschutes, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Wheeler Counties) to freeze the minimum wage at the rate in effect on July 1, 2016, and to opt out of future increases, with an annual adjustment based on the consumer price index, to be calculated by April 30 each year by the BOLI Commissioner.</p> <p>Allows a qualifying Eastern Oregon local government to opt out on behalf of all employers under the jurisdiction of the local government.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>
<p><u>Allowing Certain Entities Bordering Idaho to Opt Out of State Minimum Wage Requirement</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 412</u>	<p>Amends ORS Chapter 653.</p> <p>Allows local governments, charter schools, school districts and education service districts located in Idaho border counties (Baker, Malheur or Wallowa) to freeze the minimum wage at the rate in effect on July 1, 2016, and to opt out of future increases, with annual adjustment based on the consumer price index, to be calculated by April 30 each year by the BOLI Commissioner.</p> <p>Allows qualifying local government to opt out on behalf of all employers under jurisdiction of local government.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>

<p><u>Allowing Lower Minimum Wage for Certain High School Students</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 448</u></p>	<p>Amends ORS Chapter 653.</p> <p>Establishes a lower minimum wage – the applicable rate in effect at the employer’s location on 07/01/2016, with annual CPI adjustments – for high school students participating in a vocational training program that provides credit toward a community college or public university degree through an accelerated college credit program or similar program.</p> <p>Allows students to earn credit toward community college or public university. Directs the State Board of Education to adopt by rule policies, standards and programs for college credit. Requires an employer to pay wages to a student participating in the program into an account in the Oregon 529 Savings Network. Requires the state to match student earnings.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Declares emergency; effective 07/01/2017. Becomes operative on 01/01/2018. Died in committee as of 04/18/2017.</p>
<p><u>Freezing Minimum Wage for Certain Agricultural Employers Based on Commodity Fluctuations</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 455</u></p>	<p>Freezes the minimum wage rate for certain agricultural employers that experience lower than average commodity values. Allows for lower than the regular minimum wage when the value of an agricultural commodity produced by the employer in a calendar year falls below 80 percent of the 10-year average value for that commodity and the commodity accounts for 30 percent or more of the general revenue of the employer.</p> <p>Authorizes the Director of Agriculture to create rules for implementation.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>

<p><u>Creating Withholding Tax Credit for Wages Paid to Youth Workers</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 460</u></p>	<p>Amends ORS Chapters 314, 316 and 318.</p> <p>Creates a tax credit for employers that pay wages to youth workers, defined as workers between 16 and 25 years of age.</p> <p>Allows the taxpayer to claim the credit by retaining a portion of the withholding tax, calculated as a percentage of wages paid to the youth worker. Bases the percentage to be retained on the age of the youth worker.</p> <p>Applies to wages paid to youth workers on or after 01/01/2018 and to tax years beginning on or after 01/01/2018 and before 01/01/2024.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Takes effect on the 91st day following adjournment <i>sine die</i>. Died in committee as of 04/18/2017.</p>
<p><u>Minimum Wage Exemption for Employees Under 19 and Agricultural/Forest Products Industry Workers</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 569</u></p>	<p>Exempts employees under 19 years of age, agricultural workers (as defined in ORS 315.163), and forest products industry workers (as described in ORS 660.358(4)) from the Oregon minimum wage and allows payment of such employees at the federal FLSA minimum wage level, currently \$7.25 per hour.</p> <p>The exemption for employees under 19 does not apply if the employer has laid off, terminated or otherwise reduced the number of employees with the intention of filling a vacancy at a rate lower than the regular Oregon minimum wage under ORS 653.025.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>

<p><u>Disconnecting Salary for Legislative Assembly Members from State Minimum Wage</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 590</u></p>	<p>Amends ORS 171.072 and 292.912.</p> <p>Disconnects the minimum salary for members of the Oregon Legislative Assembly from the state minimum wage increases.</p> <p>Allows the Public Officials Compensation Commission to recommend the annual salary (not lower than \$20,280) to be paid to a member of the Legislative Assembly at the minimum salary rate in effect from 07/01/2016 to 06/30/2017, adjusted biennially for inflation.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Rules Committee on 01/17/2017. Declares emergency; effective on passage. Died in committee.</p>
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MINIMUM WAGE OVERVIEW AND HISTORY

<u>Federal</u>		<u>Oregon</u>	
01/01/81	\$3.35	01/01/81	\$3.10
----	----	01/01/86	\$3.35
----	----	09/01/89	\$3.85
04/01/90	\$3.80	01/01/90	\$4.25
04/01/91	\$4.25	01/01/91	\$4.75
10/01/96	\$4.75	----	----
09/01/97	\$5.15	01/01/97	\$5.50
----	----	01/01/98	\$6.00
----	----	01/01/99	\$6.50
----	----	01/01/03	\$6.90
----	----	01/01/04	\$7.05*
----	----	01/01/05	\$7.25*
----	----	01/01/06	\$7.50*
07/24/07	\$5.85	01/01/07	\$7.80*
07/24/08	\$6.55	01/01/08	\$7.95*
07/24/09	\$7.25	01/01/09	\$8.40*
		01/01/10	\$8.40*
		01/01/11	\$8.50*
		01/01/12	\$8.80*
		01/01/13	\$8.95*
		01/01/14	\$9.10*
		01/01/15	\$9.25*
		01/01/16	\$9.25*

- *Per Ballot Measure 25 (2002), the Oregon minimum wage was previously adjusted annually based on the increase from September of the prior year to September of the current year in the U.S. City Average Consumer Price Index (CPI) for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest five cents, effective as of January 1 of the following year. (There was no change in 2010 and 2016, because the CPI remained flat in the preceding years.)
- Federal government contractors and subcontractors have been required to pay employees at least **\$10.10** per hour (previously \$7.25) since January 1, 2015 based on Executive Order 13658 (<http://www.gpo.gov/fdsys/pkg/FR-2014-02-20/pdf/2014-03805.pdf>), signed by President Obama on 02/12/2014. The new minimum wage for such employees is indexed to inflation and adjusted annually, starting in 2016, based on the annual percentage increase in the Consumer Price Index. Effective 01/01/2016, the minimum wage rose to **\$10.15** per hour, and effective 01/01/2017, it rose to **\$10.20** per hour. A U.S. Department of Labor FAQ sheet is available at <http://www.dol.gov/whd/flsa/eo13658/finalrule-faq.pdf>.

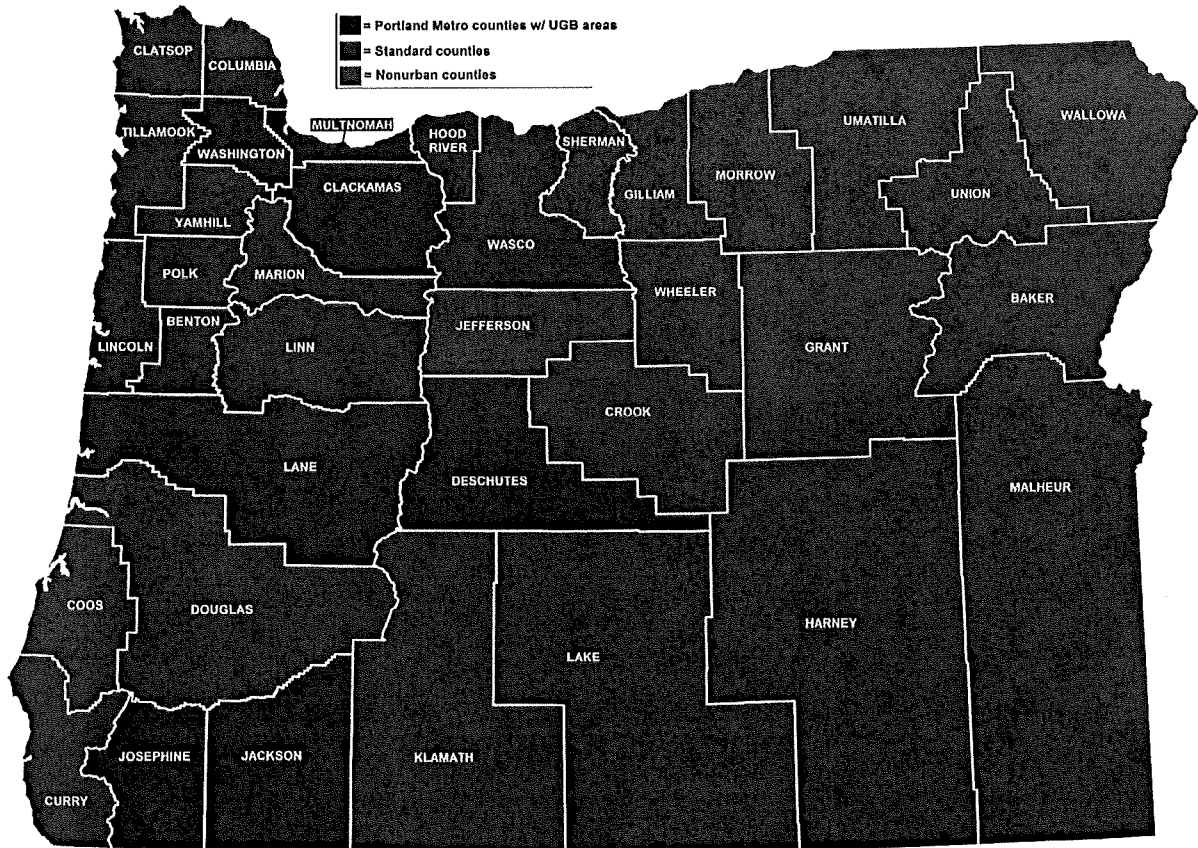
- The Oregon minimum wage generally applies to all employees, except for certain exempt employees.
- The Oregon minimum wage applies equally to minors (employees under 18).
- Oregon does not allow for a “tip credit” against the minimum wage for tipped employees.
- Oregon does not allow for an initial “training wage” lower than minimum wage.

FURTHER MINIMUM WAGE INCREASES
AS A RESULT OF 2016 Oregon Senate Bill 1532

Date	General Minimum Wage Levels	Minimum Wage Levels for Employers in <u>Urban Growth Boundary (Parts of Clackamas, Multnomah and Washington Counties)</u> <u>Metro UGB Address Lookup</u>	Minimum Wage Levels for Nonurban Counties (Baker, Coos, Crook, Curry, Douglas, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler)
07/01/2016	\$9.75	\$9.75	\$9.50
07/01/2017	\$10.25	\$11.25	\$10.00
07/01/2018	\$10.75	\$12.00	\$10.50
07/01/2019	\$11.25	\$12.50	\$11.00
07/01/2020	\$12.00	\$13.25	\$11.50
07/01/2021	\$12.75	\$14.00	\$12.00
07/01/2022	\$13.50	\$14.75	\$12.50
07/01/2023 and annually thereafter	A rate adjusted annually for inflation, to be calculated by the BOLI Commissioner by the end of April based on the increase, if any, from March of the preceding year to March of the current year, in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest five cents, to become effective on July 1 of the year in which the calculation is made.	At least \$1.25 more per hour than the general minimum wage as adjusted for inflation (in the column to the left).	No less than \$1 per hour less than the general minimum wage as adjusted for inflation.

From BOLI: Oregon Minimum Wage Rates by County

Note: Employers located within Washington, Multnomah and Clackamas Counties but not within the Urban Growth Boundary are subject to the general (standard) minimum wage rate.



- Washington State's minimum wage rose from \$9.47 to **\$11.00** per hour as of 01/01/2017, as a result of passage by voters of November 2016 Initiative 1433.
- California's minimum wage increased to \$9.00 per hour on 07/01/2014, to **\$10.00** per hour on 01/01/2016, and to **\$10.50** per hour on 01/01/2017 (\$10.00 per hour for employers with 25 or fewer employees). It will increase annually, reaching \$15.00 per hour as of 01/01/2022 (01/01/2023 for employers with 25 or fewer employees).

MORE WAGE & HOUR LEGISLATION:

<p><u>Requiring Triple Pay for Overtime by Corrections Employees</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2104</u></p>	<p>Amends ORS 653.268, a statute on labor directly employed by a public employer.</p> <p>Requires an employer of security personnel in a corrections institution to pay the employee three times the regular rate of the employee's pay if the employer assigns mandatory overtime and requires the employee to work in excess of 40 hours in any one week.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Judiciary Committee, with subsequent referral to Ways and Means Committee, on 01/17/2017. Public hearing held on 03/21/2017. Died in committee.</p>
<p><u>New Employee Scheduling Requirements HB 2193</u></p> <p><u>SB 828</u></p> <p>PASSED in Senate and House</p>	<p><u>HB 2193</u> <u>SB 828</u></p>	<p>Amends ORS Chapter 653 and ORS 659A.885.</p> <p><u>As initially introduced</u>, the legislation included minimum show-up/reporting pay requirements and would have required an employer to pay an employee the equivalent of at least four hours of work or the number of hours in the employee's scheduled work shift, whichever is less, on any day that the employee is scheduled or called in to work but, due to the employer, does not work the entire shift. The requirement also would have applied if the employee is notified less than 24 hours before a shift that the employee does not need to report to work or that the hours in the shift have been reduced.</p> <p><u>As initially introduced</u>, the bill would have required covered employers to engage in an interactive process toward resolution of schedule conflicts and to grant the preferred schedule request to an employee unless the employer had a bona fide business reason not to do so.</p> <p><u>As amended and passed</u>, the bill requires large employers in specified industries (retail, hospitality and food service establishments with 500 or more employees worldwide) to provide a new employee with an estimated work schedule and to provide a current employee with seven days' notice of the employee work schedule, with the requirement extended to two weeks' notice effective 07/01/2020. The bill permits covered employers to maintain a list of employees for work shift coverage in certain circumstances.</p>

		<p>Prohibits large employers in specified industries from scheduling work shifts that do not allow sufficient break time (10 hours) in between shifts unless the employee earns 1.5 times the scheduled rate of pay.</p> <p>Requires large employers in specified industries to pay a penalty wage if the employer changes a scheduled shift with less than seven days' notice, with an exception if the change was outside the employer's control.</p> <p>Requires all employers to maintain records relating to compliance for three years. Makes it an unlawful employment practice for covered employers to interfere with employee rights or to retaliate against an employee for exercising rights granted to the employee under this bill. Allows for an administrative or civil cause of action and statutory penalties for each violation.</p> <p>Prohibits covered employers from retaliating against employees who request a preferred work schedule.</p> <p>The amended Senate Bill repeals the sunset of the preemption of local government regulation of work schedules.</p> <p>HB 2193: Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 03/06/2017. Work session held on 04/18/2017. Referred to Rules Committee on 04/21/2017.</p> <p>SB 828: Introduction and first reading on 02/21/2017. Referred to Senate Workforce Committee on 02/22/2017. Public hearing held on 02/27/2017. Public hearing held on 04/03/2017. Work session held on 04/17/2017. "Do pass" recommendation and referred to Senate Rules Committee on 04/20/2017. Public hearing and work session held on 06/14/2017. Recommendation of "do pass with amendments" on 06/20/2017. Second reading on 06/21/2017. Passed in Senate (23-6 vote) on 06/22/2017.</p> <p>Referred to House Speaker's desk on 06/23/2017. Referred to House Rules Committee on 06/23/2017. Public hearing and work session held on 06/27/2017. "Do pass" recommendation on 06/28/2017. Passed in House (46-13 vote) on 06/29/2017.</p>
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		Signed by Senate President on 07/03/2017. Signed by House Speaker on 07/05/2017. Declares emergency; effective on passage.
<p><u>Allowing Payroll Deductions for Employee Contributions to Benefit Plans</u></p> <p>PROPOSED: In House Committee</p>	HB 2163	<p>Amends ORS 243.800 and 652.610.</p> <p>Permits an employer to make a payroll deduction from an employee's wages for a contribution to an individual account for the employee's benefit in a plan maintained under section 125, 401(k), 403(b), 408, 408A or 457 of the Internal Revenue Code if the employee is given written notice of the contribution before the initial deduction is made or the amount of the deduction is increased. The notice must include a description of the benefit the contribution provides and of the right to cancel or change the amount of the contribution by instruction to the employer, including the procedure for giving the instruction.</p> <p>Requires the governing board of a public university to contribute four percent of an employee's salary to the Optional Retirement Plan in each month in the tax year after the employee contributes the maximum amount allowed to a tax-deferred investment plan.</p> <p>Background: Oregon's existing payroll deduction law, ORS 652.610, allows for six categories of lawful payroll deduction at subsections (3)(a) – (f). Subsection (3)(b) allows for a deduction that is voluntarily authorized in writing by an employee, is for the employee's benefit, and is recorded in the employer's books, and this can include deductions for benefits plan contributions. The new proposed subsection (3)(g) under HB 2163 would allow for benefits plan deductions without the employee's written authorization, so long as the appropriate written notice is provided to the employee allowing for the employee to opt out.</p> <p>There is an argument under current law that even without a written authorization by the employee, benefit plan payroll deductions are lawful under the federal Pension Protection Act (PPA) based on ERISA preemption of state deduction statutes, as described in U.S. Department of Labor (DOL) Employee Benefits Security Administration (EBSA) opinion letter 2008-02A dated 02/08/2008 (https://www.dol.gov/agencies/ebsa/employers-and-</p>

		<p><u>advisers/guidance/advisory-opinions/2008-02a</u>). But passage of HB 2163 would make it unnecessary to rely on ERISA preemption and would clarify that the payroll deduction is allowed even without an employee's written authorization.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 03/01/2017. Died in committee as of 04/18/2017.</p>
<p><u>Limiting Attorney Fees Awards to Plaintiff Employees Who Prevail in Claims</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2169</u></p>	<p>Amends ORS 652.615, 653.055, 653.285 and 659A.885.</p> <p>Limits certain attorney fee awards to a plaintiff employee who prevails on a claim against an employer in wage and hour and employment cases.</p> <p>Specifies in ORS 652.615 that an award of costs, disbursements and reasonable attorney fees is only available to a prevailing "plaintiff" rather than to any prevailing "party," and makes a similar change to ORS 653.055, 653.285 and 659A.885.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 02/13/2017. Work session held on 04/10/2017. Died in committee as of 06/02/2017.</p>
<p><u>Allowing Lien on Employer Property Based on Unpaid Wage Claim</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2180</u></p>	<p>Amends ORS Chapter 652.</p> <p>Establishes the right of an employee for a civil action based on unpaid wages against the employer.</p> <p>Authorizes the creation of a lien on employer's real and personal property for unpaid wages under certain circumstances. The lien takes effect on the date on which the employee files a notice of claim of lien with the county clerk, pays any required filing fees, and serves a copy of the notice on the employer by certified mail with return receipt requested.</p> <p>Establishes the priority of the lien for amounts of unpaid wages up to a specified amount. Creates exception.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017.</p>

		Public hearing held on 02/13/2017. Died in committee as of 04/18/2017.
<p><u>Rebuttable Presumption Against Employer for Actions Following Employee's Wage-Related Activity; Requirement for Written Reason for Termination</u></p> <p>PROPOSED: In House Committee</p>	<u>HB 2181</u>	<p>Amends ORS 652.355, 653.060 and 659A.885.</p> <p>Creates a rebuttable presumption against an employer if the employer discharges or in any other manner discriminates or retaliates against an employee within 90 days of the employee's protected, wage-related activity.</p> <p>Protected activities include making a wage claim or discussing, inquiring about or consulting an attorney or agency about a wage claim, and instituting any wage claim proceedings under ORS 652.310 to 652.414 or ORS 653.010 to 653.261.</p> <p>Requires an employer, after termination of an employee, to provide to the employee, within 10 days of the employee's written request, "a full, succinct and complete written statement of the reason or reasons for the termination of the employee."</p> <p>Except by agreement between the employer and a terminated employee, prohibits the employer from making or furnishing any person a statement with respect to the reason for the termination of the employee that materially differs from the reason provided to the employee in the written statement required by the bill. (The employer still retains the option to decline to provide a reason for termination of the employee to third parties.) Makes a violation subject to punitive damages, and provides a right to jury trial.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 02/13/2017. Died in committee as of 04/18/2017.</p>
<p><u>Withholding Tax Credit for Wages Paid to Youth Workers</u></p> <p>PROPOSED: In House Committee</p>	<u>HB 2182</u>	<p>Amends ORS Chapters 314, 316 and 318.</p> <p>Creates a tax credit for employers that pay wages to youth workers, defined as workers who are at least 16 years of age and, on the last day of the tax year, not older than 24 years of age.</p> <p>Allows the taxpayer to claim credit by retaining a portion</p>

		<p>of the withholding tax, calculated as a percentage of wages paid to the youth worker.</p> <p>Applies to wages paid to youth workers on or after 01/01/2018 and to tax years beginning on or after 01/01/2018 and before 01/01/2024.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Revenue Committee on 01/17/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Died in committee.</p>
<p><u>Making it Unlawful to Induce Employee to Create False Documents Related to Hours Worked or Compensation</u> PASSED by House and Senate; Signed by Governor</p>	<p><u>HB 3008</u></p>	<p>Amends ORS Chapter 652. Prohibits an employer from requiring an employee to create, file or sign documents containing information that the employer knows is false related to hours worked or compensation received by the employee.</p> <p>Specifically, the bill provides that an employer may not "[c]ompel, coerce or otherwise induce or attempt to induce an employee to create, file or sign documents containing information that the employer knows is false related to the hours worked or compensation received by the employee."</p> <p>Establishes a private cause of action. Authorizes a court to award statutory damages of \$1,000 or more per violation (if actual damages are greater), injunctive relief, attorney fees and costs. Provides that a court shall count each pay period in which a violation occurs or continues as a separate violation.</p> <p>Authorizes the BOLI Commissioner to assess a civil penalty of up to \$1,000 per violation, and provides that the Commissioner has the same enforcement powers with respect to these rights as are established in ORS Chapters 652 and 653.</p> <p>Introduction and first reading, and referred to House Business and Labor Committee on 02/23/2017. Public hearing held on 03/08/2017. Work session held on 04/12/2017. Recommendation of "do pass with amendments" on 04/13/2017. Passed in House (53-5 vote) on 04/20/2017.</p> <p>Referred to Senate President's desk on 04/24/2017. Referred to Senate Workforce Committee on 04/27/2017.</p>

		<p>Public hearing held on 05/03/2017. Work session held on 05/17/2017. Passed in Senate (23-4 vote) on 05/24/2017.</p> <p>Signed by House Speaker on 05/26/2017. Signed by Senate President on 05/30/2017. Signed by Governor on 06/06/2017. 2017 Oregon Laws, Chapter 211. Effective 01/01/2018.</p>
<p><u>Flexible Scheduling Rights for Employees of Large Employers</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3028</u></p>	<p>Amends ORS 653.060 and ORS Chapter 653.</p> <p>Authorizes an employer of an employer than employs more than 1.3 million employees nationwide (other than the federal government) to request a flexible or predictable work schedule. Requires the employer to engage in an interactive process with the employee to attempt to establish a mutually acceptable work schedule. Requires the employer to provide an alternate work schedule in certain cases.</p> <p>The employer must notify the employee in writing of its decision to grant or deny the request, and must provide a reason for any denial. Unless the employer has a bona fide business reason for denial, the employer must grant a request based on a serious health condition of the employee, the employee's caregiving responsibilities for a family member (defined using the broad OFLA definition), a second job of the employee, or the employee's participation in a career-related educational or training program.</p> <p>Requires the employer to provide the employee, upon hire, with a written work schedule that includes the times and the number of hours the employee is scheduled to work. Requires the employer to post schedules of all employees in an accessible location at the worksite.</p> <p>Specifies that if an employee reports for work and is given less than the scheduled hours of work, the employer must provide certain pay (four hours, if the scheduled shift was at least four hours, or the number of scheduled hours, if less than four hours).</p> <p>Authorizes the BOLI Commissioner to adopt regulations.</p> <p>Establishes the unlawful employment practice of discharging or retaliating against an employee who requests or discusses a flexible or predictable work</p>

		<p>schedule or who files a complaint related to work scheduling.</p> <p>Requires the employer to pay the employee additional compensation for certain shift changes or for being required to contact the employer to determine whether the employee is to report for a scheduled shift.</p> <p>Introduction and first reading on 02/27/2017. Referred to House Business and Labor Committee on 03/02/2017. Died in committee as of 04/18/2017.</p>
<p><u>Requiring BOLI to Study Methods on Modernizing White Collar Exemptions</u> PROPOSED: In House Committee</p>	<p><u>HB 3034</u></p>	<p>Requires the Commissioner of the Bureau of Labor and Industries to “study methods to modernize and streamline existing overtime rules for individuals who engage in administrative, executive or professional work.”</p> <p>Introduction and first reading on 02/27/2017. Referred to House Business and Labor Committee on 03/03/2017. Died in committee as of 04/18/2017.</p>
<p><u>Clarifying No “Pyramiding” of Overtime Required for Manufacturing Employers; Setting Weekly Hours Cap</u></p> <p>PASSED in House and Senate; Signed by Governor</p>	<p><u>HB 3458</u></p>	<p>Amends ORS Chapters 652 and 653. Directs certain employers (mills, factories and manufacturing establishments) to pay overtime for the greater of the daily overtime (over 10 hours in a day) and weekly overtime totals (over 40 hours) in the workweek, when the employee is eligible for both categories of overtime. Declares that an employer satisfies overtime requirements by paying the greater of applicable daily or weekly overtime.</p> <p>Defines the “workweek” for purposes of calculating weekly hours worked as a fixed period established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods, which may begin on any day of the week and any hour of the day and need not coincide with a calendar week.</p> <p>Prohibits mills, factories and other manufacturing establishments from requiring certain employees to work more than 55 hours in one workweek, or 60 hours in one</p>

		<p>workweek if the employee requests or consents in writing to work more than 55 hours in the workweek.</p> <p>Provides an undue hardship period exemption to certain employers that process perishable products. Allows the employer to permit certain employees to work up to 84 hours per workweek for four workweeks during a period of undue hardship (when a perishable product like crops, meat or fish must be processed after harvesting, slaughter or catch) and up to 80 hours per workweek during the remainder of an undue hardship period. Limits the combined total duration of an undue hardship period to 21 workweeks in a calendar year.</p> <p>To claim an undue hardship period exemption, an employer must provide notice of the undue hardship to the BOLI Commissioner and obtain written consent from each employee whom the employer will request to work more than 55 hours in any workweek during the undue hardship period, on forms prescribed by the Commissioner.</p> <p>Requires a 10-hour rest period between certain work shifts for certain employees of mills, factories or other manufacturing establishments. Provides an exception when the employer requires the employee to work additional hours due to disruptions in business operations caused by a power outage, major equipment breakdown, severe weather or similar emergency outside the employer's control.</p> <p>Creates a private cause of action to enforce certain overtime laws. Authorizes a court to award costs, disbursements and reasonable attorney fees to a prevailing plaintiff for violations of certain overtime laws.</p> <p>Imposes civil penalties against an employer that coerces an employee to consent to work certain additional hours.</p> <p>Introduction, first reading, and referred to House Speaker's desk on 05/15/2017. Referred to House Rules Committee on 05/16/2017. Public hearing held on 06/20/2017. Work session held on 06/22/2017. Passed in House (33-26 vote) on 06/28/2017.</p> <p>Referred to Senate President's desk, with subsequent referral to Senate Rules Committee, on 06/29/2017. Public</p>
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		<p>hearing and work session held on 07/01/2017. Passed in Senate (30-0 vote) on 07/05/2017.</p> <p>House concurred in Senate amendments and repassed bill (51-8 vote) on 07/06/2017.</p> <p>Signed by House Speaker on 07/11/2017. Signed by Senate President on 07/18/2017. Signed by Governor on 08/08/2017. 2017 Oregon Laws, Chapter 685. Declares emergency; effective on passage (08/08/2017). Certain provisions of the bill become operative on 01/01/2018.</p>
<p><u>Increasing Employee Awareness of the Earned Income Tax Credit Via Employer Notice and BOLI Posting</u></p> <p>PASSED in Senate and House; Signed by Governor</p>	<p><u>SB 398</u></p>	<p>Amends ORS 652.610.</p> <p><i>As initially introduced</i>, the bill would have required the employee's pay stub summary to include a notice that the recipient may be entitled to an earned income tax credit under the federal tax laws, with an Internet address and telephone number for further information.</p> <p><i>As amended</i>, the bill requires the BOLI Commissioner to adopt rules to require employers to provide written notice to employees about state and federal earned income credits. The notice must be in English and the employee's primary language and must be sent annually with the employee's federal form W-2, including the website addresses for the Internal Revenue Service and the Department of Revenue where the employee can find information about the state and federal earned income tax credits. The amended bill also requires BOLI to include such information on the Oregon minimum wage poster. The amended bill also requires the Oregon Employment Department to provide information to recipients of unemployment insurance benefits about the earned income tax credits.</p> <p>The template notice provided by BOLI (http://www.oregon.gov/boli/TA/Pages/ETIC_Notice.aspx) is as follows:</p> <p>"Employees may be eligible for the Earned Income Tax Credit (EITC or EIC), a benefit for working people with low to moderate income, particularly those with Children. EITC reduces the amount of tax owed and may provide a refund."</p>

		<p>Background: In 2016, the Oregon legislature passed Senate Bill 1587, expanding the requirements for the written pay statement (pay stub) to show, effective 01/01/2017:</p> <ul style="list-style-type: none"> (A) The date of the payment; (B) The dates of work covered by the payment; (C) The name of the employee; (D) The name and business registry number or business identification number; (E) The address and telephone number of the employer; (F) The rate or rates of pay; (G) Whether the employee is paid by the hour, shift, day or week or on a salary, piece or commission basis; (H) Gross wages; (I) Net Wages; (J) The amount and purpose of each deduction made during the respective period of service that the payment covers; (K) Allowances, if any, claimed as part of minimum wage; (L) Unless the employee is paid on a salary basis and is exempt from overtime compensation as established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked and pay for those hours, and the number of overtime hours worked and pay for those hours; and (M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number of pieces completed at each piece rate and the total pay for each rate. <p>That legislation also requires the employer to maintain time and pay records of a terminated employee for not less than the period required under the federal law and accompanying regulations, from the date of termination (generally, three years, or two years for individual time cards and time sheets), and requires the employer to provide payroll records to the employee if requested, by including "time and pay records" within the definition of personnel records an employer must provide under ORS 652.750.</p>
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<p><u>Limiting Awards of Attorney Fees in Wage Claims</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 777</u></p>	<p>Amends ORS 653.055.</p> <p>Provides that a court may award reasonable attorney fees to the prevailing "plaintiff" (rather than "party") in any wage-related action brought under the statute.</p> <p>The change removes discretion from a court to require an employee to pay an employer's attorney fees if the employee pursues an action for unpaid wages but does not prevail.</p> <p>Introduction and first reading on 02/09/2017. Referred to Senate Workforce Committee on 02/13/2017. Died in committee as of 04/18/2017.</p>

<p><u>Establishing Permanent State Preemption of Local Authority to Regulate Schedules and Compensation</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 970</u></p>	<p>Repeals ORS 653.017 and Sections 1 and 2, Chapter 591, Oregon Laws 2015.</p> <p>Establishes the permanent state preemption of local governmental authority to regulate employee work schedules and compensation requirements.</p> <p>Provides exceptions, allowing a local government to set work schedule or compensation requirements for public employers and in specifications for public contractors or subcontracts entered into by the local government. Repeals previous iterations of similar preemptions.</p> <p>Clarifies that the bill does not preempt the authority of a local government to provide protection to an employee that exceeds state requirements for protection from discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income, disability, age, work-related injury or whistleblowing activity.</p> <p>Introduction and first reading on 03/02/2017. Referred to Senate Workforce Committee on 03/03/2017. Declares emergency; effective on passage. Died in committee as of 04/18/2017.</p>
<p><u>Clarifying that No "Pyramiding" Applies to Manufacturing Establishment Daily and Weekly Overtime</u></p> <p>PASSED in Senate; in House Committee</p>	<p><u>SB 984</u></p>	<p>Amends ORS 652.020 and 653.265.</p> <p>Clarifies that for mills, factories and manufacturing establishment employers subject to both daily and weekly overtime requirements, the employer need only calculate the daily and weekly overtime totals for the workweek and pay overtime for the greater of the two amounts (rather than having to pay overtime twice for the same work hours).</p> <p>Introduction and first reading on 03/02/2017. Referred to Senate Workforce Committee on 03/03/2017. Public hearing held on 03/29/2017. Work session held on 04/12/2017. Work session held on 04/17/2017. Recommendation of "do pass with amendments" on 04/21/2017. Passed in Senate (29-0 vote) on 04/25/2017.</p> <p>Referred to House Speaker's desk on 04/26/2017. Referred to House Business and Labor Committee on 04/28/2017. Work session held on 05/31/2017. Referred to House Rules Committee without recommendation as to passage on</p>

		<p>06/06/2017. Died in committee upon adjournment on 07/07/2017.</p> <p>Background: ORS 652.020 generally requires mills, factories and manufacturing establishments in Oregon to pay overtime to non-exempt employees after 10 hours in a work day, and limits work hours of non-exempt employees to 24 hours of work in the employer's designated 24-hour work day.</p> <p>The law in question, ORS 652.020, has been on the books since 1913 and was one of the first state wage laws upheld by the U.S. Supreme Court. In <i>Bunting v. Oregon</i>, 243 U.S. 426 (1917), 100 years ago, the Court upheld the ten-hour work day.</p> <p>Historically, the Oregon Bureau of Labor and Industries (BOLI) has directed employers covered by the statute to calculate daily overtime and weekly overtime for a workweek and to pay the employee at an overtime rate for the greater of the two totals. In other words, there was not a requirement to allow "pyramiding" of the two overtime rules.</p> <p>Effective in December 2016, BOLI changed its longstanding interpretation, on the basis that neither ORS 653.261, which authorizes BOLI to adopt rules on overtime pay after 40 hours in a week, nor ORS 652.020 on daily overtime, stipulates that daily overtime and weekly overtime should offset each other.</p> <p>The plaintiffs in a 2016 Multnomah County Circuit Court case, <i>Reyes v. Portland Specialty Baking, LLC</i>, had taken a similar position, but lost on summary judgment on 03/09/2017. The Court found that overtime was not owed for both daily and weekly overtime hours and that it is appropriate for an employer to pay overtime for the higher of the two totals for the workweek (without pyramiding or "double-counting" of hours).</p> <p>As of the date of this publication, BOLI has not reverted to its pre-2017 interpretation, but has referenced the <i>Portland Specialty Baking</i> decision in its guidance and stated that it is not known whether the case will be appealed. BOLI also noted that this legislation on the issue was currently pending.</p>
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<p><u>Limiting Penalties for Certain Wage Violations</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 999</u></p>	<p>Amends ORS 652.020, 652.120, 652.150, 652.615, 653.055 and 653.261.</p> <p>Limits the remedies and penalties for certain wage and hour violations. Prohibits an employee who claims that an employer failed to pay certain wages during employment from seeking an additional remedy for failure to pay unpaid wages at the time of employee's separation from employment for the same or substantially similar alleged violation.</p> <p>Applies to the various statutes, including those addressing daily overtime in mills, factories and manufacturing establishments; maintaining a regular payday; and lawful payroll deductions,</p> <p>Introduction and first reading on 03/06/2017. Referred to Senate Workforce Committee on 03/08/2017. Public hearing held on 04/12/2017. Died in committee as of 04/18/2017.</p>
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II. CIVIL RIGHTS LAW

TOPIC	BILL	SHORT SUMMARY
<p><u>Pay Equity; Restrictions on Seeking and Using Salary History</u></p> <p>PASSED by House and Senate; Signed by Governor</p>	<u>HB 2005 B</u>	<p>Amends ORS 652.210, 652.220, 652.230, 659A.875 and 659A.885.</p> <p>Makes it an unlawful employment practice to discriminate in payment of wages against an employee on the basis of a protected class.</p> <p>Makes it an unlawful employment practice to screen job applicants based on salary history, to base a salary decision on salary history (other than for internal hires), and to seek salary history information from an applicant for employment other than after making an offer of employment to an employee that includes the amount of compensation.</p> <p>Allows an employer to pay employees for work of comparable character at different compensation levels only if the entire compensation differential is based on a bona fide factor related to the position in question and based on certain criteria. Provides definitions relating to comparable work.</p> <p>Extends the time limitation to bring certain pay equity claims by making each subsequent payroll action that is based on an underlying pay equity violation actionable. Extends the tort claim notice requirement from 180 days to 300 days for a public employee to give notice of certain pay equity violations. Adds additional remedies for pay equity and wage-related violations that include the right to a jury trial and the right to compensatory and punitive damages.</p> <p>Allows an employee who files a complaint alleging a pay equity violation with the Bureau of Labor and Industries and who prevails to recover back pay for up to two years plus the duration of time spent in the complaint process.</p>

		<p>Permits an employer to file a motion to disallow an award of compensatory or punitive damages. Provides that the court shall grant the motion if the employer demonstrates that the employer has completed an equal-pay analysis that meets certain criteria, eliminated wage differentials for the plaintiff and made reasonable and substantial progress toward eliminating wage differentials for other employees in the same protected class asserted by the plaintiff. Provides that if the court grants the employer's motion, the court may award back pay only for the two-year period immediately preceding the filing of the action and allow the prevailing plaintiff costs and attorney fees but may not award damages.</p> <p>Introduction and first reading on 02/06/2017. Referred to House Business and Labor Committee on 02/07/2017. Public hearings held on 02/22/2017 and 03/13/2017. Work session held on 03/20/2017. Motion to substitute Minority Report failed (29-31 vote) on 03/28/2017. A-Engrossed bill passed by House (36-24 vote) on 03/28/2017.</p> <p>First reading and referred to Senate Workforce Committee on 03/29/2017. Public hearing held on 04/26/2017. Informational meeting scheduled on 05/01/2017. Work session held on 05/10/2017. Recommendation of "do pass with amendments" on 05/15/2017. Passed in Senate (30-0 vote) on 05/17/2017.</p> <p>Signed by House Speaker on 05/24/2017. Signed by Senate President on 05/25/2017. Signed by Governor on 06/01/2017. 2017 Oregon Laws, Chapter 197.</p> <p>Takes effect on the 91st day following adjournment <i>sine die</i>. Becomes operative on 01/01/2019. Makes a violation for seeking salary history from a prospective or current employee prior to an offer of employment subject to compensatory and punitive damages beginning on 01/01/2024.</p>
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<p><u>Establishing "Oregon Right to Rest Act" for Homeless Individuals</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2215</u></p>	<p>Amends ORS 659A.885 and ORS Chapter 659A.</p> <p>Establishes the Oregon Right to Rest Act.</p> <p>Makes finding that decriminalizing of rest allows local governments to redirect resources from law enforcement to activities that address root causes of homelessness and poverty. Declares public policy of Oregon to guarantee that homeless person may participate in the social and economic life of Oregon, remunerative employment, use of and free movement within public spaces, and participation in government programs, without discrimination.</p> <p>Expresses intent that homeless individuals be permitted to use public spaces in the same manner as any other person without discrimination, and without being subject to harassment, citation or arrest by law enforcement officers, public or private security personnel or employees of local governments.</p> <p>Makes it an unlawful practice for any person to deny, refuse, restrict or withhold from a homeless person any of the rights listed in the Act. Allows complaints to be filed with the Commissioner of the Bureau of Labor and Industries or by civil action.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Judiciary Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Workplace Bullying as Unlawful Employment Practice</u></p> <p>PROPOSED: In House and Senate Committees</p>	<p><u>HB 2167</u> <u>SB 292</u></p>	<p>Amends ORS 654.005 and 659A.885. Creates an unlawful employment practice and a violation of the Oregon Safe Employment Act for creating or maintaining abusive work environment.</p> <p>Defines "abusive conduct" as conduct that is sufficiently severe or pervasive to create a hostile, intimidating or offensive work environment to an objectively reasonable and similarly situated employee.</p> <p>Defines "abusive work environment" as a workplace in which an employee is subjected to abusive conduct that causes physical harm or psychological harm to the employee.</p>

		<p>Creates liability if an employer knew or should have known of an abusive work environment unless the employer can demonstrate it exercised reasonable care to prevent and promptly correct the abusive work environment and that the complaining employee(s) unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.</p> <p>HB 2167: Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. <u>Public hearing</u> held on 02/13/2017. Died in committee as of 04/18/2017.</p> <p>SB 292: Introduction and first reading on 01/09/2017. Referred to Senate Judiciary Committee on 01/17/2017. <u>Public hearing</u> held on 03/13/2017. Died in committee as of 04/18/2017.</p> <p>Note: Similar legislation, HB 3311, was introduced in the 2015 Oregon legislative session, but the bill died in committee.</p>
<p><u>Creating Outreach Program within BOLI to Promote Awareness of Employee Rights; Enhancing Remedies for Certain Employment Violations</u></p> <p>PROPOSED: In House Committee</p>	<u>HB 2856 A</u>	<p>Amends ORS 659A.885.</p> <p>Creates the Community Outreach and Labor Education Program within the Apprenticeship and Training Division of the Bureau of Labor and Industries, as a grant program to fund outreach, education and technical assistance to Oregon workers pertaining to employee rights in the workplace. Appropriates General Fund amounts to BOLI for the grants.</p> <p>Grants provided through the Program may be used for activities including door-to-door outreach, community-based education events, training materials, technical assistance, counseling and referral services. Prior is to be given to projects that provide services to low wage workers, women, immigrant and refugee workers, lesbian, gay, bisexual or transgender individuals, workers under 20 years of age; disabled workers, and workers of color.</p> <p>Enhances remedies by allowing compensatory and punitive damages for violations of ORS 652.355</p>

		<p>(discrimination because of wage claim), 653.060 (discharge or discrimination because of wage claim), 653.601 to 653.661 (Oregon protected sick time law), 659A.150 to 659A.186 (Oregon Family Leave Act), 659A.194 (leave to attend criminal proceeding), and 659A.277 (leave related to domestic violence, harassment, sexual assault or stalking).</p> <p>Introduction and first reading on 02/08/2017. Referred to House Business and Labor Committee, with subsequent referral to Ways and Means Committee, on 02/10/2017. Public hearing held on 02/27/2017. Work session held on 04/10/2017. "Do pass" recommendation on 04/13/2017. Declares emergency; effective on 07/01/2017. Died in committee.</p>
<p><u>Extending Limitations Period for Pay Equity Claims</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3309</u></p>	<p>Amends ORS 652.230 and 659A.875.</p> <p>Extends the time limitation to bring certain pay equity claims by making each subsequent payroll action that is based on an underlying pay equity violation actionable.</p> <p>Introduction and first reading on 03/02/2017. Referred to House Business and Labor Committee on 03/09/2017. Died in committee as of 04/18/2017.</p>
<p><u>Confirming Disparate Impact Basis for Discrimination</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3310</u></p>	<p>Amends ORS 659A.001.</p> <p>Provides that a claim for "discrimination" includes any act that is "fair in form but discriminatory in operation," explicitly recognizing the disparate impact basis for discrimination under Oregon law.</p> <p>Background: The Oregon Bureau of Labor and Industries regulations already address "adverse impact discrimination" at OAR 839-005-0010(2), noting that the establishment of intentional discrimination is not required if the evidence reveals that a respondent has a standard or policy that is applied equally but that has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class.</p>

		<p>However, that standard does not explicitly appear in the employment non-discrimination statutes in ORS Chapter 659A, and HB 3310 would add it explicitly.</p> <p>Introduction and first reading on 03/02/2017. Referred to House Rules Committee on 03/07/2017. Died in committee.</p>
<p><u>Modifying Law on Veterans' Preference in Public Employment</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3328</u></p>	<p>Amends ORS 408.225, 659A.320 and 659A.885; and repeals ORS 408.230, 408.235 and 408.237.</p> <p>Modifies the law regarding the requirement that a public employer grant preference to a veteran (five preference points) or disabled veteran (10 preference points) in the selection process for a civil service position. Limits eligibility for preference to a veteran who applies for a position within 10 years of discharge or release from service in the Armed Forces of the United States. Requires evidence of eligibility and disability to be provided at the time of application. Sets forth the processes for granting one or more preferences.</p> <p>Allows a public employer to exercise discretion to not appoint a qualified veteran or disabled veteran to a civil service position based solely on the veteran's or disabled veteran's merits or qualification in the final stage of the selection process. Requires a public employer to provide written reasons for not appointing a veteran or disabled veteran to a position under certain circumstances.</p> <p>Makes violation an unlawful employment practice. Requires an aggrieved veteran or disabled veteran to exhaust nonjudicial remedies with the Bureau of Labor and Industries before filing a civil action for an unlawful employment practice.</p> <p>Introduction and first reading on 03/02/2017. Referred to House Veterans and Emergency Preparedness Committee on 03/09/2017. Died in committee as of 04/18/2017.</p>

<p> <u>Extending BOLI Commissioner Discretion in Civil Rights Enforcement Matters</u> </p> <p> PASSED in Senate and House; Signed by Governor </p>	<p><u>SB 298</u></p>	<p>Amends ORS 659A.845 and 659A.870. Repeals Section 6, Chapter 609, Oregon Laws 2015.</p> <p>Extends the sunset for provisions that make discretionary the Commissioner of the Bureau of Labor and Industries' authority to prepare formal charges and pursue certain matters in court.</p> <p>Background: In 2015, the Oregon legislature passed Senate Bill 380, and it took effect on 06/30/2015. The legislation made certain actions based on civil rights complaints filed with the BOLI Commissioner discretionary on the part of the Commissioner rather than mandatory.</p> <p>That bill provided that following a BOLI substantial evidence determination and failure to reach settlement through conciliation, or if the Commissioner determines that the interest of justice requires a hearing without first seeking settlement, the Commissioner "may" (rather than "shall") prepare formal charges.</p> <p>The bill also provided that if a respondent in a BOLI case timely elects to have the matter heard in circuit court under ORS 659A.885, the Commissioner "may" (rather than "shall") pursue the matter in court on behalf of the complainant at no cost to the complainant.</p> <p>That bill also included a sunset of its provisions on 10/01/2017.</p> <p>2017 Senate Bill 298 would extend those changes through 10/01/2021.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, with subsequent referral to Judiciary Committee. Public hearing held on 02/20/2017. Work session held on 03/08/2017. "Do pass" recommendation on 03/10/2017. Public hearing and work session held on 03/29/2017. Work session held on 04/13/2017. Recommendation of "do pass with amendments" on 04/24/2017. Passed in Senate (29-0 vote) on 04/26/2017.</p>
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<p><u>Protecting After-Hours Use of Marijuana</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 301</u>	<p>Amends ORS 659A.315.</p> <p>Provides that conditioning employment on refraining during nonworking hours from using any substance that is lawful to use in this state is unlawful employment practice.</p> <p>Background: The existing statute, ORS 659A.315, make it an unlawful employment practice for any Oregon employer, to require as a condition of employment, that any employee or prospective employee refrain from using "lawful tobacco products" during non-working hours. The proposed amendment would expand the protection to other substances, including medical and recreational marijuana.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Judiciary Committee on 01/17/2017. Public hearing held on 02/21/2017. Work session held on 04/18/2017. Recommendation of "do pass with amendments" and referred to Business and Transportation Committee on 05/04/2017. Declares emergency; effective on passage. Died in committee as of 06/02/2017.</p>

Reducing and Repealing
Marijuana Penalties

**PASSED in
Senate and
House;
Signed by
Governor**

SB 302

Removes provisions related to marijuana offenses from the Uniform Controlled Substances Act (UCSA). Moves crimes, penalties, defenses to crimes and procedural provisions in the UCSA that apply to marijuana offenses to the Control and Regulation of Marijuana Act.

Reduces criminal penalties related to the possession of less than four times the legal limit, increases certain penalties for possession of greater levels, and repeals criminal penalties for possession, manufacture, or sale of marijuana with 1000 feet of a school.

Background: Marijuana or cannabis has been defined by Oregon law as an illegal narcotic as far back as 1930. Prohibitions on the manufacture, delivery, possession and sale of cannabis were more recently codified in 1971.

The Oregon Medical Marijuana Act (OMMA), ORS 475.300 to 475.346, makes clear at ORS 475.340(2) that nothing in the law requires an employer to accommodate use or possession in the workplace, and the Oregon Supreme Court held on April 14, 2010 in *Emerald Steel Fabricators, Inc. v. BOLI*, 348 Or. 159 (2010), that an employer is not required to accommodate an employee's use of medical marijuana, even where an employee is an OMMA registry card holder and the marijuana use occurs after hours.

In 2014, Oregon voters also passed Measure 91 (the Control and Regulation of Marijuana Act), allowing persons over the age of 21 to use, possession, manufacture and sell marijuana legally. That law specifies that it does not affect employment rules.

SB 302 would clarify certain inconsistencies between the laws.

Introduction and first reading on 01/09/2017.
Referred to Senate Marijuana Regulation Committee. Public hearing held on 02/14/2017.
Work session held on 03/07/2017. **Passed in Senate (21-8 vote) on 03/14/2017.**

		<p>Referred to House Marijuana Regulation Committee on 03/15/2017. Passed in House (34-21 vote) on 04/06/2017.</p> <p>Signed by Senate President and House Speaker on 04/13/2017. Signed by Governor on 04/21/2017. 2017 Oregon Laws, Chapter 021. Declares emergency; effective on passage (04/21/2017).</p>
<p><u>Shielding Personal Information of Recreational Marijuana Users</u></p> <p>PASSED in Senate and House; Signed by Governor</p>	<p><u>SB 863 A</u></p>	<p>Amends ORS 475B.010 to 475B.395.</p> <p>Prohibits marijuana retailers from recording, retaining and transferring the type of information that is contained on a passport, driver license, military identification card or other identification card that bears a picture of a person. Creates exemptions.</p> <p>Requires a marijuana retailer to destroy the above types of identifying information in the retailer's possession on the effective date of the Act, within 30 days of the effective date.</p> <p>Background: When purchasing marijuana, recreational users in Oregon must provide identification verifying they are at least 21 years of age. Due to worries over a federal marijuana crackdown, SB 863 proposes to shield their identifying information. Retaining such identifying information is already either prohibited or discouraged in Alaska, Colorado and Washington state.</p> <p>Introduction and first reading on 02/23/2017. Referred to Senate Marijuana Regulation Committee on 03/01/2017. Public Hearing and Work Session held on 03/07/2017. Work Session held on 03/14/2017. Passed in Senate (21-6 vote) on 03/21/2017.</p> <p>Referred to House Marijuana Regulation Committee on 03/24/2017. "Do pass" recommendation on 03/27/2017. Carried over to 04/10/2017 calendar. Passed in House (53-5 vote) on 04/10/2017.</p>

		<p>Signed by Senate President on 04/11/2017 and by House Speaker on 04/12/2017. Signed by Governor on 04/19/2017. Oregon 2017 Laws, Chapter 018. Declares emergency; effective on passage (04/19/2017).</p>
<p><u>Establishing Whistleblower Commission to Investigate Complaints of Government Abuses</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 388</u></p>	<p>Establishes an Oregon Whistleblower Commission.</p> <p>Directs the Commission to investigate complaints of government fraud, waste or corruption and to make public investigation findings. Authorizes the Commission to refer matters to the Attorney General, Secretary of State or district attorney for further proceedings if warranted.</p> <p>Grants confidentiality to complainants and supplies complainants with immunity from criminal proceedings related to a complaint. Exempts Commission records from mandatory disclosure under the public records law and exempts Commission proceedings from the public meetings law.</p> <p>Requires the Commission to prepare annual reports to the Governor and Legislative Assembly outlining Commission recommendations for reducing fraud, waste and corruption.</p> <p>Specifies that the remedies provided under this bill are in addition to and not in lieu of existing remedies, including those available to whistleblowers under ORS 659A.199 and 659A.200 to 659A.224.</p> <p>Introduction and first reading. Referred to Senate Judiciary Committee, then to Ways and Means Committee on 01/17/2017. Died in committee.</p>

<p> <u>Making Disabled Veterans Eligible for Reemployment Assistance</u> </p> <p> PASSED by Senate and House; Signed by Governor </p>	<p> <u>SB 476</u> </p>	<p> Amends ORS 656.622, the statute establishing a Reemployment Assistance Program designed to preclude or reduce nondisabling claims from becoming disabling claims, preclude on-the-job injuries from recurring, reduce disability by returning injured workers to work sooner and to help injured workers remain employed. </p> <p> Adds disabled veterans to the definition of preferred workers who are eligible for reemployment assistance (in addition to other works who are unable to return to regular employment because of a permanent disability resulting from a compensable injury or occupational disease). </p> <p> Introduction and first reading on 01/09/2017. Referred to Senate Veterans and Emergency Preparedness Committee on 01/17/2017. Public hearing held on 03/30/2017. Work session held on 04/04/2017. "Do pass" recommendation on 04/11/2017. Passed in Senate (30-0 vote) on 04/13/2017. </p> <p> Referred to House Speaker's desk on 04/17/2017. Referred to House Veterans and Emergency Preparedness Committee on 04/20/2017. Public hearing held on 05/11/2017. Public hearing and work session held on 05/25/2017. "Do pass" recommendation on 05/30/2017. Carried over to 06/12/2017 calendar. Passed in House (51-0 vote) on 06/12/2017. </p> <p> Signed by Senate President on 06/15/2017. Signed by House Speaker on 06/16/2017. Signed by Governor on 06/22/2017. 2017 Oregon Laws, Chapter 455. Effective 90 days after adjournment <i>sine die</i>. </p>
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<p><u>Allowing Preemployment Polygraph Testing of Law Enforcement Officers</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 519</u></p>	<p>Amends ORS 192.502, 659.840 and 659A.300.</p> <p>Allows a polygraph test as a condition of employment for preemployment screening of law enforcement officers, subject to any applicable collective bargaining agreement.</p> <p>Exempts the polygraph test from disclosure under public records law.</p> <p>Background: Existing Oregon civil rights laws, ORS 659.840 and 659A.300, generally prohibit “polygraph examination[s] or psychological stress test[s],” defined as a test to detect deception or to verify the truth of statements through the use of instrumentation or mechanical devices.</p> <p>The federal Employee Polygraph Protection Act likewise prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment, and prohibits employers from discharging, disciplining or discriminating against an employee or prospective employee for refusing to take a test or for exercising other rights under the Act. Exemptions apply in public employment and to certain individuals engaged in national security-related activities.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Judiciary Committee on 01/17/2017. Public hearing held on 03/15/2017. Died in committee as of 04/18/2017.</p>
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III. LEAVES OF ABSENCE

TOPIC	BILL	SHORT SUMMARY
<u>Excluding Employers Temporarily Operating in Portland from Sick Leave Requirements</u> PROPOSED: In House Committee	<u>HB 2966</u>	<p>Amends ORS 653.601, the Oregon statewide protected sick time (PST) law.</p> <p>Excludes certain Portland employers from stricter Portland leave coverage standards if the employer is located in Portland on a temporary or seasonal basis and has a permanent location outside of the city.</p> <p>Background: The PST law provides that employers that employ at least 10 employees working anywhere in Oregon must provide paid sick leave under the law, while smaller employers may provide unpaid sick leave.</p> <p>The employee threshold for employers located in a city with a population exceeding 500,000, however, is six employees.</p> <p>HB 2966 would exclude from the definition of an "employer located in a city with a population exceeding 500,000" employers who only temporarily operate in Portland. Thus, they would only have to provide paid sick leave if they have 10 employees in Oregon.</p> <p>Introduction and first reading on 02/20/2017. Referred to House Business and Labor Committee on 02/20/2017. Died in committee as of 04/18/2017.</p>
<u>Paid Family Leave Insurance Program</u> PROPOSED: In House Committee	<u>HB 3052</u>	<p>Amends ORS 316.168 and 316.171.</p> <p>HB 3052, the Family Leave Benefits Insurance Act, creates the Family Leave Benefits Insurance program to provide benefits to eligible employees taking leave under the Oregon Family Leave Act (OFLA) for the following purposes: caring for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-</p>

		<p>care because of a mental or physical disability; to care for a family member with a serious health condition; or to recover from or seek treatment for a serious health condition that renders the employee unable to perform at least one of the essential functions of the employee's regular position.</p> <p>The paid family leave benefits are allowed for a maximum of six weeks in an application year. The minimum period of family leave for which benefits may be paid is one week. Payments are not allowed if the employee is already receiving pay through vacation leave or paid sick leave, workers' compensation, or paid family leave or disability insurance benefits that an employer provides.</p> <p>The Legislative Assembly findings note that although family leave laws have assisted employees to balance work and family responsibilities, many employees do not have access to family leave, and those who do may not be in a financial position to take leave that is unpaid.</p> <p>Requires employers to withhold an amount from employee earnings for deposit in the Family Leave Benefits Insurance Account. Continuously appropriates moneys in the account to the Bureau of Labor and Industries (BOLI) and requires BOLI to administer claims for benefits. Establishes qualifications for benefits.</p> <p>Creates an unlawful employment practice for an employer that fails to withhold premiums or fails to pay when due the moneys withheld under the law, or fails to comply with other requirements of the Act. Authorizes BOLI to assess civil penalties of up to \$5,000 against employers for failure to comply with the withholding requirements of the Act.</p> <p>Establishes procedures and requirements for filing reports with the Department of Revenue.</p> <p>Introduction and first reading on 02/27/2017. Referred to Early Childhood and Family Supports Committee with subsequent referral to Revenue Committee on 03/03/2017. Died in committee.</p>
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<p><u>Family Medical Leave Insurance Benefits</u> <u>Funded by Employer and Employee Contributions;</u> <u>OFLA Amendment for Earlier Eligibility</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3087</u></p>	<p>Amends ORS 659A.156 and 659A.885.</p> <p>Creates the Family and Medical Leave Insurance Program and Fund to provide a covered employee with a portion of wages for up to 12 weeks while on family medical leave for any reason covered under the Oregon Family Leave Act (OFLA) or military-related leave under ORS 659A.090 to 659A.099 (the Oregon Military Family Leave Act) or the federal Family and Medical Leave Act of 1993 (FMLA), including "qualifying exigency" leave.</p> <p>Allows an employee to qualify for up to six weeks of insurance benefits for parental leave beyond the 12 weeks of insurance for covered purposes.</p> <p>Applies to all employers in Oregon, even those with fewer than 25 employees who are not covered by OFLA.</p> <p>Requires employer and employee contributions to fund the program. Employee contributions may not exceed 0.5 percent of the employee's wages. Allows self-employed individuals to opt into the program. Directs the Director of the Department of Consumer and Business Services (DCBS) to establish contribution amounts and a timeline for availability of benefits.</p> <p>Amends the Oregon Family Leave Act (OFLA) to allow for leave after an employee has been employed for 90 days with the employer (instead of the current 180-day requirement), to match the waiting period for paid benefits.</p> <p>Protects the employee's position of employment with the employer while the employee is on leave. Prohibits an employer from retaliating against an employee who invokes the program and from interfering with the employee's rights under the program. Requires the DCBS Director to work with other agencies and promulgate rules for administration of the program. Allows the Director to contract with outside entities for remittance and other actions necessary for administration of the program.</p>
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<p><u>Establishing Hourly Paid Sick Time Rate for Employees Paid at Multiple Rates of Pay</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3233</u></p>	<p>Amends ORS 653.606, Oregon's Protected Sick Time (PST) law.</p> <p>Allows an employer to pay accrued sick leave to an employee at the employee's fixed hourly rate of pay, if the employee is employed on a fixed-rate for certain job duties in the pay period and employed on a piece-rate or commission basis for other job duties in the pay period.</p> <p>Allows the employer to pay accrued sick leave to an employee who is employed solely on a commission or piece-rate basis at the minimum wage level.</p> <p>Introduction and first reading on 03/01/2017. Referred to House Business and Labor Committee on 03/08/2017. Possible work session scheduled for 04/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Allowing Family Medical Leave Savings Account to Cover Wage Loss During Leave</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3336</u></p>	<p>Amends ORS 314.752 and 318.031 and ORS Chapters 315 and 316.</p> <p>Permits an individual to create a family medical leave savings account with a financial institution to pay or reimburse the qualified beneficiary's wage loss during a family medical leave absence from work under the Oregon Family Leave Act (OFLA), ORS 659A.150 to 6569A.186.</p> <p>Allows subtraction from an account holder's federal taxable income for amounts contributed to the family medical leave savings account during each tax year. Exempts from taxation the amount of</p>

		<p>interest and other income earned on the account. Allows a tax credit for an employer or other person to voluntarily contribute funds to the account. Provides that withdrawals for unapproved purposes are taxable income to the account holder.</p> <p>Applies to tax years beginning on or after 01/01/2018 and before 01/01/2024.</p> <p>Requires BOLI to prepare an employer form to require verification from the employee as to leave taken under the savings program. Requires BOLI, in consultation with the Department of Revenue, to prepare and distribute information materials on the savings account program to financial institutions and employee organizations to publicize the availability of the program.</p> <p>Introduction and first reading on 03/06/2017. Referred to House Early Childhood and Family Supports Committee with subsequent referral to Revenue Committee, on 03/17/2017. Public hearing held on 04/04/2017. Takes effect on the 91st day following adjournment <i>sine die</i>. Died in committee.</p>
<p><u>Clarifications to Oregon Sick Leave Law on Limiting of Hours, Employers in Portland Temporarily, Counting of Employees for Coverage, and Sick Leave Pay Rate</u></p> <p>PASSED by Senate and House; Signed by Governor</p>	<p><u>SB 299</u></p>	<p>Entire text of bill as <i>initially introduced</i>: "The Bureau of Labor and Industries shall study the issue of sick leave in Oregon."</p> <p>The <i>amended</i> A-Engrossed and B-Engrossed bills remove that directive and instead amend ORS 653.601, 653.606 and 653.611. They clarify that employers may limit the number of hours of sick time that employees may accrue per year to 40 hours. They further clarify that employers may adopt a policy that limits an employee to accruing no more than 80 total hours of sick time, and may adopt a policy that limits an employee to using no more than 40 hours of sick time in a year. (The current law is confusing in that it uses an "or.")</p> <p>The engrossed bill provides that an "employer located in a city with a population exceeding 500,000" (that is, a Portland employer) does not include an employer that maintains only a seasonal farm stand or a trailer that is used temporarily on a construction site for office purposes only.</p>

		<p>The engrossed bill excludes certain individuals from the determination of the number of employees of an employer: an individual or the parent, spouse or child of an individual who is a director of a corporation who has a substantial ownership interest in the corporation; a member of a limited liability company who has a right to vote on or consent to any matter submitted to a vote or requiring the consent of the members of the limited liability company, and has a substantial ownership interest in the limited liability company; a partner of a limited liability partnership who has a substantial ownership interest in the limited liability partnership; or a sole proprietor of a business.</p> <p>It modifies the rate of pay for accrued sick time for employees paid on commission to be a rate equal to at least the Oregon minimum wage. (Current law refers to the employee's "regular rate of pay" or, if none, the minimum wage.)</p> <p>It provides that for an employee paid an hourly, weekly or monthly wage and also paid on a piece-rate or commission basis, the employer must pay for accrued sick time at the hourly, weekly or monthly wage or the minimum wage, whichever is greater.</p> <p>Clarifies that an employer using a sick leave, paid vacation or paid personal time off policy to comply with the sick time law must, at a minimum, comply with the law's terms for the first 40 hours that the employer's policy provides per year and need not comply with the requirements of the law beyond the first 40 hours that the employer's policy provides per year.</p> <p>It applies to hours worked and sick time accrued or used on or after 01/01/2018.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, with subsequent referral to Ways and Means Committee, on 01/17/2017. Public hearing held on 04/10/2017. Work session held on 04/17/2017. Recommendation</p>
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<p><u>Tax Credit for Providing Paid Family Leave or Paid Sick Leave</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 400</u>	<p>Amends ORS 314.752 and 318.031 and ORS Chapter 315.</p> <p>Creates an income tax credit for certain employers that provide paid family leave to employees, including paid sick time taken under ORS 653.601, Oregon's protected sick time law, to care for family members of employees. The amount of the credit will equal the total amount of compensation paid by the employer to its employees during the tax year for paid family leave and any paid sick time used to care for a family member of the employee.</p> <p>Applies to tax years beginning on or after 01/01/2018 and before 01/01/2024.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, then to Tax Credits Committee, on 01/17/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Died in committee as of 04/18/2017.</p>

<p><u>Tax Credit for Providing Paid Sick Time</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 401</u></p>	<p>Amends ORS 314.752 and 318.031 and ORS Chapter 315.</p> <p>Creates an income tax credit for certain employers with fewer than 50 full-time employees that provide paid sick time, in an amount equal to the total amount of compensation for paid sick time paid by the employer to its employees during the tax year.</p> <p>Applies to tax years beginning in or after 01/01/2018 and before 01/01/2024.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, then to Tax Credits Committee, on 01/17/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Died in committee as of 04/18/2017.</p>
<p><u>Exempting Most Agricultural Workers from Sick Time Law</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 402</u></p>	<p>Amends ORS 653.601, 653.606, 653.616 and 653.626.</p> <p>Exempts agricultural workers (as defined in ORS 315.163) from the Oregon Protected Sick Time (PST) law, except for agricultural workers who use leave because of domestic violence, harassment, sexual assault, stalking (Oregon domestic violence leave) or to attend a criminal hearing relating harm as a result of certain "person felonies" (Oregon crime victim leave). When the agricultural worker takes leave for those purposes, the employer with 10 or more agricultural workers must grant a pro rata percentage of the PST hours to which the agricultural worker would be entitled for an entire year, as if the worker were an employee who otherwise qualifies under the PST law.</p> <p>Specifies that agricultural workers are still entitled to the greater unpaid leave entitlements under the domestic violence and crime victim leave laws.</p> <p>Adds crime victims leave as a covered reason for use of PST for all types of employees.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>

<p><u>Restricting Reasons for Use of Protected Sick Time</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 403</u></p>	<p>Amends ORS 653.616 and 653.626.</p> <p>Limits the availability of paid and unpaid protected sick time (PST) to an employee who uses the leave because of domestic violence, harassment, sexual assault, stalking (Oregon domestic violence leave) or harm as a result of certain "person felonies" (Oregon crime victim leave to attend criminal proceedings).</p> <p>Would no longer allow the use of accrued PST for an employee's or family member's illness or care, for donation to another employee, for other OFLA-covered purposes, for public health emergencies and business or school closures, or for quarantines of the employee or family member.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Exempting Certain Agricultural Employers from Protected Sick Time Law Based on Commodity Fluctuations</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 453</u></p>	<p>Amends ORS 653.601.</p> <p>Exempts from the Protected Sick Time (PST) law certain agricultural employers (as defined in ORS 315.163) that experience lower than average commodity values. The exemption applies if the value of an agricultural commodity produced by the employer in a calendar year falls below 80 percent of the 10-year average value for that commodity, and the commodity accounts for 30 percent or more of the general revenue of the employer.</p> <p>Authorizes Director of Agriculture to create rules. Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>

<p> <u>Requiring Leave for Volunteer Firefighters, Reserve Peace Officers or Civil Air Patrol Members</u> </p> <p> PROPOSED: In Senate Committee </p>	<p><u>SB 471</u></p>	<p>Amends ORS 659A.088.</p> <p>Requires an employer that employs 20 or more employees to grant an unpaid leave of absence to an employee who is called into service to perform duties related to service as a volunteer firefighter, a member of the Civil Air Patrol Pacific Region, or as a member of the Oregon Association of Reserve Peace Officers.</p> <p>Requires an employer that employs 50 or more employees to grant an unpaid leave of absence for up to 14 days to an employee for training related to service as volunteer firefighter, reserve peace officer or civil air patrol member.</p> <p>Provides that an employer commits an unlawful employment practice if the employer refuses to grant unpaid leave of absence or reinstatement to a qualifying employee who is a volunteer emergency service provider.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Public hearing held on 03/01/2017. Died in committee as of 04/18/2017.</p> <p>Background: Existing statutes, ORS 476.574 and 476.576, provide that an employer "may" grant a leave of absence to an employee who is a volunteer firefighter of a rural fire protection district or a firefighter employed by a city or a private firefighting service. While that leave is discretionary, the statute says that the employer "shall" restore the employee to the employee's position or an equivalent position, if the employer does grant the leave.</p> <p>Similarly, another existing statute, ORS 404.250, says that an employer "may" grant an unpaid leave of absence to an employee who is a search and rescue volunteer accepted to participate in search and rescue activities by the sheriff, until release from the search and rescue activities permits the employee to resume the duties of employment. While that leave is discretionary, the statute says that the employer "shall" restore the employee at</p>
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		the end of such leave to the employee's same position or an equivalent position, if the employer does grant the leave.
<u>Tax Credit for Certain Employers Providing Paid Family Leave</u> PROPOSED: In Senate Committee	<u>SB 543</u>	<p>Amends ORS 314.752 and 318.031 and ORS Chapter 315.</p> <p>Creates an income tax credit for certain employers with 50 or fewer employees that provide paid family leave, with restrictions.</p> <p>Applies to tax years beginning on or after 01/01/2018 and before 01/01/2028.</p> <p>The amount of the credit is 50 percent of the qualified paid family leave wages that are paid by the employer during the tax year.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, then Tax Credits Committee, on 01/17/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Died in committee as of 04/18/2017.</p>
<u>State Preemption of Local Government Authority to Mandate Employment Benefits for Private Employers</u> PROPOSED: In Senate Committee	<u>SB 544</u>	<p>Establishes state preemption of local government authority to require the mandatory provision of employment benefits to employees of private employers.</p> <p>Defines "employment benefit" to include all benefits other than salary and wages, including but not limited to retirement benefits, transportation benefits, sick time leave, scheduling preferences or scheduling rights, vacation leave and any form of paid time off or paid leave that accrues to an employee in regular intervals that may be used by the employee for any purposes.</p> <p>Preempts authority of any county, city, district or other public corporation, authority or entity organized and existing under statute or city or county charter.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>

<p><u>Excluding Certain Family Members From Employee-Count for Sick Leave Law</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 779</u></p>	<p>Amends ORS 653.606, Oregon's Protected Sick Time (PST) law.</p> <p>Specifies that, for purpose of the sick leave employee-count threshold, an individual and the parent, spouse or child of the individual may not be counted as an employee if the individual or the individual's parent, spouse, or child is (A) a director of a corporation who has a substantial ownership interest in the corporation; (B) a member of a limited liability company, including members who are managers; or (C) a partner of a limited liability partnership.</p> <p>Background: The paid sick leave provisions of the PST law apply to Oregon employers with 10 or more employees (6 or more employees in Portland), and the unpaid sick leave provisions of the law apply to Oregon employers with fewer than 10 employees (fewer than 6 employees in Portland).</p> <p>Introduction and first reading on 02/09/2017. Referred to Senate Workforce Committee on 02/13/2017. Public hearing held on 03/08/2017. Died in committee as of 04/18/2017.</p>
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OFLA, OMFLA AND FMLA BASICS

- The **Oregon Family Leave Act (OFLA)** (ORS 659A.150 – 659A.186 - http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors659A.html; OAR 839-009-0200 – 839-009-0320 - http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_839/839_009.html) was enacted by the Oregon Legislature in 1995.
- The federal **Family and Medical Leave Act (FMLA)** (29 USC § 2601 et seq. - <http://www.dol.gov/whd/regs/statutes/fmla.htm>; 29 CFR Part 825 - <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=336a9ee5cfc5db69e03d0ca51ff7ae8d;rgn=div5;view=text;node=29%3A3.1.1.3.54;idn o=29;cc=ecfr>) was enacted by Congress in 1993.
- OFLA and FMLA each generally require employers to provide eligible employees up to 12 weeks of protected leave during a 12-month leave year, in a variety of qualifying situations, including when the employee or a family member has a serious health condition and when the employee has a new child. FMLA applies to employers with 50 or more employees in the U.S., and OFLA applies to any employer with 25 or more employees in Oregon.
- Eligible employees have reinstatement and/or reemployment rights after a family leave and are

protected from discrimination, leave interference, and retaliation.

- OFLA has broader coverage in some respects, allowing up to 12 weeks of leave for “sick child” incidents related to the non-serious health condition of a child requiring home care, and allowing more than 12 weeks of leave in a 12-month leave year in certain situations involving the use of pregnancy disability leave and parental leave. Effective Jan. 1, 2014, OFLA allows two weeks of the leave entitlement to be used for bereavement leave to deal with the death of an eligible employee’s family member, to be taken within 60 days of receiving notice of the death.
- FMLA’s “family member” definition covers the parent, spouse or child of the employee. On August 9, 2013, the U.S. Department of Labor indicated, following the U.S. Supreme Court decision in *U.S. v. Windsor*, that FMLA will be available to same-sex spouses where such marriages are recognized in the state where the employee resides. A new DOL final rule took effect on March 27, 2015 providing that the definition of “spouse” is determined by the state in which a marriage is entered (the “state of celebration”). OFLA’s “family member” definition is much broader than FMLA’s, covering not only the parent, spouse or child of an employee, but also the employee’s parents-in-law, grandparents, grandchildren, and registered same-sex domestic partner and parents and children of such partner.
- In 2008, Congress expanded FMLA to include up to 26 weeks of protected leave to care for a family member of “next of kin” injured or ill as a result of active duty military service, as well as up to 12 weeks of protected leave for various “qualifying exigencies” related to the military call-up of a family member.
- In 2009, OFLA was expanded by OMFLA, the **Oregon Military Family Leave Act** (HB 2744) (ORS 659A.090 – 659A.099 - http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors659A.html; OAR 839-009-0370-839-009-0460 - http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_839/839_009.html), which took effect June 25, 2009. OMFLA allows eligible employees who have worked an average of 20 hours per week up to 14 work days of unpaid leave per military deployment (notification of an impending call or order to active duty) of a spouse or registered same-sex domestic partner in the Armed Forces, National Guard, or military reserve forces, or for the spouse’s leave from deployment during a period of military conflict. OMFLA generally leave runs concurrently with (rather than in addition to) the 12-week OFLA entitlement, when the employee is eligible under both laws. When an employee using OMFLA leave is also FMLA-eligible, the leave will run concurrently with FMLA’s “qualifying exigency” leave entitlement.

WHEN DO EMPLOYEES GET FAMILY LEAVE UNDER OFLA AND FMLA?

Employees are entitled to protected family and medical leave in the following qualifying circumstances, provided they are eligible employees of covered employers, and provided they have not yet depleted the annual leave entitlements under OFLA and FMLA:

OFLA Qualifying Circumstances	FMLA Qualifying Circumstances
<ul style="list-style-type: none"> Employee's <u>own serious health condition</u>, including pregnancy related conditions <u>Serious health condition of employee's family member</u>: <ul style="list-style-type: none"> spouse parent parent-in-law biological, adopted or foster child (of any age) Registered same-sex domestic partner (and parents/children of such partner grandparent (as of 1/1/08) grandchild (as of 1/1/08) Newborn, newly adopted or newly placed foster child ("<u>parental leave</u>") Non-serious health condition of a child requiring home care ("<u>sick child leave</u>") <u>Bereavement leave</u> (up to two weeks of leave, to be taken within 60 days of receiving notice of death of a family member) 	<ul style="list-style-type: none"> Employee's <u>own serious health condition</u>, including pregnancy related conditions <u>Serious health condition of employee's family member</u>: <ul style="list-style-type: none"> spouse parent biological, adopted or foster child Same-sex spouse (if employee resides in a state recognizing same-sex marriage) Newborn, newly adopted or newly placed foster child ("<u>parental leave</u>") "<u>Servicemember care leave.</u>" Family member injured while on active military duty (up to 26 weeks). Effective 1/28/2008. "<u>Qualifying exigency leave</u>" related to family member's active duty military call-up.
ORS 659A.159, OAR 839-009-0230.	29 CFR §825.112.

NEWER
PROVISIONS

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Effective
Jan. 1. 2014

HOW MUCH FAMILY AND MEDICAL LEAVE DO EMPLOYEES GET UNDER OFLA AND FMLA?

OFLA How much leave?	FMLA How much leave?
<ul style="list-style-type: none"> • 12 weeks per leave year ➤ Exception #1: A female who takes leave for a <i>pregnancy-related disability</i> (including routine prenatal care) may take up to an additional 12 weeks for any OFLA-qualifying purpose. ➤ Exception #2: Male or female employees who use <i>a full 12 weeks of parental leave</i> may use <i>up to 12 additional weeks</i> in the same leave year for <i>sick child leave</i>. <p>ORS 659A.162, OAR 839-009-0240.</p>	<ul style="list-style-type: none"> • 12 weeks maximum per leave year ➤ Exception: Effective January 28, 2008, eligible employees may take up to 26 weeks of FMLA leave in a single year to care for a family member injured while on active military duty. <p>29 CFR §825.200.</p>

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IV. MISCELLANEOUS EMPLOYMENT-RELATED LEGISLATION

TOPIC	BILL	SHORT SUMMARY
<p><u>Reducing Corporate Excise Tax for Employers That Increase Employment Levels</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2385</u></p>	<p>Amends ORS 317.061 and ORS Chapter 317.</p> <p>Reduces corporate excise tax rates for a taxpayer that increases average monthly employment for the tax year from the immediately preceding tax year.</p> <p>Provides that if average monthly employment headcount increases by at least 10% but less than 20%, the rate otherwise applicable will be multiplied by 0.8; that if employment increases by at least 20% but less than 30%, the rate otherwise applicable will be multiplied by 0.6; that if employment increases by at least 30% but less than 40%, the rate otherwise applicable will be multiplied by .4; and that if employment increases by at least 40% but less than 50%, the rate otherwise applicable will be multiplied by 0.2. Further provides that if the taxpayer increases the average monthly employment number by at least 50%, no tax is imposed.</p> <p>Requires the Oregon Department of Revenue to establish regulations.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Revenue Committee on 01/17/2017.</p> <p>Applies to tax years beginning on or after January 1, 2018. Takes effect on 91st day following adjournment <i>sine die</i>. Died in committee.</p>
<p><u>Easing Requirement on Timing of Nursing License</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2475</u></p>	<p>Amends ORS Chapter 678.</p> <p>Allows skilled nursing facilities to temporarily (for up to 120 calendar days) employ nurses holding a license issued by another state or territory of the United States while a license from the Oregon State Board of Nursing is pending.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Health Care Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>

<p><u>Implementing a Broader State WARN Act</u></p> <p>PASSED by House; in Senate Committee</p>	<p><u>HB 2567</u></p>	<p>Requires private sector employers with 100 or more employees (the initially introduced bill used a 75-employee threshold) to provide 60 days' notice to employees and certain officials before ceasing operations, relocating or ordering a "mass layoff" involving 50 or more employees during any 30-day period – or 50 or more employees in the aggregate over a 90-day period unless the employer demonstrates the employment loss is the result of separate and distinct actions and causes.</p> <p>Creates exceptions if a mass layoff, relocation or termination is necessitated by a natural disaster or other catastrophic event, an act of war or terrorism.</p> <p>The required notification must be provided to the employees of the covered establishment and to the Employment Department, the Office of Community Colleges and Workforce Development, the local workforce development board, and the chief elected official of each city and county within which the mass layoff, relocation or termination will occur. The notice must include the same elements required by the federal Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101 et seq.</p> <p>Requires an employer attempting to invoke the exception involving active pursuit of capital or business to provide, under penalty of perjury, written documentation of efforts to a court or to the BOLI Commissioner.</p> <p>Requires the BOLI Commissioner to adopt regulations.</p> <p>Provides that an employer is liable for back pay to an employee and other relief for violations.</p> <p>The bill as initially introduced authorized compensatory damages to an employee of up to \$500 for each day for the period during which the employer failed to give notice, but this provision was removed in the A-Engrossed amended bill.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee</p>
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		<p>on 01/17/2017. Public hearing held on 03/20/2017. Work session held on 04/12/2017 and 04/14/2017. Recommendation of "do pass with amendments" on 04/18/2017. Carried over to 04/21/2017 calendar. Passed in House (33-23 vote) on 04/24/2017.</p> <p>Referred to Senate President's desk on 04/25/2017. Referred to Senate Workforce Committee on 04/27/2017. Public hearing held on 05/15/2017. Died in committee as of 06/02/2017.</p> <p>Background: The federal WARN Act applies to employers with 100 or more employees in the U.S. and requires employers to give 60 days' advance notice to affected employees and local government representatives when there is a "plant closing" or a "mass layoff."</p> <p>The "plant closing" standard applies only when one or more facilities or operating units within an employment site will be shut down, and the shutdown will result in an employment loss for 50 or more employees during any 30-day period, or fewer than 50 employees if the closing also involves layoff of enough other workers to make the total number of layoffs 50 or more. In cases where an employer staggers workforce reductions related to a closing over a period of time, notice must be given if the total reductions within a 90-day period trigger the notice requirement.</p> <p>The "mass layoff" standard applies when 500 or more workers at a single site are laid off during a 30-day period, or when 50-499 workers are laid off if this constitutes 33% or more of the employer's total active workforce.</p> <p>Oregon has an existing "Baby" WARN Act, ORS 285.510, et seq., but it merely incorporates the above federal WARN Act definitions by reference and identifies the appropriate state contact agency, the Department of Community and Workforce Development, for notifications when notice is required. Therefore, under existing law, if Oregon layoffs trigger the federal WARN Act, compliance with the federal requirements is sufficient. Passage of HB 2567 would substantially broaden the</p>
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		coverage and notice requirements for Oregon employers.
<p><u>Increasing Oregon Penalties and Broadening Standards for Distracted Driving</u></p> <p>PASSED by Senate and House</p>	<u>HB 2597</u>	<p>Amends ORS 811.507. Renames the offense of operative a motor vehicle while using a mobile communication device as the offense of driving a motor vehicle while using a mobile electronic device.</p> <p>Provides that a person commits the offense if the person, while driving a motor vehicle on a highway or premises open to the public, holds the device in the person's hand or uses the device for any purpose.</p> <p>Defines a "mobile electronic device" as an electronic device that is not permanently installed in a motor vehicle, including but not limited to a device capable of text messaging, voice communication, entertainment, navigation, accessing the Internet or producing electronic mail.</p> <p>Defines "using a mobile electronic device" to include but not be limited to using the device for any of the above-referenced purposes.</p> <p>Creates certain exceptions for public safety officers, commercial motor vehicle drivers and school bus drivers who lawfully use a mobile device within the scope of their employment, for use of a medical device, and for certain calls by a driver to summon medical or other emergency help if no other person in the vehicle was capable of summoning help.</p> <p>Creates an exception for a driver 18 years of age or older using a hands-free accessory, defined as an attachment or built-in feature for or an addition to a mobile electronic device that when used gives a person the ability to keep both hands on the steering wheel.</p> <p>Beginning 01/01/2018, provides for suspension of a fine for a first offense if the person completes and provides proof of completion of a distracted driving avoidance course within 120 days of sentencing.</p>

		<p>Increases the penalty for a first offense to a Class B traffic violation. Increases the penalty further to a Class A traffic violation if the offense contributes to an accident or is a second or subsequent offense. Includes a maximum fine of \$2,000 for a Class B misdemeanor.</p> <p>Introduction, first reading, and referred to House Speaker's desk on 01/09/2017. Referred to House Judiciary Committee on 01/17/2017. Public hearing held on 02/27/2017. Work session held on 04/14/2017. Passed in House (46-13 vote) on 05/01/2017.</p> <p>First reading and referred to Senate President's desk on 05/02/2017. Referred to Senate Judiciary Committee on 05/05/2017. Public hearing held on 05/24/2017. Work session held on 06/01/2017. Referred to Rules Committee on 06/06/2017. Public hearing and work session held on 06/22/2017. Passed in Senate (21-8 vote) on 06/29/2017.</p> <p>House concurred in Senate amendments and repassed bill (47-6 vote) on 06/30/2017.</p> <p>Signed by House Speaker on 07/05/2017. Signed by Senate President on 07/06/2017. Declares emergency; effective 10/01/2017.</p>
<p><u>Setting Civil Penalty Ranges for Violations of State Occupational Health and Safety Statutes</u></p> <p>PASSED by Senate and House; Signed by Governor</p>	<p><u>SB 92</u></p>	<p>Amends ORS 654.003, 654.086 and 652.120.</p> <p>Allows the Director of the Department of Consumer and Business Services (DCBS) to set civil penalties for violations of state occupational health and safety statutes, not to exceed maximum penalties or fall below certain minimum penalties under the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Public hearing held on 02/20/2017. Work session held on 03/27/2017. Passed in Senate (21-8 vote) on 03/30/2017.</p> <p>Referred to House Business and Labor Committee on 04/05/2017. Public hearing held on 04/26/2017.</p>

		<p>Work session held on 05/03/2017. "Do pass" recommendation on 05/05/2017. Second reading on 05/08/2017. Carried over to 05/25/2017 calendar. Passed in House (38-20 vote) on 05/25/2017.</p> <p>Signed by Senate president on 05/30/2017. Signed by House Speaker on 05/31/2017. Signed by Governor on 06/06/2017. 2017 Oregon Laws, Chapter 238. Effective 01/01/2018.</p>
<p><u>Requires Reporting of Potential Sex Trafficking or Underage Performers By Employees of Certain Establishments</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 369</u></p>	<p>Amends ORS 471.385 and ORS Chapter 471.</p> <p>Requires an employee of a premises licensed for full on-premises sales or limited on-premises sales of alcohol who holds service permit to make a report to law enforcement and to the Oregon Liquor Control Commission (OLCC) if the employee has a reasonable belief that sex trafficking is occurring at the premises, and to OLCC if the employee has a reasonable belief that a minor is employed as a performer at the premises in a manner violating OLCC rules.</p> <p>Exempts the employee from any criminal or civil liability for making a good faith report.</p> <p>Allows the OLCC to revoke or suspend a service permit or impose a civil penalty in lieu of or in addition to suspension if it finds or has reasonable grounds to believe that the permittee was aware of activities the permittee had a duty to report under this bill and the permittee did not report.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Judiciary Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Repealing Law Allowing BOLI Commissioner to Issue Warrants to Collect Unpaid Debt</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 392</u></p>	<p>Repeals ORS 651.065; amends ORS 18.854.</p> <p>Repeals the law (passed in 2015 and effective 01/01/2016) authorizing the Commissioner of the Bureau of Labor and Industries to issue warrants to collect unpaid debt due to BOLI.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on</p>

		01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.
<p><u>Prohibiting Automatic Enrollment of Employees in Oregon Retirement Savings Plan</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 404</u>	<p>Amends ORS 178.210, 178.215, and 178.230.</p> <p>Removes provisions providing for automatic enrollment of employees in the Oregon Retirement Savings Plan.</p> <p>Provides for voluntary enrollment in plan.</p> <p>Background: As a result of the passage of <u>2015 House Bill 2960</u> creating the Oregon Retirement Savings Plan, effective 06/25/2015, Oregon employers who do not offer employees a qualified retirement plan (such as a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or section 457(b) of the Internal Revenue Code) are required to automatically enroll employees in the state plan.</p> <p>The program, known as "OregonSaves" (https://employer.oregonsaves.com/home/program-details.html), is a form of Roth IRA (Individual Retirement Arrangement), and it will be rolled out in phases over a period of years to all employers who have employees in Oregon and who do not offer a qualified retirement plan. Frequently Asked Questions for OregonSaves are available here.</p> <p>The OregonSaves program has a registration deadline of November 15, 2017 for employers with 100 or more employees, with subsequent deadlines in 2018, 2019 and 2020 for employers with fewer employees.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Business and Transportation Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>

<p><u>Repealing the Oregon Retirement Savings Plan</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 405</u></p>	<p>Repeals ORS 178.200 – 178.245 and sections 11, 13 and 15, Chapter 557, Oregon Laws 2015.</p> <p>Repeals provisions establishing Oregon Retirement Savings Plan.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Business and Transportation Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p> <p>Background: Approximately 55 million Americans currently do not have a retirement plan through their employer. Lawmakers in California, Connecticut, Illinois, Maryland, New Jersey, Washington and Oregon have created plans that require businesses to enroll their employees in state-sponsored IRAs if they do not have access to an employer-sponsored retirement plan.</p> <p>The Oregon Retirement Savings Plan, created by 2015 legislation, is set to be rolled out later in summer 2017, and Oregon is expected to be the first state to launch its pilot program. The plan will be treated like a Roth IRA with respect to contribution and withdrawal rules, and employees will have three investment options from which to choose.</p> <p>However, on 02/15/2017, the U.S. House of Representatives voted along party lines to undo an Obama administration rule that allowed for such state retirement plans. On 03/30/2017, the U.S. Senate narrowly passed legislation moving closer to finalizing a repeal.</p>
<p><u>Creating Tax Credit for Workforce Expansion</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 598</u></p>	<p>Amends ORS 314.752, 318.031, and ORS Chapter 315.</p> <p>Creates a credit against income tax for taxpayers with 100 or fewer employees that create 10 or more new jobs during the tax year.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, with subsequent referral to Tax Credits Committee, on 01/17/2017. Takes effect on 91st day following</p>

		adjournment <i>sine die</i> . Applies to tax years beginning on or after January 1, 2018. Died in committee as of 04/18/2017.
<p><u>Creating Tax Credit for Workforce Expansion with Higher-Paying Positions</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 613</u>	<p>Amends ORS 314.752, 318.031, and ORS Chapter 315.</p> <p>Creates an income tax credit for a period of five tax years following a qualifying year if a taxpayer corporation expands its workforce by 10 percent in the tax year with qualified employment positions that pay a wage above the average wage of the county in which the employee performs a plurality of the employee's work.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, with subsequent referral to Tax Credits Committee, on 01/17/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Applies to tax years beginning on or after January 1, 2018. Died in committee as of 04/18/2017.</p>
<p><u>Making Required Employee Vaccinations an Unlawful Employment Practice</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 848</u>	<p>Amends ORS 659A.</p> <p>Makes it an unlawful employment practice for an employer to require, as a condition of employment, that an employee or prospective employee obtain or receive any vaccination.</p> <p>Provides that the prohibition does not apply if an applicable collective bargaining agreement requires the receipt of any vaccination.</p> <p>Introduction and first reading on 02/23/2017. Referred to Senate Workforce Committee on 02/27/2017. Died in committee as of 04/18/2017.</p>
<p><u>Prohibiting Mandatory Immunizations for Employment</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 914</u>	<p>Amends ORS 659A.885.</p> <p>Declares as policy of Oregon that decisions related to immunizations are personal health care decisions and that immunizations may not be mandated by an employer as a condition of employment unless required by federal law.</p> <p>Makes it an unlawful employment practice for an employer to require an applicant for employment</p>

		<p>or an employee to be immunized as a condition of future or continuing employment, unless the immunization is mandated by federal law.</p> <p>Authorizes applicants and employees alleging a violation to file a complaint under ORS 659A.820 with the BOLI Commissioner or in court.</p> <p>Introduction and first reading on 03/02/2017. Referred to Senate Health Care Committee on 03/03/2017. Public hearing held on 03/28/2017. Died in committee as of 04/18/2017.</p>
<p><u>Making Non-Competition Agreements and Non-Solicitation Agreements Unenforceable for Home Care Workers</u></p> <p>PASSED by Senate and House; Signed by Governor</p>	<p><u>SB 949</u></p>	<p>Provides that notwithstanding ORS 653.295 (Oregon's statute on non-competition agreements), a non-competition agreement made in the context of an employment relationship or contract with a home care worker as defined in ORS 410.600 is voidable by the home care worker and may not be enforced by an Oregon court.</p> <p>Further provides that a covenant between an employee and an employer not to solicit employees of the employer or solicit or transact business with customers of the employer made in the context of an employment relationship or contract with a home care worker as defined in ORS 410.600 is voidable by the home care worker and may not be enforced by an Oregon court.</p> <p>Background: Oregon's statute on non-competition agreements, <u>ORS 653.295</u>, was amended in 2007 to require, for any non-competition agreements entered into on January 1, 2008 or thereafter, that:</p> <ul style="list-style-type: none"> • (A) The employer informs the employee in a written employment offer received by the employee at least two weeks before the first day of employment that a non-competition agreement is required as a condition of employment; or (B) The non-competition agreement is entered into upon a subsequent bona fide advancement of the employee by the employer. • A non-compete agreement will only be enforceable with an employee properly

		<p>classified as a salaried exempt supervisory, administrative or professional employee under <i>Oregon's</i> wage and hour laws.</p> <ul style="list-style-type: none"> • The employer must have a protectable interest, meaning that the employee has access to trade secrets or to competitively sensitive confidential business or professional information. • The employee's gross annual salary and commissions must exceed the median family income for a four-person family, as determined by the U.S. Census Bureau for the most recent year available at the time of the employee's termination. (That figure was <u>\$72,518 for 2017</u>.) • The term of the non-competition agreement is limited to <u>two years</u> from the date of termination. (A 2015 bill, <u>HB 3236</u>, reduced this term to <u>18 months</u> maximum, for any agreements entered into on or after 01/01/2016.) <p>The statute includes a "carve-out" for non-solicitation agreements, stating that the law does not apply to a "covenant not to solicit employees of the employer or solicit or transact business with customers of the employer." This means that non-solicitation agreements with employees are generally enforceable (if reasonable and narrowly tailored to protect an employer's proprietary interests).</p> <p>Introduction and first reading on 03/02/2017. Referred to Senate Human Services Committee on 03/03/2017. Public hearing held on 03/27/2017. Work sessions held on 04/03/2017 and 04/05/2017. Recommendation of "do pass with amendments" on 04/07/2017. Passed in Senate (29-1 vote) on 04/11/2017.</p> <p>Referred to House Speaker's desk on 04/12/2017. Referred to House Human Services and Housing Committee on 04/19/2017. Public hearing held on 04/27/2017. Work session held on 05/04/2017. "Do</p>
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		<p>pass" recommendation on 05/10/2017. Passed in House (48-8 vote) on 06/01/2017.</p> <p>Signed by Senate President on 06/07/2017. Signed by House Speaker on 06/09/2017. Signed by Governor on 06/14/2017. 2017 Oregon Laws, Chapter 360. Effective 01/01/2018.</p>
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V. IMMIGRATION LAW

TOPIC	BILL	SHORT SUMMARY
<p><u>Requiring Use of E-Verify by Oregon State Agencies (HB 2917)</u></p> <p><u>(SB 545)</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>HB 2917</u></p> <p><u>SB 545</u></p>	<p>Requires Oregon state agencies to use the federal E-Verify employment verification system to verify employment eligibility of job applicants.</p> <p>Instructs state agencies to report the use of the E-Verify system to the Oregon Department of Administrative Services (DAS). Requires DAS to report annually to the Legislative Assembly on the use of the E-Verify system by state agencies. Authorizes DAS to adopt rules.</p> <p>Establishes the Task Force on the Use of E-Verify by Public Employers. Requires the task force to report findings and recommendations to an interim legislative committee.</p> <p><u>House Bill 2917:</u> Introduction and first reading on 02/15/2017. Referred to House Judiciary Committee, with subsequent referral to Ways and Means Committee, on 02/20/2017. Died in committee.</p> <p><u>Senate Bill 545:</u> Introduction and first reading on 01/09/2017. Referred to Senate General Government and Accountability Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>
<p><u>Preempting Cities and Counties from Adopting Rules on Immigration</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2921</u></p>	<p>Amends ORS 181A.820.</p> <p>Preempts a city or county from adopting a rule, ordinance or policy related to immigration. Requires cities and counties to comply with federal detainer requests and prohibits adoption of a rule that permits the release of an individual in the custody of the law enforcement agency of the local government if the federal government has issued a civil immigration detainer request for the individual.</p>

		<p>Removes a provision that prohibits law enforcement agencies from using resources to detect or apprehend a foreign citizen present in the United States in violation of federal immigration law.</p> <p>Introduction and first reading on 02/15/2017. Referred to House Judiciary Committee on 02/20/2017. Died in committee as of 04/18/2017.</p>
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VI. HEALTH INSURANCE / HEALTH CARE / EMPLOYEE **BENEFITS PLAN**

TOPIC	BILL	SHORT SUMMARY
<p> <u>Requiring Reproductive Health Care Coverage by Benefit Plans</u> </p> <p> PROPOSED: In House Committee </p>	<p><u>HB 2232</u></p>	<p>Amends the Oregon Insurance Code.</p> <p>Requires health benefit plan coverage of specified health care services (including well-woman care, pregnancy-related services, including pregnancy tests, preconception care, abortion and prenatal care, counseling for sexually transmitted infections including HIV and AIDS, screening for various STDs and conditions, screening for tobacco use and domestic violence, folic acid supplements, breastfeeding support, genetic counseling, breast cancer mammography, breast cancer chemoprevention counseling, and any contraceptive drug, device or product approved by the U.S. Food and Drug Administration, voluntary sterilization, education and counseling on contraception), drugs, devices, products and procedures related to reproductive health. Allows an exemption for plans sold to religious employers.</p> <p>Requires the Oregon Health Authority to implement a program to reimburse the costs of services, drugs, devices, products and procedures related to reproductive health provided to individuals who can become pregnant and who would be eligible for medical assistance if not for certain federal requirements.</p> <p>Prohibits discrimination in the provision of health care coverage.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Health Care Committee, with subsequent referral to Ways and Means Committee, on 01/17/2017. Declares emergency; effective on passage. Died in committee.</p>

<p><u>Requiring Reproductive Health Care Coverage, Including Abortion, by Benefit Plans</u></p> <p>PASSED by House and Senate</p>	<p><u>HB 3391</u></p>	<p>Amends the Oregon Insurance Code and creates the Reproductive Health Equity Act.</p> <p>Requires health benefit plan coverage of specified health care services (including well-woman care, pregnancy-related services, including pregnancy tests, preconception care, abortion and prenatal care, counseling for sexually transmitted infections including HIV and AIDS, screening for various STDs and conditions, screening for tobacco use and domestic violence, folic acid supplements, abortion, breastfeeding support, genetic counseling, breast cancer mammography, breast cancer chemoprevention counseling, and any contraceptive drug, device or product approved by the U.S. Food and Drug Administration, voluntary sterilization, education and counseling on contraception), drugs, devices, products and procedures related to reproductive health. Allows an exemption for plans sold to religious employers.</p> <p>Requires the Oregon Health Authority to implement a program to reimburse the costs of services, drugs, devices, products and procedures related to reproductive health provided to individuals who can become pregnant and who would be eligible for medical assistance if not for certain federal requirements.</p> <p>Prohibits discrimination in the provision of health care coverage on the basis of actual or perceived race, color, national origin, sex, sexual orientation, gender identity, age or disability.</p> <p>Prohibits interference by a public body in a consenting female's choice to terminate a pregnancy. Prohibits a public body's interference with a health care provider terminating or assisting in termination of pregnancy of a health care provider's patient, if the health care provider is acting within the scope of the provider's license.</p> <p>Background: HB 3391 was introduced as a response to proposed abortion restrictions and other federal funding cuts that would take effect under the currently tabled repeal and replacement of the federal Patient Protection and Affordable</p>
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		<p>Care Act ("Obamacare"). As a result of previously planned cuts to federal matching dollars for Medicaid expansion, Oregon must come up with \$270 million to continue services at current levels during the 2017 to 2019 budget period starting on 07/01/2017.</p> <p>Introduction and first reading, and referred to House Health Care Committee, with subsequent referral to Ways and Means Committee, on 03/09/2017. Public hearing held on 03/15/2017. Work session held on 04/14/2017. Recommendation of "do pass with amendments" and referred to Ways and Means Committee on 04/19/2017. Assigned to Subcommittee on Human Services on 06/26/2017. Public hearing and work session held on and returned to full committee 06/28/2017. Work session held on 06/29/2017. Passed in House (33-23 vote) on 07/01/2017.</p> <p>First reading and referred to Senate President's desk and Senate Ways and Means Committee on 07/03/2017. Recommendation of "do pass with amendments" and second reading on 07/04/2017. Passed in Senate (17-13 vote) on 07/05/2017.</p> <p>Signed by House Speaker on 07/11/2017. Signed by Senate President on 07/18/2017. Declares emergency; effective on passage.</p>
<p><u>Modifying Definition of Small Employer for Group Health Benefit Plans</u></p> <p>PASSED in Senate and House; Signed by Governor</p>	<p><u>SB 271</u></p>	<p>Amends ORS 743B.005.</p> <p>Modifies the definition of "small employer" for purposes of group health benefit plans to mean "an employer who employed an average of at least one but nor more than 50 full-time equivalent employees on business days during the preceding calendar year and who employs at least one full-time equivalent employee on the first day of the plan year, determined in accordance with a methodology prescribed by the Department on Consumer and Business Services by rule."</p> <p>Background: The current definition of "small employer" at ORS 743B.005 refers to the meaning of that term in 42 U.S.C. 18024 unless otherwise prescribed by rule in accordance with guidance</p>

		<p>issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor, or the U.S. Department of the Treasury.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Health Care Committee on 09/17/2017. Public hearing and work session held on 02/07/2017. Passed in Senate (29-0 vote) on 02/23/2017.</p> <p>Referred to House Health Care Committee on 03/03/2017. Public hearing held on 04/26/2017. Work session held on 05/08/2017. "Do pass" recommendation on 05/10/2017. Passed in House (57-0 vote) on 05/15/2017.</p> <p>Signed by Senate President on 05/17/2017. Signed by House Speaker on 05/18/2017. Signed by Governor on 05/24/2017. 2017 Oregon Laws, Chapter 142. Effective 01/01/2018.</p>
<p><u>Prohibiting Discrimination in Determining Covered State Medical Services</u></p> <p>PROPOSED: In Senate Committee</p>	<u>SB 390</u>	<p>Amends ORS Chapters 414, 735, 743 and 743B.</p> <p>Prohibits discrimination based on age, expected length of life, present or predicted disability, degree of medical dependency or quality of life in the determination by the Oregon Health Authority of medical services covered by the state medical assistance program, in coverage under medical retainer practice and in issuance of health benefit plans.</p> <p>Applies to medical retainer practices and health benefit plans in force on January 2, 2018.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Health Care Committee, then to Ways and Means Committee, on 01/17/2017. Declares emergency, effective on passage. Died in committee.</p>

<p><u>Establishing “Fair Share” Penalty for Certain Employers with Employees Receiving Coverage Through Medical Assistance Program</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 997</u></p>	<p>Amends ORS 657.660, 657.665 and 659A.885.</p> <p>Targeted at employers who fail to provide affordable health insurance coverage to low-wage workers who are covered by medical assistance and thereby shift the cost of health care coverage from the employer to the taxpayer. Finds that controlling health care costs can be more readily achieved if a greater share of working people and their families have employer-sponsored health insurance so that cost-shifting is minimized.</p> <p>Establishes a penalty to be imposed by the Department of Consumer and Business Services (DCBS) on employers that offer health insurance coverage to employees but that have employees working at least 20 hours per week who receive health care coverage through the medical assistance program.</p> <p>Appropriates penalties collected by DCBS to the Oregon Health Authority for specified purposes.</p> <p>Establishes a remedy for an employee who is retaliated against by an employer for applying for or receiving medical assistance.</p> <p>Introduction and first reading on 03/06/2017. Referred to Senate Health Care Committee on 03/08/2017. Public hearing held on 03/30/2017. Takes effect on the 91st day following adjournment <i>sine die</i>. Died in committee as of 04/18/2017.</p>
<p><u>Establishing Health Care for All Oregon Board to Implement Plan Replacing Health Insurance Exchange</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 1046</u></p>	<p>Amends ORS Chapters 238, 243, 291, 352, 408, 411, 413, 414, 430, 431, 441, 442, 479, 677, 731, 742, 743A, 743B.</p> <p>Establishes the Health Care for All Oregon Board to develop, implement and oversee the Health Care for All Oregon Plan to be administered by the Oregon Health Authority. Repeals the health insurance exchange upon implementation of the Plan.</p> <p>Supplants coverage by private insurers for health services covered by the Plan. Authorizes the Public Employees’ Benefit Board and the Oregon</p>

		<p>Educators Benefit Board to offer supplemental health benefit plans to employees. Requires public employees to be covered by the Plan.</p> <p>Establishes the Health Care for All Oregon Fund. Continuously appropriates moneys in the fund to the Health Care for All Board.</p> <p>Establishes the office of Health Care for All Oregon Ombudsman in the office of the Governor.</p> <p>Requires the Board to establish Regional Planning Boards to oversee the allocation of health resources in geographic regions prescribed by the Board. Requires submission to the Board of plans for addition, alternation or construction of a health care facility except long term care facilities. Authorizes the Board to provide public funding upon request if addition, alternation or construction is approved. Transfer to the Department of Human Services authority to approve a certificate of need for a long-term care facility.</p> <p>Appropriates moneys from the General Fund to the Board for purposes of the Plan.</p> <p>Introduction and first reading, and referred to Senate Health Care Committee, with subsequent referral to Ways and Means Committee, on 04/04/2017. Public hearing held on 04/20/2017. Declares emergency, effective on passage. Died in committee.</p>
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VII. UNEMPLOYMENT

TOPIC	BILL	SHORT SUMMARY
<p><u>Allowing Summer Unemployment Benefits for Community College Instructors</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2714</u></p>	<p>Amends ORS 657.167.</p> <p>Provides that unemployment insurance benefits are payable during the summer term to a community college instructor who has received an assignment for the previous summer term.</p> <p>Codifies the presumption that an instructor at public university or community college does not have a reasonable assurance of performing services for the public university or community college in the following academic term.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Requiring Drug Testing of Individuals Applying for Unemployment Benefits</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2926</u></p>	<p>Amends ORS Chapter 657.</p> <p>Requires drug testing for unlawful use of controlled substances of an individual making an initial application for unemployment insurance benefits if the individual was terminated by the most recent employer for the unlawful use of controlled substances or suitable work is available for the individual only in an occupation that regular conducts drug testing.</p> <p>Provides that the cost of administering the drug tests must be paid by the Oregon Employment Department and may not be charged to applicants for benefits.</p> <p>Disqualifies an individual who fails the drug test from the receipt of unemployment benefits. Provides that disqualification lasts until the individual meets the current legal requirements for requalification and passes another drug test.</p> <p>Introduction and first reading on 02/15/2017. Referred to House Business and Labor Committee</p>

		on 02/20/2017. Declares emergency; effective on passage. Died in committee as of 04/18/2017.
<u>Bringing Unemployment Insurance Statute on Educational Employees Into Conformity with Federal Law</u> PASSED in Senate and House; Signed by Governor	<u>SB 42</u>	<p>Amends ORS 657.221 related to unemployment benefits between academic terms for certain services performed for an educational institution or institution of higher education.</p> <p>Reverses amendments to statute made by Enrolled Senate Bill 1534 (2016) that were determined by United States Secretary of Labor to be out of conformity with federal law.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Public hearing held on 03/27/2017. Work session held on 03/29/2017. Passed in Senate (25-5 vote) on 04/04/2017.</p> <p>Referred to House Business and Labor Committee on 04/05/2017. Public hearing held on 05/03/2017. Work session held on 05/15/2017. "Do pass" recommendation on 05/16/2017. Carried over to 06/01/2017 calendar. Passed in House (56-1 vote) on 06/01/2017.</p> <p>Signed by Senate President on 06/06/2017. Signed by House Speaker on 06/07/2017. Signed by Governor on 06/14/2017. 2017 Oregon Laws, Chapter 308. Effective 01/01/2018.</p>
<u>Requiring Study of Eligibility of Educational Employees for Unemployment Benefits</u> PROPOSED: In Senate Committee	<u>SB 296</u>	<p>Requires the Director of the Oregon Employment Department to study the eligibility of employees of educational institutions for unemployment insurance benefits.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee, with subsequent referral to Ways and Means Committee, on 01/17/2017. Died in committee.</p>

VIII. WORKERS' COMPENSATION

TOPIC	BILL	SHORT SUMMARY
<p><u>Allowing Appointment of Processing Agent for Self-Insured Employer That Defaults</u></p> <p>PASSED in House and Senate; Signed by Governor</p>	<p><u>HB 2336</u></p>	<p>Amends ORS 656.443, 656.591 and 656.593.</p> <p>Permits the Director of the Department of Consumer and Business Services (DCBS) to appoint a claims processing agent for a self-insured employer or self-insured employer group that defaults or cancels the employer's or group's certification or that the Director decertifies.</p> <p>Permits a claims processing agent that the DCBS Director appoints, other than the State Accident Insurance Fund Corporation (SAIF), to choose legal counsel to employ.</p> <p>Provides that the paying agency must repay expenditures from the Consumer and Business Services Fund, Self-Insured Employer Adjustment Reserve, Self-Insured Employer Group Adjustment Reserve and Workers' Benefit Fund that DCBS makes, and the present value of any reasonably expected expenditures from funds or reserves that DCBS may make, to reimburse the costs of the paying agency.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 02/06/2017. Work session held on 02/20/2017. Passed in House (60-0 vote) on 03/02/2017.</p> <p>Referred to Senate Workforce Committee on 03/08/2017. Public hearing held on 04/24/2017. Work session held on 05/03/2017. Recommendation of "do pass with amendments" and second reading on 05/08/2017. Passed in Senate (30-0 vote) on 05/09/2017.</p> <p>Signed by House Speaker on 05/10/2017. Signed by Senate President on 05/11/2017. Signed by Governor on 05/17/2017. 2017 Oregon Laws, Chapter 69. Effective on 01/01/2018.</p>

<p><u>Increasing Workers' Compensation Benefits for Permanent Total Disability</u></p> <p>PASSED in House and Senate; Signed by Governor</p>	<p><u>HB 2337</u></p>	<p>Amends ORS 656.206.</p> <p>Increases workers' compensation benefits for permanent total disability.</p> <p>Provides that if permanent total disability results from a workers' injury, the worker receives during the period of that disability compensation benefits equal to 66-2/3 percent of wages, no more than 133 percent of the average weekly wage (previously capped at 100%) or no less than 33 percent of the average weekly wage (previously set at 90 percent of weekly wages or \$50, whichever is less).</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 02/06/2017. Work session held on 03/08/2017. Passed in House (59-0 vote) on 03/14/2017.</p> <p>Referred to Senate Workforce Committee on 03/20/2017. Public hearing held on 04/24/2017. Work session held on 05/03/2017. Recommendation of "do pass with amendments" and second reading on 05/08/2017. Passed in Senate (27-3 vote) on 05/09/2017.</p> <p>Signed by House Speaker on 05/10/2017. Signed by Senate President on 05/11/2017. Signed by Governor on 05/17/2017. 2017 Oregon Laws, Chapter 70. Effective on 01/01/2018.</p>
<p><u>Specifying Benefits for Workers' Compensation Beneficiaries</u></p> <p>PASSED in House and Senate; Signed by Governor</p>	<p><u>HB 2338</u></p>	<p>Amends ORS 656.005, 656.204 and 656.208.</p> <p>Specifies only one monthly benefit rate for children of a deceased worker and a uniform duration of benefits for children under 19 years of age.</p> <p>Specifies a benefit for a period of not more than 48 months for children and dependents of a deceased worker who are between 19 and 26 years of age at the time of the worker's death or who will attain the age of 19 years after the worker's death and who are completing high school, obtaining a general</p>

		<p>educational development (GED) certificate or attending a program of higher education.</p> <p>Provides that if a worker dies during a period of permanent total disability, benefits are payable to the worker's dependents.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 02/06/2017. Work session held on 03/08/2017. Passed in House (59-1 vote) on 03/14/2017.</p> <p>Referred to Senate Workforce Committee on 03/20/2017. Public hearing held on 04/24/2017. Work session held on 05/03/2017. Recommendation of "do pass with amendments" and second reading on 05/08/2017. Passed in Senate (30-0 vote) on 05/09/2017.</p> <p>Signed by House Speaker on 05/10/2017. Signed by Senate President on 05/11/2017. Signed by Governor on 05/17/2017. 2017 Oregon Laws, Chapter 71. Effective on 01/01/2018.</p>
<p><u>Requiring Employer to Provide Form to Employee for Reporting Injury</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2762</u></p>	<p>Amends ORS 656.265.</p> <p>Provides that an employer must provide an injured worker, within 48 hours after injury, with a form that the Director of the Department of Consumer and Business Services (DCBS) develops.</p> <p>Prohibits the employer from requiring the worker to ask for the injury report form before supplying the form.</p> <p>Background: The current statute states that the form (currently known as Form 801) must be supplied by employers "upon request of the injured worker ..."</p> <p>Introduction and first reading on 02/06/2017. Referred to House Business and Labor Committee on 02/07/2017. Died in committee as of 04/18/2017.</p>

<p><u>Removing Certain LLC Managers from Coverage as Subject Workers for Workers' Compensation</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3209</u></p>	<p>Amends ORS 656.027 and 657.046.</p> <p>Removes from coverage as a subject worker a member or manager of a limited liability company who holds direct or indirect ownership interest in the limited liability company, including through one or more holding companies, regardless of the work that the member or manager performs for the limited liability company.</p> <p>Introduction and first reading on 03/01/2017. Referred to House Business and Labor Committee on 03/08/2017. Died in committee as of 04/18/2017.</p>
<p><u>Excluding Sick Leave from "Payroll" Definition for Workers' Compensation Calculations</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 607</u></p>	<p>Amends ORS 656.005.</p> <p>Excludes sick leave pay from the definition of "payroll" for purpose of workers' compensation calculations.</p> <p>Background: ORS 656.005(22) provides that "payroll," for purposes of workers' compensation calculations, excludes "overtime pay, vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments to reward workers for safe working practices." This bill would add sick leave pay to that list.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Workforce Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Modifying Independent Medical Examination Process</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 780</u></p>	<p>Amends ORS 656.325 and 656.328.</p> <p>Modifies the process for independent medical examinations of injured workers to provide for random selection of qualified physicians to conduct independent medical examinations in workers' compensation claims. Establishes a process for provider selection for out-of-state independent medical examinations.</p> <p>Introduction and first reading on 02/09/2017. Referred to Senate Workforce Committee on 02/13/2017. Public hearing held on 03/08/2017. Died in committee as of 04/18/2017.</p>

IX. APPRENTICESHIP

TOPIC	BILL	SHORT SUMMARY
<p><u>Requiring 10 Percent Apprenticeship Utilization on Public Contracts</u></p> <p>PASSED in House and Senate; Signed by Governor</p>	<p><u>HB 2162</u></p>	<p>Requires a state contracting agency that awards a public improvement contract with a contract price of more than \$5 million to require the contractor to employ apprentices to perform 10 percent of work hours on the public improvement that workers in apprenticeable occupations perform.</p> <p>Requires in each subcontract for which the contract price exceeds the lesser of \$1 million or 25 percent of the price of the contract, that a subcontractor employ apprentices to perform 10 percent of the work hours that workers in apprenticeable occupations perform on the subcontract.</p> <p>Increases in 2022 the apprentice employment requirement to 12 percent on public improvement projects with a contract price of more than \$3 million and subcontracts for which the contract price exceeds the lesser of \$1 million or 25 percent of the price of the contract. Exempts the Department of Transportation from the requirement.</p> <p>Specifies reporting requirements for contractors.</p> <p>Requires the Oregon Bureau of Labor and Industries to establish and provide staffing for an advisory committee that monitors the implementation of and compliance with the Act.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee, with subsequent referral to Ways and Means Committee, on 01/17/2017. Public hearing held on 03/22/2017. Work session held on 04/14/2017. Recommendation of "do pass with amendments" on 04/18/2017. Subsequent referral to Ways and Means Committee rescinded by order of the House Speaker on 04/18/2017. Passed in House (53-3 vote) on 04/24/2017.</p>

		<p>Referred to Senate President's desk on 04/25/2017. Referred to Senate Workforce Committee on 04/27/2017. Public hearing held on 05/15/2017. Public hearing and work session held on 05/31/2017. Recommendation of "do pass with amendments" on 06/06/2017. Passed in Senate (26-4 vote) on 06/08/2017.</p> <p>House concurred in Senate amendments and repassed (54-4 vote) on 06/13/2017.</p> <p>Signed by House Speaker on 06/16/2017. Signed by Senate President on 06/19/2017. Signed by Governor on 06/22/2017. 2017 Oregon Laws, Chapter 416.</p> <p>Takes effect on 91st day following adjournment <i>sine die</i>. Becomes operative on 01/01/2018.</p>
<p><u>Establishing</u> <u>Apprenticeship Credits</u> <u>Toward Associate's</u> <u>Degree</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3335</u></p>	<p>Requires the Higher Education Coordinating Commission to develop a plan for enabling community colleges to offer an associate's degree completed in coordination with credits earned in an apprenticeship or training program.</p> <p>Requires the Commission to submit a report detailing the plan by 12/01/2018. Sunsets 01/02/2019.</p> <p>Introduction and first reading on 03/06/2017. Referred to Higher Education and Workforce Development Committee on 03/13/2017. Public hearing held on 03/30/2017. Work session held on 04/13/2017. Recommendation of "do pass with amendments" and referred to Ways and Means Committee on 04/18/2017. Declares emergency; effective on passage. Died in committee.</p>

<p><u>Requiring Apprenticeship Promotional Materials for High Schools</u></p> <p>PASSED in House and Senate; Signed by Governor</p>	<p><u>HB 3340 A</u></p>	<p>Requires the Oregon Department of Education to develop and provide to public high schools written materials regarding apprenticeship opportunities. Requires public high schools to disseminate the materials to students and to parents or guardians of students.</p> <p>Introduction and first reading on 03/06/2017. Referred to House Education Committee on 03/13/2017. Public hearing held on 03/29/2017. Work session held on 04/05/2017. "Do pass" recommendation on 04/10/2017. Carried over to 04/18/2017 calendar. Passed in House (58-0 vote) on 04/18/2017.</p> <p>Referred to Senate President's desk on 04/19/2017. Referred to Senate Education Committee on 04/24/2016. Public hearing held on 05/16/2017. Work session held on 05/30/2017. "Do pass" recommendation and second reading on 06/01/2017. Passed in Senate (30-0 vote) on 06/06/2017.</p> <p>Signed by House Speaker on 06/08/2017. Signed by Senate President on 06/12/2017. Signed by Governor on 06/20/2017. 2017 Oregon Laws, Chapter 405. Declares emergency; effective on passage.</p>
<p><u>Creating Tax Credit for Employers Providing Apprenticeship Opportunities</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 3362</u></p>	<p>Amends ORS 314.752 and 318.031.</p> <p>Creates an income tax credit of \$1000 per qualifying apprentice employed, for taxpayers that provide apprenticeship opportunities for qualifying apprentices between 16 and 30 years of age. Requires the taxpayer first to obtain written certification of eligibility from the Oregon Department of Revenue, and requires to Department to adopt related regulations.</p> <p>Introduction and first reading on 03/06/2017. Referred to House Business and Labor Committee, with subsequent referral to Revenue Committee, on 03/13/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Applies to tax years beginning on or after 01/01/2018 and before 01/01/2024. Died in committee.</p>

<p> <u>Requiring Apprenticeship</u> <u>Credit for Military</u> <u>Experience</u> PROPOSED: In Senate Committee </p>	<p><u>SB 676</u></p>	<p>Amends ORS 660.002 to 660.210.</p> <p>Requires an organization that has a related apprenticeship program to give credit toward the apprenticeship for qualifying individuals who obtained experience in plumbing, pipefitting, steamfitting or heating ventilation air conditioning (HVAC) while in active duty in the armed forces.</p> <p>Introduction and first reading on 02/01/2017. Referred to Senate Veterans and Emergency Preparedness Committee on 02/06/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Becomes operative on 01/01/2018. Applies to apprenticeships entered into on or after 01/01/2018. Died in committee as of 04/18/2017.</p>
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X. PUBLIC CONTRACTS/ PREVAILING WAGE RATES (PWR)

TOPIC	BILL	SHORT SUMMARY
<p><u>Including Tax Credits in PWR Definition of "Funds of a Public Agency" for PWR Purposes</u></p> <p>PROPOSED: In House Committee</p>	<u>HB 2194</u>	<p>Amends ORS Chapter 279A.</p> <p>Defines "funds of a public agency," for purposes of applying the prevailing rate of wage to projects for public works, to include tax credits or tax abatements that a contractor engaged in a project for public works receives from the state in connection with the project.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Revenue Committee on 01/17/2017. Becomes operative 91 days after effective date of Act. Declares emergency, effective on passage. Died in committee.</p>
<p><u>Classifying Exemption from Property Taxation as "Funds of a Public Agency" for PWR Purposes</u></p> <p>PROPOSED: In House Committee</p>	<u>HB 2583</u>	<p>Amends ORS Chapter 279C.</p> <p>Modifies the definition of "public works." Classifies an exemption from ad valorem property taxation as funds of a public agency for the purpose of requiring payment of the prevailing rate of wage.</p> <p>Requires a public agency that procured a contract for public works or the sponsor of an enterprise zone in which public works is located, as appropriate, to receive certified statements.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Declares emergency, effective on passage. Becomes operative 91 days after effective date of Act. Died in committee as of 04/18/2017.</p>

<p> <u>Requiring Disclosures of Certain Legal Violations by Bidders on Public Contracts</u> </p> <p> PROPOSED: In House Committee </p>	<p><u>HB 2670</u></p>	<p>Amends ORS 279B.110, 279B.130, 279C.375 and 279C.440.</p> <p>Provides that a contracting agency, in a solicitation for procurement, must require a bidder or proposer to disclose, under penalty of perjury, violations in the past three years of the following laws:</p> <ul style="list-style-type: none"> • The Fair Labor Standards Act of 1938; • The Occupational Safety and Health Act of 1970; • The National Labor Relations Act; • The Davis-Bacon Act; • The Migrant and Seasonal Agricultural Worker Protection Act; • The Service Contract Act; • Presidential Executive Order 11246; • Section 503 of the Rehabilitation Act of 1973; • The Vietnam Era Veterans' Readjustment Assistance Act of 1974; • The Family and Medical Leave Act; • Title VII of the Civil Rights Act of 1964; • The Americans with Disabilities Act of 1990; • The Age Discrimination in Employment Act of 1967; • ORS 653.010 to 653.216 (Oregon wage laws); • ORS chapter 656 (Oregon workers' compensation laws); and • Any other law of the state that has as the law's purpose protecting worker health, safety or welfare, and that the Attorney General specifies by rule. <p>Permits the bidder or proposer to describe the circumstances of the violation and steps the bidder or proposer took to remedy the violation and improve future compliance with laws. Requires the contracting agency, in consultation with the Attorney General or the local contracting review board, to determine whether violations, remedies and assurances of improved compliance, taken together, warrant a finding that the bidder or proposer has a satisfactory record of integrity and is otherwise responsible.</p>
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		<p>Provides that a contractor must require a prospective subcontractor to make disclosures similar to the disclosures the contractor made to the contracting agency in the bid or proposal.</p> <p>Requires a public contract to provide that a contractor and subcontractor must update the list of violations every 180 days during the term of the public contract. Permits the contracting agency to consider certain actions after disclosure of new violations.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 03/22/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Becomes operative on 01/01/2018. Died in committee as of 04/18/2017.</p> <p>Background: The requirements of this bill are similar to what would have been required of federal government contractors under the Fair Pay and Safe Workplaces (FPSW) Executive Order (E.O. 13673), also known as the "Blacklisting" Rule or "Bad Actor" order. That order was signed by President Obama on 07/31/2014 and initially took effect on 10/25/2016. However, the bulk of the Executive Order was put on hold based on a Texas federal court injunction finding the Obama administration exceeded its authority with the disclosure obligations. Federal contractor pay transparency obligations under the order were not halted, and they initially took effect on 01/01/2017. But on 03/27/2017, President Trump signed H.J. Res. 37, permanently blocking the FPSW executive order and invalidating its implementing regulation from the U.S. Department of Labor (DOL) and the Federal Acquisition Regulatory (FAR) Council, including the pay transparency portion of the rules.</p>
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<p><u>Prohibiting Employee Benefits Discrimination Based on Gender Identity in Public Contracts</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2677</u></p>	<p>Amends ORS Chapter 279A.</p> <p>Prohibits a state contracting agency from entering into a public contract with a contract price that exceeds \$100,000 with a contractor that discriminates in providing benefits against an employee or an employee's dependent on the basis of the employee's or dependent's actual or perceived gender identity, including identification as transgendered.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Becomes operative on January 1, 2018. Takes effect on 91st day following adjournment <i>sine die</i>. Died in committee as of 04/18/2017.</p>
<p><u>Requiring Contractors in Public Procurements to Have Policies Preventing Harassment and Discrimination</u></p> <p>PASSED in House and Senate; Signed by Governor</p>	<p><u>HB 3060</u></p>	<p>Amends ORS Chapter 279A.</p> <p>Prohibits a state contracting agency from entering into a public contract with a prospective contractor that has not certified that it has a policy and practice of preventing sexual harassment, sexual assault and discrimination against members of protected classes of workers. Specifies minimum elements that the policy and practice must include and the method by which contractors may provide the required notice.</p> <p>Requires a public contract to require as a material term that the contractor have and maintain a policy and practice to prevent sexual harassment, sexual assault and discrimination against members of protected classes.</p> <p>Introduction and first reading on 02/27/2017. Referred to House Business and Labor Committee on 03/03/2017. Public hearings held on 03/20/2017 and 03/22/2017. Work session held on 04/12/2017. "Do pass" recommendation on 04/13/2017. Second reading on 04/17/2017. Passed in House (53-5 vote) on 04/24/2017.</p> <p>Referred to Senate President's desk on 04/25/2017. Referred to Senate Workforce Committee on 04/27/2017. Public hearing held on 05/15/2017. Work session held on 05/17/2017. "Do pass"</p>

		<p>recommendation and second reading on 05/22/2017. Passed in Senate (24-3 vote) on 05/24/2017.</p> <p>Signed by House Speaker on 05/26/2017. Signed by Senate President on 05/30/2017. Signed by Governor on 06/06/2017. 2017 Oregon Laws, Chapter 212. Takes effect on 91st day following adjournment <i>sine die</i>. Becomes operative on 01/01/2018.</p>
<p><u>Regulating the Prevailing Rate of Wage and Dividing Public Works Projects</u></p> <p>PASSED in Senate and House; Signed by Governor</p>	<p><u>SB 416</u></p>	<p>Amends ORS Chapter 279C.</p> <p>Provides that Commissioner of the Bureau of Labor and Industries may apply certain considerations to determine whether to divide a public works project into separate contracts.</p> <p>Requires all contracts for public works and all subcontracts related to a public works contract to specify that the contractor or subcontractor must have filed a public works bond with the Oregon Construction Contractors Board (CCB) unless the contractor or subcontractor is exempt from the requirement.</p> <p>Specifies that a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business must file a public works bond if the BOLI Commissioner finds that the enterprise or business violated prevailing rate of wage law or rules the Commissioner adopts under prevailing wage law. Specifies circumstances in which a contractor or subcontractor violates the provision against any other person paying all or a portion of the prevailing rate of wage or fringe benefits.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Public hearing held on 03/01/2017. Work session held on 04/05/2017. Passed in Senate (18-10 vote) on 04/12/2017.</p> <p>Referred to House Speaker's desk on 04/13/2017. Referred to House Business and Labor Committee on 04/20/2017. Public hearing held on 05/01/2017.</p>

		<p>Work session held on 05/10/2017. "Do pass" recommendation on 05/12/2017. Carried over to 06/01/2017 calendar. Passed in House (38-19 vote) on 06/01/2017.</p> <p>Signed by Senate President on 06/06/2017. Signed by House Speaker on 06/07/2017. Signed by Governor on 06/14/2017. 2017 Oregon Laws, Chapter 334. Declares emergency, effective on passage (06/14/2017).</p>
<p><u>Allowing Paid Sick Leave to Count as Fringe Benefit for PWR</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 606</u></p>	<p>Amends ORS 653.606.</p> <p>Allows paid sick leave under the Oregon protected sick time law to be counted as a fringe benefit for the purpose of the prevailing rate of wage under ORS Chapter 279C.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Declares emergency; effective on passage. Died in committee as of 04/18/2017.</p>
<p><u>Allowing Public Employer to Enact "Right to Work" Legislation and Prohibiting Mandatory Union Membership or Dues</u></p> <p>PROPOSED: In House Committee</p>	<p><u>SB 950</u></p>	<p>Provides that notwithstanding ORS 243.650 to 243.782 and 292.055, a local public employer (a city, county, community college, school district, special district or public or quasi-public corporation) may not require an employee to be a member of or make payment to a labor organization for any reason; may not require an employee to pay labor organization dues; and may not deduct from the salary or wages of an employee for payment to a labor organization unless the employee has requested such a deduction in writing.</p> <p>Provides that an employee of a local public employer is not a member of a labor organization unless the employee has requested in writing to be a member and that an amount for payment to the union be deducted from the employee's earnings.</p> <p>Provides that a labor organization may not be required to represent, bargain collectively or provide services of any kind of any employee of a local public employer who is not a member of the labor organization.</p>

		<p>Introduction and first reading on 03/02/2017. Referred to Senate Workforce Committee on 03/03/2017. Applies to collective bargaining agreements entered into or renewed on or after the effective date of the bill. Died in committee as of 04/18/2017.</p>
<p><u>Requiring Least Cost Analysis Before Contracting Agency Constructs Public Improvement</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 1045</u></p>	<p>Amends ORS 279A.010 and 279C.305.</p> <p>Requires a contracting agency to perform an analysis to determine whether constructing a public improvement with the contracting agency's own equipment and personnel will result in the least cost to contracting agency.</p> <p>Specifies the contents of the analysis. Requires the contracting agency to file the analysis with the Commissioner of the Bureau of Labor and Industries. Requires the Commissioner to investigate an alleged violation of the Act in response to a complaint from a contractor or trade association that represents contractors.</p> <p>Provides that if the Commissioner finds that a contracting agency has previously violated provisions of the Act, the Commissioner shall require the contracting agency to negotiate and enter into an agreement with the contractor or trade association to remedy and prevent future violations. Permits the Commissioner to enter an order that sets forth terms of the agreement. Permits a party to the agreement with a contracting agency to bring an action in state court to enjoin the contracting agency from breaching or to compel the contracting agency to comply with the terms of the agreement.</p> <p>Introduction and first reading on 04/04/2017. Referred to Senate General Government and Accountability Committee on 04/05/2017. Takes effect on 91st day following adjournment <i>sine die</i>. Becomes operative January 1, 2018. Died in committee as of 04/18/2017.</p>

XI. FARM FOREST AND LABOR CONTRACTORS

TOPIC	BILL	SHORT SUMMARY
<p><u>Allowing BOLI to Issue Multiyear License to Qualifying Labor Contractor</u></p> <p>PASSED in House and Senate; Signed by Governor</p>	<p><u>HB 2572</u></p>	<p>Amends ORS 658.413 and 658.435.</p> <p>Allows the Commissioner of the Bureau of Labor and Industries to issue a multiyear license to a qualifying labor contractor.</p> <p>Background: ORS 658.435(1) currently provides that each labor contractor license expires one year following the date of its issuance. HB 2572 allows for a multiyear license (two or four years) if the BOLI Commissioner finds that an applicant has operated as an Oregon licensed labor contractor for at least two years in compliance with ORS 658.405 to 658.503 and other relevant laws, and that no valid claims for unpaid wages have been made against the applicant.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Public hearing held on 02/08/2017. Work session held on 03/08/2017. Passed in House (57-3 vote) on 03/15/2017.</p> <p>Referred to Senate President's desk on 03/16/2017. Referred to Senate Business and Transportation Committee on 03/20/2017. Public hearing and work session held on 05/15/2017. Recommendation of "do pass with amendments" and second reading on 05/22/2017. Passed in Senate (28-0 vote) on 05/24/2017.</p> <p>Signed by House Speaker on 05/26/2017. Signed by Senate President on 05/30/2017. Signed by Governor on 06/06/2017. 2017 Oregon Laws, Chapter 208. Effective 01/01/2018.</p>

<p> <u>Including Property Services Contractors as Covered "Labor Contractors" and Establishing Rules on Required Employee Training</u> </p> <p> PASSED in House and Senate </p>	<p> <u>HB 3279</u> </p>	<p> Amends ORS 658.405 and 658.511. </p> <p> Modifies the definition of "labor contractor" to include a property services contractor. Requires the BOLI Commissioner to establish procedures for licensing of property services contractors. Requires the Commissioner to adopt rules for property services contractors to provide training to employees with respect to sexual harassment, discrimination and whistleblower protection. </p> <p> Defines "property services contractor" to include any person that, for remuneration, recruits, solicits, supplies or employs workers to perform labor for another person to provide services that include janitorial services, or enters into a subcontract with another for such activities. </p> <p> Introduction and first reading on 03/02/2017. Referred to House Judiciary Committee on 03/03/2017. Public hearing and work session held on 03/27/2017. Work session held on 04/14/2017. Recommendation of "do pass with amendments" and referred to House Ways and Means Committee on 04/21/2017. Assigned to Subcommittee on Transportation and Economic Development on 06/06/2017. Public hearing held on 06/14/2017. Work session held and returned to full committee on 06/22/2017. Work session held on 06/28/2017. Passed in House (43-12 vote) on 07/01/2017. </p> <p> First reading, referred to Senate President's desk, and referred to Senate Ways and Means Committee on 07/01/2017. Recommendation of "do pass with amendments on 07/04/2017. Passed in Senate (16-14 vote) on 07/05/2017. </p>
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XII. PUBLIC EMPLOYEE STANDARDS AND BENEFITS: **COLLECTIVE BARGAINING**

TOPIC	BILL	SHORT SUMMARY
<u>Requiring Binding Arbitration for Unresolved Bargaining Issues</u> PROPOSED: In House Committee	<u>HB 2187</u>	Amends ORS 243.698, 243.742 and 243.746. Requires an issue subject to collective bargaining during the term of a collective bargaining agreement that is not resolved through negotiation or mediation to be resolved through binding arbitration. Prohibits a public employee from striking when an issue subject to collective bargaining during the term of a collective bargaining agreement is subject to binding arbitration. Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Died in committee as of 04/18/2017.
<u>Allowing Reemployment of Certain Retired PERS Members for Law Enforcement or Security</u> PROPOSED: In House Committee	<u>HB 2323</u>	Amends ORS 238.082 and 238.092. Exempts a retired member of the Public Employees Retirement System (PERS) from limitations on reemployment if the member is reemployed for purposes of providing law enforcement or security services to the Governor, Legislative Assembly, Judicial Department or Department of Revenue. Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.
<u>Requiring Reporting of Employee-to-Supervisor Ratio in Public Employment</u> PASSED in House and Senate; Signed by Governor	<u>HB 2332</u>	Amends Chapter 622, Oregon Laws 2015. Requires certain state agencies to determine the maximum ratio of supervisory employees to nonsupervisory employees and report the maximum supervisory ratio to the Joint Committee on Ways and Means during the biennial budget process. A state agency must determine its maximum supervisory ratio by starting from a baseline ratio of 11-to-1 and adjusting the ratio based on specified factors.

		<p>Provides that state agencies that exceed the maximum supervisory ratio may not fill supervisory positions unless granted an exemption by the Oregon Department of Administrative Services.</p> <p>(The bill as initially introduced would have extended the suspension of the requirement that state agencies attain a 11-to-1 ratio of nonsupervisory employees to supervisory employees to the 2017-2019 biennium, from 07/01/2017 to 07/01/2019, as the existing law had the suspension expiring on 07/01/2017.)</p> <p>Introduction and first reading on 01/09/2017. Referred to House Rules Committee on 01/17/2017. Public hearing held on 04/25/2017. Work session held on 05/09/2017. Recommendation of "do pass with amendments" on 05/12/2017. Passed in House (57-0 vote) on 05/16/2017.</p> <p>Referred to Senate General Government and Accountability Committee on 05/17/2017. Public hearing and work session held on 05/24/2017. Recommendation of "do pass with amendments" and second reading on 05/31/2017. Passed in Senate (30-0 vote) on 06/01/2017.</p> <p>Signed by House Speaker on 06/05/2017. Signed by Senate President on 06/07/2017. Signed by Governor on 06/14/2017. 2017 Oregon Laws, Chapter 285. Effective 01/01/2018.</p>
<p><u>Establishing that Public Official's Use of Public Resources for Campaign Purposes is Ethical Violation</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2381</u></p>	<p>Amends ORS Chapter 244.</p> <p>Establishes that violation of ethics law occurs if public official uses public resources, including but not limited to computers, electronic mail systems, telephones or office equipment, to engage in campaign activity.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Rules Committee on 01/17/2017. Died in committee.</p>

<p><u>Prohibiting Public Employee Retirement Benefits Beyond Legal Allowances</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2425</u></p>	<p>Amends ORS 238.229 and 238A.340.</p> <p>Prohibits a public employer from agreeing to pay or provide a retirement benefit to a member of the Public Employees Retirement System (PERS) other than payments required or provided for in statutes governing retirement benefits of members of the PERS system.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>
<p><u>Requiring Employee to Repay Administrative Leave Wages Following Conviction</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2441</u></p>	<p>Provides that an employee of a public employer is liable to the employer for wages paid to the employee during a period of administrative leave if the employee was placed on leave as result of an allegation that the employee engaged in criminal conduct, if employee is thereafter convicted of the crime by reason of the conduct.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Declares emergency, effective on passage. Died in committee as of 04/18/2017.</p>
<p><u>Requiring Certain Public School Employees Be Certified in CPR and First Aid</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2447</u></p>	<p>Directs the State Board of Education to adopt standards requiring certain persons employed by public schools to have valid certification in cardiopulmonary resuscitation and first aid.</p> <p>Allows the Department of Education to distribute moneys to school districts and public charter schools to assist persons in becoming certified.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Education Committee on 01/17/2017. Would first apply to the 2018-2019 school year. Died in committee as of 04/18/2017.</p>

<p><u>Allowing Different Employment Terms for Non-Union Member</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2476</u></p>	<p>Amends ORS 243.672, 243.676 and 243.726.</p> <p>Excludes from unfair labor practices the employer practice of establishing wages, benefits or other employment terms for a member of a labor organization that are different from the wages, benefits or other employment terms for an employee who is not a member of a labor organization.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Expanding Options for Oregon State Police to Reemploy Retired PERS Members</u></p> <p>PROPOSED: In House Committee</p>	<p><u>HB 2632</u></p>	<p>Amends ORS 238.082.</p> <p>Relating to reemployment of retired members of the Public Employees Retirement System.</p> <p>Expands the exemption from limitations on the employment of retired members of the Public Employees Retirement System (PERS) reemployed by the Oregon State Police (OSP).</p> <p>Would no longer require that the individual be employed by OSP "for work in a county with a population of fewer than 75,000 inhabitants ..."</p> <p>Applies the exemption to all retired members reemployed by the OSP.</p> <p>Introduction and first reading on 01/09/2017. Referred to House Business and Labor Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>
<p><u>Prohibiting Public Employer From Collecting Union Dues</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 386</u></p>	<p>Amends ORS 243.670, 243.672, 243.676 and 243.726.</p> <p>Prohibits a public employer from participating in or using resources for the collection of labor organization dues.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Died in committee as of 04/18/2017.</p>

<p><u>Changing PERS Final Salary Calculation</u></p> <p>PROPOSED: In Senate Committee</p>	<p><u>SB 559</u></p>	<p>Amends ORS 238.005.</p> <p>Changes the calculation of final average salary for purposes of the Public Employees Retirement System (PERS) to use five years of salary instead of three years, for salary paid on and after 01/01/2018.</p> <p>Directs the Public Employees Retirement Board to recalculate employer contribution rates to reflect savings attributable to the Act.</p> <p>Provides for expedited review of the Act by the Oregon Supreme Court upon petition by an adversely affected party.</p> <p>Introduction and first reading on 01/09/2017. Referred to Senate Workforce Committee on 01/17/2017. Public hearing held on 02/13/2017. Work session held on 04/17/2017. Referred to Ways and Means Committee on 04/20/2017. Declares emergency; effective on passage. Died in committee.</p>
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The Alphabet Soup:

A Summary of Key Labor and Employment Law (and Leave Law) Acronyms

GENERAL LABOR AND EMPLOYMENT LAWS

- **AAAAAAA**, the **Americans Against Acronym And Abbreviation Abuse Act**, is a fictional law that we only wish were on the books. We promise that the rest of the laws listed in this document are real.
- **ADA**, the **Americans with Disabilities Act of 1990**, 42 U.S.C. § 12101 et seq., is the federal law that prohibits discrimination against job applicants and employees with mental or physical disabilities. Title I of the ADA (42 U.S.C. §§ 12111-12117; 29 CFR Part 1630 - <http://www.law.cornell.edu/cfr/text/29/1630>) requires employers to make reasonable accommodations for a qualified individual with a disability. This federal law applies to every employer with 15 or more employees, and similar Oregon disability statutes (see “DADPEA,” below – ORS 659A.103 - 659A.145 – https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html) apply to every Oregon employer with six or more employees.
 - **ADAAA**, the **ADA Amendments Act of 2008** (42 U.S.C. § 12101, et seq. -- <http://www.law.cornell.edu/uscode/text/42/12101>), effective January 1, 2009, overrules four U.S. Supreme Court decisions that narrowly interpreted the original ADA’s definition of “disability.” The ADAAA directs the courts to broadly interpret the ADA’s “disability” definition, meaning that more employees are protected as individuals with disabilities and that employers must emphasize and document the “interactive process” when a physical or mental condition impacts an employee’s job performance. Oregon passed legislation in 2009 (SB 874) that took effect January 1, 2010 and dictates that Oregon disability statutes be broadly construed to the extent possible consistently with the ADAAA.
- **ADEA**, the federal **Age Discrimination in Employment Act** of 1967 (29 U.S.C. §§ 621 -634 -- <http://www.law.cornell.edu/uscode/text/29/621>; 29 CFR Part 1625 -- <http://www.law.cornell.edu/cfr/text/29/1625>), prohibits employers with 20 or more employees from discriminating against employees who are 40 or over. The Oregon law on age discrimination applies to all employers and prohibits age discrimination against individuals who are 18 or over.
 - **OWBPA**, the **Older Workers Benefit Protection Act of 1990** (29 CFR § 1625.22, et seq. - <http://www.law.cornell.edu/cfr/text/29/1625.22>), amended the ADEA, making it illegal to discriminate against individuals 40 or over for employment benefit programs, and setting specific criteria for individual and group severance and release agreements in order to waive age discrimination claims.
- **CAFA**, the federal **Class Action Fairness Act**, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, allows federal jurisdiction over certain collective action lawsuits (including wage and employment claims) and allows removal to federal court based on diversity jurisdiction.
- **CFAA**, the **Computer Fraud and Abuse Act**, 18 U.S.C. § 1030, criminalizes certain knowing access to a computer without authorization (such as hacking by outsiders) with an intent to defraud and obtaining valuable intellectual property. Employers increasingly assert CFAA violations in civil actions in combating employee theft of intellectual property, especially when departing employees use their former employer’s customer or business information obtained through unauthorized use of a company computer.
- **COBRA**, the **Consolidated Omnibus Budget Reconciliation Act**, is a federal law passed by Congress in 1986 that provides certain former employees, retirees, spouses and dependent children the right to temporary continuation of employer group health benefits that would otherwise be terminated. COBRA applies to employers with 20 or more employees, and the law provides an option to continue insurance benefits for up to

18 months. A similar Oregon law applies to employers with fewer than 20 employees and allows for benefits continuation for nine months (increased from six months in 2009).

- The **ARRA, the American Recovery and Reinvestment Act of 2009**, also known as the federal “stimulus plan,” included provisions allowing certain individuals involuntarily terminated between September 1, 2008 and December 31, 2009 to receive a nine-month 65 percent premium discount on COBRA continuation coverage. On December 19, 2009, President Obama signed legislation extending the premium subsidy and discount to 15 months total for individuals involuntarily terminated through February 28, 2010. The President’s budget for fiscal year 2011 proposes to further extend the COBRA subsidy to workers involuntarily terminated between March 1 and December 31, 2010, and the maximum discount period for those workers would be 12 months.
- **DADPEA, the Discrimination Against Disabled Persons in Employment Act**, ORS 659A.103, et seq. (https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html) makes it an unlawful employment practice for any employer to refuse to hire, employ or promote, bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment on the basis of disability, and requires reasonable accommodation of qualified individuals with disabilities. Since the passage of Oregon 2009 Senate Bill 874, effective January 1, 2010, ORS 659A.139 states that the Oregon law must be construed to the extent possible in a manner consistent with any similar provisions of the federal Americans with Disabilities Act of 1990, as amended by the federal ADA Amendments Act of 2008 and as otherwise amended (see **ADA** and **ADAAA**, above).
- **DTSA, the Defend Trade Secrets Act of 2016**, S. 1890 – 114th Congress (2015-2016), Public Law No. 114-153, enacted May 11, 2016, amends the federal criminal code, creating a private civil cause of action for trade secret misappropriation. Specifically, the DTSA gives the federal courts original jurisdiction over civil trade secret claims. The law allows trade secret owners, including employers, to bring private rights of action in federal district court against individuals, including employees, who misappropriate trade secrets. The law is largely based on the Uniform Trade Secrets Act that has been enacted in most states, including Oregon and Washington. However, it adds new provisions, including allowing for seizure of property to prevent dissemination of trade secrets. *Ex parte* seizure orders can be executed without notice to a new employer of an individual, to allow for seizure of misappropriated trade secrets. The law also provides employees immunity from liability for certain confidential disclosures to the government or attorneys. The DTSA allows for remedies including injunction (*e.g.*, to block an employee from working for a competitor) and damages. The statute of limitation is five years from the date of discovery of the misappropriation.

The DTSA also requires employers to provide notice to employees about a whistleblower’s right to disclose trade secret information to federal enforcement authorities. Employers should include such notice in a whistleblower policy or in nondisclosure, confidentiality and non-competition agreements in order to comply with the DTSA. Employers may choose to say, *e.g.*, “This agreement does not cover whistleblowing to a government agency.” However, to be certain they are providing sufficient notice, employers may choose to include the following language directly from the statute:

“Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing:

(1) Immunity—An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) Use of Trade Secret Information in Anti-Retaliation Lawsuit—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.”

- **ESIGN, the Electronic Signatures in Global and National Commerce Act**, 15 USC § 7001 et seq. (<http://www.law.cornell.edu/uscode/text/15/chapter-96>), was enacted June 30, 2000 by Congress to facilitate the use of electronic documents and signatures in interstate and foreign commerce. The law states that a contract or signature “may not be denied legal effect, validity, or enforceability solely because it is in electronic form.” The law requires the signatory to consent to the use of an electronic format, and requires the business to retain an electronic record that is accessible “in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing or otherwise.”
- **EPA, the Equal Pay Act of 1963**, amended the Fair Labor Standards Act (FLSA) and sets rules prohibiting wage discrimination based on gender. The EPA protects not only hourly non-exempt employees but also those administrative, professional and executive employees who are exempt under the FLSA.
- **ERISA, the Employee Retirement Income Security Act of 1974**, is a federal law designed to protect the rights of participants and beneficiaries of employee benefit and retirement plans.
- **EPPA, the federal Employee Polygraph Protection Act**, applies to all employers and generally prevents employers from using lie detector tests, either for pre-employment screening or during the course of employment, with certain exemptions. Employers generally may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act. Each employer who, relying on an exemption, requests or administers a polygraph test to an employee or applicant must maintain records setting forth the specific activity or incident which is the basis of the testing, notices setting forth the time and place of the testing and the employee's rights, and copies of reports and other documents provided by the examiner. An Oregon civil rights statute, ORS 659A.300, similarly makes it an unlawful employment practice for any employer to subject any employee or prospective employee to a polygraph examination, except where the individual consents to such examination during the course of criminal or civil judicial proceedings or during the course of a criminal investigation conducted by a law enforcement agency, a district attorney, or the Attorney General.
- **FAA, the Federal Arbitration Act**, 9 U.S.C. § 1 et seq., was enacted February 12, 1925. The FAA allows for arbitration of many private disputes filed in both state and federal courts, including employment claims, where the parties have agreed to arbitrate. The U.S. Supreme Court has consistently interpreted the FAA as establishing a federal policy favoring arbitration agreements, even with respect to Title VII discrimination claims. In Oregon, ORS 36.620 establishes the validity of arbitration agreements, but states in the employment context (ORS 36.620(5)) that the agreement is voidable and may not be enforced unless: (a) the employee received notice in a written employment offer at least 72 hours before the first day of employment that an arbitration agreement is required as a condition of employment, including a copy of the agreement containing an acknowledgment prescribed at ORS 36.620(6); or the agreement is entered into upon subsequent bona fide advancement of the employee.
- **FCA, the False Claims Act**, 31 U.S.C. §§ 3729-3733, provides whistleblower protection to individuals (including employees) who report companies (typically federal contractors) that defraud governmental programs. Individuals that file FCA claims have standing to collect a portion of recovered damages.
- **FCRA, the federal Fair Credit Reporting Act**, 15 U.S.C. § 1681a et seq., applies to employers who conduct background checks on applicants and employees. The law, originally passed in 1971, requires employers to provide notice and disclosure when requesting “consumer reports” or “consumer investigative reports.” Congress amended FCRA with the Consumer Credit Reporting Reform Act of 1996 (**CCRRA**) and the Consumer Reporting Employment Clarification Act of 1988 (**CRECA**) to provide additional consumer protections. In 2003, Congress passed another FCRA amendment, **FACTA**, the Fair and Accurate Credit Transactions Act of 2003, also known as the “FACT Act.” FACTA allows consumers to obtain free credit reports once every 12 months and contains provisions to reduce identity theft.

- **FLSA, the Fair Labor Standards Act**, is the federal wage and hour law that sets rules for minimum wage, overtime, child labor, and classification of exempt and non-exempt employees. The FLSA applies to any employer with an annual dollar volume of \$500,000, and to any employee engaged in “interstate commerce,” a term that is very broadly construed. The Oregon wage laws apply to all Oregon employers.
- **FPSW, the Fair Pay and Safe Workplaces Executive Order** (Executive Order 13673 - <https://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces>), also known as the “**Blacklisting**” Rule or “**Bad Actor**” order, was signed by President Obama on July 31, 2014. The U.S. Department of Labor (DOL) and the Federal Acquisition Regulatory Council (FAR Council) issued final regulations (<https://www.federalregister.gov/documents/2016/08/25/2016-19676/federal-acquisition-regulation-fair-pay-and-safe-workplaces>) and guidance documents (<https://www.federalregister.gov/documents/2016/08/25/2016-19678/guidance-for-executive-order-13673-fair-pay-and-safe-workplaces>) on August 25, 2016. The final regulations, which took effect on October 25, 2016, initially would have required covered federal contractors and subcontractors (generally, those with \$500,000 or more in covered contracts) to report any violations of 14 identified labor laws or executive orders and/or their equivalent state laws, and violators could be prevented from working as federal government contractors. The bulk of the Executive Order (EO) was then on hold, based on a Texas federal court injunction finding the Obama administration exceeded its authority with the disclosure obligations. However, pay transparency provisions of the EO were not halted, and they took effect on Jan. 1, 2017. This meant that businesses bidding on federal contracts worth \$500,000 or more had to provide workers wage statements detailing total their total and overtime hours, pay rates, gross wages and deductions, broken down on a weekly basis (even if pay periods are other than weekly). Such businesses must also had to inform independent contractors of their non-employee status and advise salaried employees of their ineligibility for overtime pay. These requirements would “flow down” to subcontractors, meaning that a prime contractor whose contract contains the federal acquisition provision must include these same provisions in its contracts with subcontractors. **However, on March 27, 2017, President Trump signed H.J. Res 37 (<http://src.bna.com/noo>), permanently blocking the FPSW executive order and invalidating its implementing regulations from the DOL and FAR Council, including the paycheck transparency portion of the rules.**
- **GINA, the Genetic Information Nondiscrimination Act of 2008** (42 USC § 2000ff et seq.; 29 CFR Part 1635), effective November 21, 2009, prohibits employers and health insurers from discriminating against employees on the basis of genetic predisposition to illness and disease, including a prohibition on gathering information about family history of illness.
- **HIPAA, the Health Insurance Portability and Accountability Act of 1996**, imposes rules on employers to protect confidentiality and security of employees’ personal health information and health care data.
- **HIRE, the Hiring Incentives to Restore Employment Act**, was signed into law by President Obama on March 18, 2010. The HIRE Act creates various tax incentives for businesses to hire new employees. For example, under HIRE, employers could obtain a Social Security payroll tax exemption if they hired employees between February 3, 2010 and January 1, 2011, if those workers had been unemployed for more than six months. Employers also will receive an income tax credit when they retain certain new-hires for 52 weeks. Employers use new IRS form W-11 to claim HIRE Act exemptions.
- **ICAA, Oregon’s Indoor Clean Air Act**, aka the Oregon Smokefree Workplace Law (<http://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Pages/index.aspx>), is codified at ORS 433.835 to 433.990 (https://www.oregonlegislature.gov/bills_laws/ors/ors433.html), with regulations at OAR 333-015-0025 to 333-015-0090 (http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_015.html). The ICAA prohibits smoking in the workplace and within 10 feet of all entrances, exits, accessibility ramps that lead to and from an entrance or exit, windows and air-intake vents. In 2015, the Oregon legislature passed House Bill 2546, expanding the law to prohibit the use of “inhalant delivery systems” that can be used to delivery nicotine, cannabinoids and other substances in the form of a vapor or aerosol. Therefore, the law now prohibits the use of e-cigarettes and “vaping” in workplaces, restaurants, bars and other indoor public places (enclosed areas open to the public) in Oregon. Effective Jan. 1, 2016, employers must post an updated “no

smoking or vaping within 10 feet” sign

(<http://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/EducationalResources/Pages/index.aspx#decals>) at all building entrances and exits.

- **IRCA, the Immigration Reform and Control Act of 1986**, prohibits discrimination against individuals who are authorized to work in the United States on the basis of national origin or citizenship.
- **JSIA, the Jury Systems Improvement Act of 1978** (28 U.S.C. § 1875), is a federal law that protects employees who serve on a jury in federal court from employer retaliation or other adverse employment actions, such as termination, coercion, intimidation, and reductions in pay, benefits or seniority. (An Oregon law, ORS 10.090, likewise prohibits employers from discharging or threatening to discharge an employee because of jury duty service.)
- **LLFPA, the Lilly Ledbetter Fair Pay Act** (H.R. 11 and S. 181), was the first piece of legislation signed by President Obama, on January 29, 2009. The Act overturns a U.S. Supreme Court decision, *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), in which the court held that the 180-day statute of limitations period for filing an EEOC claim begins with the original discriminatory decision about an employee’s compensation. The impact of the LLFPA is that a new harm is deemed to occur each time wages, benefits (including retirement benefits) or other forms of compensation are paid, resulting in whole or in part from a discriminatory decision or practice, such that each discriminatory paycheck restarts the statute of limitations clock. LLFPA amends Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973, to clarify that each discriminatory paycheck constitutes a separate compensation decision and practice under those laws. LLFPA takes effect as if enacted on May 28, 2007, and applies to all claims of pay discrimination pending on or after that date.
- **MHPAEA, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008**, applies to employers with more than 50 employees. Any group health plan whose costs increase 1 percent or more due to the application of MHPAEA’s requirements may claim an exemption from MHPAEA. The Act provides for parity in the application of aggregate lifetime and annual dollar limits on mental health benefits with dollar limits on medical/surgical benefits. In general, group health plans offering mental health benefits cannot set annual or lifetime dollar limits on mental health benefits that are lower than any such dollar limits for medical/surgical benefits. A plan that does not impose an annual or lifetime dollar limit on medical/surgical benefits may not impose such a dollar limit on mental health benefits offered under the plan. MHPA’s provisions, however, do not apply to benefits for substance abuse or chemical dependency. MHPAEA final regulations published in the Federal Register on Nov. 13, 2013 take effect Jan. 13, 2014 and, together with the mental health coverage mandates taking effect under the Patient Protection and Affordable Care Act (PPACA), vastly expand rights to mental health care. While the MHPAEA does not itself mandate that all health plans provide mental health and substance abuse benefits, it requires plans that do provide them to provide parity with medical and surgical benefits. But the PPACA does require the provision of mental health and substance-use disorder services as an “essential health benefit” for non-grandfathered insurance plans, beginning in 2014.
- **NLRA, the National Labor Relations Act** (also known as the “Wagner Act”), was enacted in 1935 and protects employees – not just at unionized workplaces – who engage in various forms of concerted activity related to workplace rights. The Act established the National Labor Relations Board (NLRB), which has authority to investigate charges of unfair labor practices, to oversee union elections, and to regulate collective bargaining rights.
- **OCITPA, the Oregon Consumer Identity Theft Protection Act** of 2007, ORS 646A.600 to 646A.628 (https://www.oregonlegislature.gov/bills_laws/ors/ors646a.html) sets forth obligations of persons (including employers) who own, maintain or possess data including an individual’s personal information to promptly notify affected individuals following discovery of a breach of security.

- **OEA, the Oregon Equality Act**, effective in 2008, prohibits discrimination against persons in employment, housing and public accommodations based on sexual orientation. The law defines “sexual orientation” broadly to include “actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.”
- **OFFA, the Oregon Family Fairness Act** (ORS 106.300 - 106.340), took effect February 4, 2008 and allows for registration of and legal recognition of same-sex domestic partnerships in Oregon. Under the law, individuals of the same sex who are 18 or over and otherwise capable may register to become domestic partners in any county clerk’s office in Oregon provided that at least one of them is an Oregon resident.
- **OFWA, the Oregon Fair Workweek Act of 2017 (2017 Senate Bill 828)**, requires large employers in specified industries (retail, hospitality and food service establishments with 500 or more employees worldwide) to provide a new employee with an estimated work schedule and to provide a current employee with seven days’ notice of the employee work schedule, with the requirement extended to two weeks’ notice effective July 1, 2010. The bill permits covered employers to maintain a list of employees for work shift coverage in certain circumstances. The law prohibits such employers from scheduling work shifts that do not allow sufficient break time (10 hours) in between shifts unless the employee earns 1.5 times the scheduled rate of pay. The law requires covered employers to pay a penalty wage if the employer changes a scheduled shift with less than seven days’ notice, with an exception if the change was outside the employer’s control. It requires employers to maintain records on compliance for three years and makes it an unlawful employment practice for covered employers to interfere with employee rights or to retaliate against an employee for making inquiries related to scheduling or requesting a preferred work schedule. It allows for an administrative or civil cause of action and statutory penalties for each violation. Oregon is the first state to pass this type of legislation, following the enactment of similar ordinances in cities including Seattle, San Francisco, and San Jose.
- **OJFA, the Oregon Job Applicant Fairness Act** (2010 Senate Bill 1045; ORS 659A.320; OAR 839-005-0060 to -0085), makes it an unlawful employment practice for an employer to obtain or use an individual’s credit history for any employment purpose. There are narrow exceptions for federally insured banks or credit unions; employers that are required by law to use credit history for employment purposes; employment of certain public safety officers; and where credit history is “substantially job-related and the employer’s reasons for the use of such information are disclosed to the employee or prospective employee in writing.” However, “substantially job-related” is narrowly defined in the BOLI regulation to mean that the job has an essential function requiring access to “financial information not customarily provided in a retail transaction that is not a loan or extension of credit” – i.e., information beyond the “exchange of cash, checks and credit or debit card numbers.”
- **OPEA, the Oregon Pay Equity Act of 2017 (2017 House Bill 2005)**, makes it an unlawful employment practice for an employer to discriminate in the payment of wages against an employee on the basis of a protected classification (race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, and age), for work requiring substantially similar knowledge, skill, effort, responsibility, and working conditions. The law also makes it an unlawful employment practice to screen job applicants based on salary history, to base a salary decision on salary history (other than for internal hires), and to seek salary history information from an applicant for employment other than after making an offer of employment to an employee that includes the amount of compensation. The law allows an employer to pay employees for work of comparable character at different compensation levels only if the entire compensation differential is based on a bona fide factor related to the position in question and based on certain criteria. The law extends the time limitation to bring certain pay equity claims by making each subsequent payroll action that is based on an underlying pay equity violation actionable. The law adds additional remedies for pay equity and wage-related violations that include the right to a jury trial and the right to compensatory and punitive damages, and it allows a prevailing employee who files a BOLI complaint alleging a pay equity violation to recover back pay for up to two years plus the duration of time spent in the complaint process. A defense to compensatory and punitive damages is available to an employer who has completed an equal-pay analysis that meets certain criteria, eliminated wage differentials for the plaintiff and made reasonable and substantial progress toward eliminating wage differentials for other employees in the same protected class as the plaintiff.

- **ORSP, the Oregon Retirement Savings Plan (aka “OregonSaves”)**, was enacted in Oregon’s 2015 legislative session by the passage of House Bill 2960. Oregon employers who do not offer a qualified retirement plan (such as a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or section 457(b) of the Internal Revenue Code) are required to automatically enroll employees in the state plan. OregonSaves is a form of Roth IRA (Individual Retirement Arrangement), and it will be rolled out in phases over a period of years to all employers who have employees in Oregon and who do not offer a qualified retirement plan. Frequently Asked Questions are available here. The program has a registration deadline of November 15, 2017 for employers with 100 or more employees, with subsequent deadlines in 2018, 2019 and 2020 for employers with fewer employees. Lawmakers in California, Connecticut, Illinois, Maryland, New Jersey and Washington have also created plans that require business to enroll their employees in state-sponsored IRAs if they do not have access to an employer-sponsored retirement plan.
- **OSEA, the Oregon Safe Employment Act**, codified at ORS 654.001 to 654.295, ORS 654.412 to 654.423, ORS 654.750 to 654.780, and ORS 654.991 (https://www.oregonlegislature.gov/bills_laws/ors/ors654.html), sets safety standards for the workplace and is administered and enforced by the Oregon Occupational Safety and Health Division (OR-OSHA). ORS 654.062(5)(a) protects employees who oppose unsafe workplace conditions or make a safety complaint from discrimination, retaliation, or discharge and makes such actions by employers an unlawful employment practice. Employees may file claims for such discrimination with the Bureau of Labor and Industries within 90 days, per ORS 654.062(6)(a), or file a civil action in state court within one year, per ORS 654.062(6)(c).
- **OSHA, the Occupational Safety and Health Act of 1970**, administered by the Occupational Safety and Health Administration, provides employees with certain rights and imposes obligations on employers designed to ensure safe and healthy workplaces. OSHA also prohibits employers from retaliating against employees who file complaints or assist in an OSHA investigation, and against employees who report work-related injuries and follow the orders or treatment plan of a treating physician, including being absent from work while recovering from an injury. An OSHA rule effective August 10, 2016 will require approximately 750,000 employers – those with more than 250 employees, and those with at least 20 employees in certain high-risk industries – to submit detailed annual reports of workplace injuries and illnesses for publication online starting in 2017. States with their own occupational safety and health laws must adopt substantially identical provisions within six months. The new rule also adds penalties for employers that retaliate against employees who report accidents.
- **OWRFA, the Oregon Workplace Religious Freedom Act (SB 786)**, ORS 659A.033, was passed by the 2009 Oregon legislature and is effective as of Jan. 1, 2010. It expands existing employer obligations under ORS 659A.030 to make reasonable accommodations for employees with sincerely held religious beliefs. In particular, the law requires employers to provide reasonable accommodation to religious observance or practices of an employee (including leave from work, accommodation of observance of religious holy days, and accommodation of religious garb requirements) unless providing accommodation would impose an undue hardship.
- **PDA, the Pregnancy Discrimination Act**, is a 1978 amendment to Title VII of the Civil Rights Act of 1964 that prohibits discrimination on the basis of pregnancy in all areas of employment, including hiring, firing, fringe benefits, job security, and other terms and conditions of employment. As with Title VII, the PDA applies to employers with 15 or more employees. (Oregon’s sex discrimination law, ORS 659A.030, which covers discrimination based on pregnancy or maternity, applies to all Oregon employers.)
- **PPACA, the Patient Protection and Affordable Care Act of 2010 (aka “ObamaCare”)**, is the national health care reform measure signed into law by President Obama on March 23, 2010 and modified by a reconciliation bill that the President signed on March 26, 2010. Though PPACA does not specifically require employers to offer health insurance to employees, effective January 1, 2014, companies with 50 or more employees that do not offer health care coverage will face a tax penalty of \$2,000 for each full-time employee (excluding the first

- 30). The measure also will create health care exchanges effective October 1, 2013, and employees who earn less than four times the federal poverty level and who pay more than eight percent of their income for employer-sponsored coverage will have the option of purchasing health insurance through those exchanges.
- **PRWORA, the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996**, requires all Oregon employers to report information on newly-hired employees to the Oregon Department of Justice's Division of Child Support. The purpose of the law is to locate obligated parents to establish and enforce child support orders. Within 20 days of hire or rehire, the employer must report the data found on the W-4 form. A "new hire" is defined as any employee that is required to fill out a W-4 form. Any returning employee who has been absent for more than 45 days is also considered a "new hire" for purposes of employer reporting.
 - **SOX, the Sarbanes-Oxley Act of 2002**, was also called the "Public Company Accounting Reform and Investor Protection Act" in the Senate and the "Corporate and Auditing Accountability and Responsibility Act" in the House. The law was enacted following various corporate and accounting scandals, and it created the Public Company Accounting Oversight Board (PCAOB). The Act contains numerous titles and compliance requirements, including rules on auditor independence and corporate responsibility related to financial reports. The Act also provides protections for whistleblower employees of publicly traded companies who provide evidence of fraud (18 U.S.C. Sec. 1514A), including a prohibition on terminating employees for providing information to a federal regulatory or law enforcement agency, a member or committee of Congress, or a person with supervisory authority over the employee. The U.S. Supreme Court's March 4, 2014 opinion in *Lawson v. FMR LLC, et al.* extended the whistleblower protections of SOX to employees of private employers that are contractors, subcontractors or agents of a publicly held company.
 - **Title VII of the Civil Rights Act of 1964** applies to employers with 15 or more employees and prohibits discrimination based on race, color, sex, religion and national origin. A similar state law, ORS 659A.030, applies to all Oregon employers.
 - **UDUPA, the Uniform Disposition of Unclaimed Property Act**, ORS 98.302 to 98.436 (https://www.oregonlegislature.gov/bills_laws/ors/ors098.html) specifies how employers must deal with an employee's unclaimed wages. ORS 98.334 requires that unpaid wages that remain unclaimed by the owner for more than three years after becoming payable are presumed abandoned. If an employer has made diligent, good faith efforts to pay a former employee but cannot locate the individual, after the "dormancy period" of three years, the employer must turn the unclaimed wages over to the Oregon Division of State Lands, where it can be located in the agency's database (https://oregonup.us/upweb/up/up_search.asp). The Division of State Lands regulations on administration of unclaimed property are found at OAR Chapter 141, Division 45 (http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_141/141_045.html).
 - **UETA, the Uniform Electronic Transactions Act of 1999** (http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf), recognizes electronic signatures and documents and establishes their legal equivalence with paper writings and manually-signed signatures, when the parties have agreed to conduct transactions electronically. The UETA, designed to remove barriers to electronic commerce, has been adopted in 47 states, including Oregon (ORS Chapter 84 - <http://www.oregonlaws.org/ors/chapter/84>). The remaining three states, Illinois, New York and Washington, have adopted their own versions of statutes recognizing electronic signatures.
 - **UGESP, the 1978 Uniform Guidelines on Employee Selection Procedures**, 29 CFR Part 1607 (<http://www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol4/xml/CFR-2011-title29-vol4-part1607.xml>), was adopted by the Equal Employment Opportunity Commission, the Civil Service Commission, the U.S. Department of Labor, and the U.S. Department of Justice to establish a uniform set of principles on employer use of tests and other selection procedures in hiring, and a framework for determining the proper use of such procedures without discriminating based on race, color, religion, sex and national origin.
 - **UIIA, the Unemployment Insurance Integrity Act**, was passed by Congress in 2011. It required all 50 states to implement laws by October 21, 2013 that penalize employers who show a pattern of failing to timely or

adequately respond to the state unemployment agency's requests for information related to unemployment benefits claims. Employers who fail to respond accurately or to respond at all to a claim can have the costs of wrongly paid benefits charged against their unemployment tax accounts, even if the agency subsequently determines the claimant to be ineligible for benefits. Violations can also impact an employer's ability to receive full unemployment insurance credits against FUTA taxes. Oregon's related statute is ORS 657.471(10).

- **USERRA, the Uniformed Services Employment and Reemployment Rights Act of 1994** (38 USC §§ 4301 – 4335; 20 CFR Part 1002 -- <http://www.law.cornell.edu/cfr/text/20/1002>), is a federal law that gives active and reserve members of the armed forces the right to return to the civilian jobs they held prior to military duty. Every public and private employer, regardless of its size, is subject to USERRA. The law provides employment and benefit protections for employees who take leave for either voluntarily or involuntary military service, and it prohibits discrimination or retaliation against job applicants or employees because they are past or present members of the uniformed services, or because they have applied to the uniformed services.

The "uniformed services" include the Army, Navy, Marine Corps, Air Force, Coast Guard, and the commissioned corps of the Public Health Service. Service in the Army National Guard and the Air National Guard also qualifies when it involves active duty for training, inactive duty training, or full-time National Guard duty.

USERRA allows for up to five years of protected military leave, and in some cases more. An employee returning from military leave is generally entitled to reemployment to the employee's original position – or to a position of comparable seniority, status, and pay – and to the rights and benefits that he or she would have attained had he or she remained continuously employed.

An Oregon law also protects employees called to active duty in the Oregon National Guard. In 2009, the Oregon legislature passed a bill (HB 3256) that became effective January 1, 2010 and incorporates the federal USERRA protections into state law by reference, prohibiting discrimination or retaliation in employment against individuals who serve in uniformed services. ORS 659A.082(4).

- **WARN, the federal Worker Adjustment and Retraining Notification Act**, applies to employers with 100 or more employees and requires 60 days' advance notice to affected employees and local government representatives in the event of a "plant closing" or "mass layoff." The "plant closing" rule applies when one or more facilities or operating units within an employment site will be shut down and when the shutdown will result in an employment loss for 50 or more employees during any 30-day period, or fewer than 50 employees if the closing also involves layoff of enough other workers to make the total number of layoffs 50 or more. A "mass layoff" occurs when 500 or more workers at a single site are laid off during a 30-day period, or when 50-499 workers are laid off if this constitutes 33% or more of the employer's total active workforce.

Oregon has a "baby" WARN Act, found at ORS 285A.510, et seq., which merely incorporates the federal WARN Act definitions by reference and identifies the appropriate state contact agency for notifications when notice is required.

LEAVE LAWS FOR OREGON EMPLOYERS

(See also references above to ADA, ADAAA, USERRA and OWBFA)

- **OFLA and FMLA, the Oregon Family Leave Act** (ORS 659A.150 – 659A.186 – https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html) and the federal **Family and Medical Leave Act of 1993** (29 USC § 2601 et seq.; 29 CFR Part 825), are the state and federal laws that generally allow eligible employees to take 12 weeks of protected leave per year in various qualifying situations, including when the employee or a family member has a serious health condition and when the employee has a newborn child. The FMLA applies to employers with 50 or more employees in the U.S., and OFLA applies to any employer with 25 or more employees in Oregon.

OFLA has broader coverage in some respects, allowing up to 12 weeks of leave for “sick child” incidents related to the non-serious health condition of a child requiring home care, and allowing more than 12 weeks of leave in a 12-month leave year in certain situations involving the use of pregnancy disability leave and parental leave. Effective Jan. 1, 2014, OFLA allows two weeks of the leave entitlement to be used for bereavement leave to deal with the death of an eligible employee’s family member, to be taken within 60 days of receiving notice of the death.

FMLA’s “family member” definition covers the parent, spouse or child of the employee. On August 9, 2013, the U.S. Department of Labor indicated, following the U.S. Supreme Court decision in *U.S. v. Windsor*, that FMLA will be available to same-sex spouses where such marriages are recognized in the state where the employee resides. OFLA’s “family member” definition is much broader than FMLA’s, covering not only the parent, spouse or child of an employee, but also the employee’s parents-in-law, grandparents, grandchildren, and registered same-sex domestic partner and parents and children of such partner.

In 2008, Congress expanded FMLA to include up to 26 weeks of protected leave to care for a family member or “next of kin” injured or ill as a result of active duty military service, as well as up to 12 weeks of protected leave for various “qualifying exigencies” related to the military call-up of a family member.

In 2009, OFLA was expanded by the **OMFLA, the Oregon Military Family Leave Act** (HB 2744, ORS 659A.090-659A.099 – https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html; OAR 839-009-0370 – 839-009-0460 – http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_839/839_009.html), which took effect June 25, 2009. OMFLA allows eligible employees who have worked an average of 20 hours per week up to 14 work days of unpaid leave per military deployment (notification of an impending call or order to active duty) of a spouse or registered same-sex domestic partner in the Armed Forces, National Guard or military reserve forces, or for the spouse’s leave from deployment during a period of military conflict. OMFLA leave runs concurrently with (rather than in addition to) the 12-week OFLA entitlement. When an employee using OMFLA leave is also FMLA-eligible, the leave will run concurrently with FMLA’s “qualifying exigency” leave entitlement.

In 2015, the Oregon legislature passed House Bill 2600, effective Jan. 1, 2016, requiring employers to continue group health insurance coverage for an employee using OFLA leave on the same terms as when the employee is not on leave. The employee must continue to make any regular contributions to the cost of the health insurance premiums during the leave. (This had already been the law since 1993 for leaves covered under the federal FMLA, but benefits continuation was not previously required for leaves covered under OFLA only.)

- **Oregon Military Leave Laws** (ORS 399.065 -- https://www.oregonlegislature.gov/bills_laws/ors/ors399.html; ORS 659A.028 – 659A.088 -- https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html) protect employees called to active duty in the Oregon National Guard and track with protections provided under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). In 2009, the Oregon legislature passed a bill (HB 3256) that became effective January 1, 2010 and that incorporates the federal USERRA protections into state

law by reference, prohibiting discrimination or retaliation in employment against individuals who serve in uniformed services. ORS 659A.082(4).

- **Oregon Crime Victims Leave** (ORS 659A.190 – 659A.198 - https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html) allows an eligible employee (one who has worked an average of 25 hours or more per week in the 180 days prior to a leave) of an employer with six or more employees protected unpaid time off work if he or she is a “crime victim” who has “personally suffered financial, social, psychological or physical harm as a result of a felony” or who is a “member of the immediate family of” the crime victim. “Immediate family member” includes the spouse, domestic partner, parent, grandparent, sibling, child or stepchild of a crime victim. There is no maximum length of crime victim leave, but the employer may limit the amount of leave an employee may take if the employee’s leave creates an undue hardship on the business.
- **OVCCLA, the Oregon Victims of Certain Crimes Leave Act (Domestic Violence Leave)** (ORS 659A.270 – 659A.290 - https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html; OAR 839-009-0325 – OAR 839-009-0365 - http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_839/839_009.html), applies to employers with six or more employees and requires leave for victims of domestic violence, harassment, sexual assault or stalking and prohibits discrimination against employees using leave under OVCCLA. Leave under OVCCLA in some cases runs concurrently with OFLA leave. The 2009 Oregon legislature passed a bill (SB 928) expanding OVCCLA to require covered employers (those with six or more employees in Oregon) to provide reasonable safety accommodation for qualifying employees, effective January 1, 2010. The 2011 Oregon legislature passed a bill (HB 3482) expanding OVCCLA to apply to victims of criminal harassment under ORS 166.065. The 2013 Oregon legislature passed a bill (HB 2903) removing the requirement that an employee must have worked an average of 25 hours per week for a covered employer for at least 180 days immediately preceding the use of leave in order to be eligible, and also requiring a workplace poster related to OVCCLA leave rights, effective Jan. 1, 2014. The 2015 Oregon legislature passed a bill (Senate Bill 492), effective Jan. 1, 2016, authorizing employees using this type of leave to use accrued paid sick leave or personal business leave (in addition to the use of any paid accrued vacation leave and other paid leave offered in lieu of vacation, to which access had already been allowed under the law).
- **Bone Marrow Donation Leave**, ORS 659A.312, allows an employee who works an average of 20 or more hours per week to take time off to donate bone marrow to the extent he or she has already accrued paid leave. The length of leave may not exceed 40 work hours or the amount of the employee’s accrued paid leave, whichever is less, unless the employer agrees to allow additional leave.
- **Leave for Search and Rescue Volunteers**, ORS 404.250. Applies to any employer of one or more employees in Oregon. Upon request of an employee who is a search and rescue volunteer accepted to participate in search and rescue activities by the sheriff, the employer “may” grant an unpaid leave of absence to the employee until release from the search and rescue activities permits the employee to resume the duties of employment. However, at the end of such leave of absence, the employer “shall” restore the employee to the employee’s position or an equivalent position.
- **Leave for Volunteer Firefighters**, ORS 476.574 and 476.576. Upon request of an employee who is a volunteer firefighter of a rural fire protection district or a firefighter employed by a city or a private firefighting service, the employee, upon written notice by the employer, “may” be granted a leave of absence until release from such service permits the employee to resume the duties of employment. However, at the end of such leave of absence, the employer “shall” restore the employee to the employee’s position or an equivalent position.
- **Leave to Serve in the State Legislature**, ORS 171.120 - .125. Any member of the Oregon Legislative Assembly whose employment is interrupted because of attendance at regular or special sessions of the Legislative Assembly or the performance of official duties as a member of the Legislative Assembly shall be restored to the employment status the member would have enjoyed if the member had continued in employment during any such attendance or performance of duties.

- **Leave to Participate in Olympic Athletic Events**, ORS 659.865. No public or private organization or individual shall infringe in any manner on the right of an athlete to complete in or train for any athletic event duly sanctioned by the national governing body for that sport as recognized by the United States Olympic Committee.
- **The Oregon Protected Sick Time (PST) Law** (ORS 653.601 – 653.661 - https://www.oregonlegislature.gov/bills_laws/ors/ors653.html; 2015 Senate Bill 454, 2015 Oregon Laws, Chapter 537 - <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB0454/B-Engrossed>) was signed by Governor Kate Brown on June 22, 2015 and took effect January 1, 2016. The Oregon Bureau of Labor and Industries (BOLI) published final regulations at OAR 839-007-0000 to -0120 (http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_839/839_007.html) on December 9, 2015. A BOLI workplace poster and notice is available at <http://www.oregon.gov/boli/TA/SiteAssets/Lists/FeaturedContent/EditForm/Sick%20Time%20Poster%20%28FINAL%20English%29.pdf>.

The law entitles almost all Oregon employees to accrue and use up to 40 hours of protected sick leave annually for a wide scope of covered purposes, and protects employees from discrimination or retaliation for inquiring about or using sick time. The law preempts the authority of local governments to set sick leave requirements and therefore trumps the Portland and Eugene sick leave ordinances that were previously in effect. The law requires employers with 10 or more employees – six or more employees if located in a city with a population of more than 500,000 (meaning Portland) – to provide protected paid sick time for employees. Employers with fewer than 10 employees (or fewer than six employees if located in Portland) must provide protected unpaid sick time for employees.

The sick time, if accrued on a pro rata basis, must accrue at a rate of at least one hour for every 30 hours the employee works, or 1.333 hours for every 40 hours the employee works, and accrual must begin immediately on January 1, 2016, or on the date of the employee's hire. For leave accrual purposes, salaried exempt employees are generally presumed to work 40 hours per week. A new employee is eligible to use the accrued sick time beginning on the 91st calendar day of employment, though an employer may authorize the employee to access the accrued leave earlier. The employer may require reasonable (10 days') advance notice of the employee's intention to use sick time if the need for time off is foreseeable, or notice as soon as practicable in other cases. The employer may also require the employee to comply with the employer's usual and customary notice and procedural requirements for absences or requesting time off.

Employers who use the pro rata accrual method must allow the employee to carry over up to 40 hours of unused sick leave to the following benefit year. The Oregon legislature clarified in 2017 legislation (Senate Bill 299) that an employer may adopt a policy limiting the employee to accruing 40 hours per year, may also by policy limit the employee to a maximum accrual of 80 hours of sick time in their leave "bank," and may also by policy limit the employee's use of that time to 40 hours maximum per benefit year. Alternatively, employers may choose to "front-load" the full 40 hours of sick leave at the start of each benefit year. Employers who select this front-loading option have a lower administrative burden, since they need not track any pro rata accrual and also need not allow any carryover of unused sick leave to the following benefit year.

Employees may use their protected sick time (PST) for any of the following purposes:

- The employee's mental or physical illness, injury, or health condition; need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or need for preventive medical care;
- Care of a family member for the above reasons;
- For any of the purposes covered under the Oregon Family Leave Act (OFLA), even if the employer has fewer than 25 employees in Oregon as required for OFLA coverage;

- Leave related to domestic violence, harassment, sexual assault, or stalking of the employee or dependent child of the employee, even if the employer has fewer than six employees as required for coverage under the domestic violence leave law;
- Donating accrued sick time to another employee if the other employee uses the donated sick time for a purpose under this law and the employer has a policy allowing sick leave donations for such purposes;
- Public health emergencies, including business and school closures, and determinations by authorities that the presence of the employee or the family member of the employee in the community would jeopardize the health of others; or
- Exclusion of the employee from the workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons.

Although an employer's existing paid time off or sick leave policies may be used to comply with the new law, they must comply in all respects, including the timing of and rate of leave accrual, leave carryover standards, required notices of leave rights to employees, and required quarterly notifications to employees on leave availability.

Union employees subject to collective bargaining agreements are not exempt from the law's provisions, with a narrow exception for certain workers employed through a hiring hall or similar referral system and whose employment-related benefits are provided by a joint multi-employer-employee trust or benefit plan.

Employers are not required to cash out unused sick time upon an employee's termination, resignation or retirement, but employees are entitled to restoration of their sick leave accrual if they resume employment with the employer within 180 days of separation.

Employees asserting violations may file BOLI complaints or civil actions. Although BOLI is empowered to assess penalties of up to \$1,000 for various violations, the agency may do so only for violations occurring on or after January 1, 2017, unless the employer retaliates against or disciplines an employee during 2016 for inquiring about or using sick leave.

LEAVE LAWS FOR WASHINGTON EMPLOYERS

(See also references to ADA, FMLA and USERRA)

- **WFLA, the Washington Family Leave Act**, found at RCW Chapter 49.78 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=49.78&full=true>), was amended in 2006 and follows the federal FMLA, but in its pre-2008 form, prior to enactment of military-related statutory leave expansions and the issuance of new U.S. Department of Labor FMLA regulations that took effect in 2009. WFLA applies to employers of 50 or more employees and has the same leave eligibility thresholds as FMLA. Up to 12 weeks of WFLA leave may be used in a 12-month leave year for the eligible employee's serious health condition, serious health condition of a family member, or parental leave to bond with and care for a new child.
- **WFCA, the Washington Family Care Act**, RCW 49.12.265 - .295 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=49.12.265>) and WAC 296-130 (<http://apps.leg.wa.gov/wac/default.aspx?cite=296-130&full=true>), was enacted in 2002. WFCA applies to all Washington employers and allows workers with any available paid leave to take protected time off to care for a sick child with a health condition that requires treatment or supervision (any medical condition requiring treatment or medication that the child cannot self-administer, or any medical or mental health condition which would endanger the child's safety or recovery without the presence of a parent or guardian, or any condition warranting treatment or preventive health care such as physical, dental, optical or immunization services, when a parent must be present to authorize and when sick leave may otherwise be used for the employee's preventive health care), or to care for a spouse, parent, parent-in-law or grandparent with a serious or emergency health condition, or an adult child with a disability. WFCA leave has no upper cap, but is only available to an employee to the extent that he or she has remaining paid leave provided under the employer's policy.
- **PDL, Pregnancy Disability Leave**, applies to Washington employers with eight or more employees who are covered under the Washington Law Against Discrimination (**WLAD**). PDL rules are found in the Washington Human Rights Commission regulations at WAC 162-30-020 (<http://apps.leg.wa.gov/wac/default.aspx?cite=162-30&full=true>). An eligible Washington employee is entitled to protected PDL for the entire duration of an incapacity related to pregnancy or childbirth, as specified by her health care provider. PDL runs separately from the 12-week leave entitlement under WFLA, but runs concurrently with FMLA, which covers pregnancy disability leave.
- **WMFLA, the Washington Military Family Leave Act**, RCW Chapter 49.77 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=49.77&full=true>) allows eligible employees (those who work an average of 20 or more hours per week) to take 15 days of unpaid leave per military deployment of a spouse who has been notified of an impending call or order to active duty as a member of the armed forces of the U.S., National Guard or Reserves, or who has been deployed when the President or Congress has declared war or when military reserves have been called to active duty. The 15 days of WMFLA leave runs separately from WFLA, but concurrently with FMLA "qualifying exigency" leave when the employee is FMLA-eligible.
- **Domestic Violence Leave**, RCW Chapter 49.76 (<http://apps.leg.wa.gov/RCW/default.aspx?cite=49.76>) and WAC Chapter 296-135 (<http://apps.leg.wa.gov/wac/default.aspx?cite=296-135>), is authorized in Washington for any employee who is a victim of domestic violence, sexual assault or stalking for the purpose of addressing legal, financial and health care needs. Employees who are family members of such victims may also take leave to care for or assist the family member. Covered family members include a child, spouse, parent, parent-in-law, grandparent or person with whom the employee has a dating relationship. There is no minimum hours worked requirement for eligibility. Reasonable leave (no specific time limit is provided under the law) is permitted to seek law enforcement or legal assistance or to prepare for or participate in any legal proceedings; to seek health care treatment for physical or mental injuries or to attend to such health care treatment for a family member; to obtain or assist a

family member in obtaining services from a domestic violence shelter, a rape crisis center, or other social services; to obtain or assist a family member in obtaining mental health counseling; or to participate in safety planning, to temporarily or permanently relocate, or to take actions to increase the safety of the employee or family member.

- **Seattle's Paid Sick Leave Ordinance**, Title 14, Seattle Municipal Code, Chapter 14.16 (http://www.seattle.gov/council/issues/paid_sick_leave/attachments/201109_cb117216substitute.pdf), Seattle Office for Civil Rights Rules, Chapter 70 (<http://www.seattle.gov/civilrights/pssl.htm>), was passed by the Seattle City Council on September 12, 2011 and took effect September 1, 2012. Under the ordinance, Seattle employees of covered businesses with five or more employees must accrue paid sick/safe time that can be used for the employee's or a family member's illness or health needs, to cope with the consequences of domestic abuse, sexual assault or stalking, or in cases where a place of business or a child's school or place of care is closed for public health emergency. Employees of Tier 1 Employers (5 to 49 FTE) must accrue 1 hour for every 50 hours worked, up to cap of 40 hours (5 days) of leave. Employees of Tier 2 Employers (50 to 249 FTE) must accrue 1 hour for every 35 hours worked, up to a cap of 56 hours (7 days) of leave. Employees of Tier 3 Employers (250+ FTE) must accrue 1 hour for every 30 worked, up to a cap of 72 hours (9 days) of leave.
- **Tacoma's Paid Sick Leave Ordinance**, Ordinance No. 28275 (Tacoma Municipal Code 18.10 - <http://cms.cityoftacoma.org/Finance/paid-leave/Tacoma-Paid-Leave-Amended-Ordinance28275.pdf>, regulations at <http://cms.cityoftacoma.org/finance/paid-leave/tacoma-paid-leave-rules-and-regulations.pdf>), effective February 1, 2016, requires employers to provide up to 24 hours of paid leave annually to employees working within Tacoma. The leave can be used for temporary time off of work when a worker or their immediate family member has health or safety needs. Other permitted leave uses include work or school closures ordered by public officials or for bereavement. The Ordinance applies to all employees (full-time, part-time and temporary) who work within the city limits for 80 hours or more in a calendar year. Employees earn one hour of sick time for every 40 hours worked within Tacoma, up to 24 hours per calendar year. Employees may carry forward up to 24 hours of unused paid leave into the next year, but use of paid leave is limited to 40 hours in a calendar year. Employees may begin accessing sick leave accruals 180 days after the start of employment. Further information is available on the City's web page at <http://www.cityoftacoma.org/cms/one.aspx?objectId=75860>.
- **Washington State-Wide Sick Leave Law**, Initiative 1433 (https://sos.wa.gov/assets/elections/initiatives/FinalText_954.pdf), was approved by Washington state voters on November 8, 2016, and it takes effect on January 1, 2018. The law will allow employees of *all employers* in Washington to accrue at least one hour of paid sick leave for every 40 hours worked, with no cap allowed on accrual. However, an employee may only carry over up to 40 hours of accrued sick leave from one calendar year to the next. The employer also has the option to front-load the 40 hours of sick leave at the start of each year. An employee may begin using accrued paid sick leave on the 90th calendar day after the start of employment. Employees may use the protected sick leave for illnesses, injuries or health conditions of their own or of a family member (child, parent, parent-in-law, spouse, grandparent, grandchild, or sibling), or for the employee's or a family member's need for medical diagnosis, care, or treatment or preventative medical care. The law also covers leave related to domestic violence (<http://www.lni.wa.gov/WorkplaceRights/LeaveBenefits/FamilyCare/DomViolence/default.asp>) covered under RCW Chapter 49.76 (<http://app.leg.wa.gov/RCW/default.aspx?cite=49.76>) and workplace/school shutdowns for health reasons. Employees who use leave are protected from discrimination or retaliation and from having protected absences counted as disciplinary absences. Employers may require reasonable notice of leave and may require verification that the leave is for a covered purpose if the employee is absent more than three days. The employee using protected sick leave may not be required to find a replacement to cover the shift. The employer need not cash out unused sick leave at termination, but must restore the prior sick leave balance if the employee is rehired within 12 months of separation. The state-wide law does not supersede local ordinances, so employers in cities with paid sick leave ordinances must follow the provisions that provide employees with the greatest benefit.

LEAVE LAWS FOR CALIFORNIA EMPLOYERS

(See also references to ADA, FMLA and USERRA)

- **CFRA, the California Family Rights Act** (Cal. Gov. Code § 12945.2, <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=12001-13000&file=12940-12951>, and Cal. Code Regs., tit. 2, § 11087.0 et seq (formerly § 7297.0 et seq.), http://ca.eregulations.us/code/t.2_d.4.1_subch.2_art11_sec.11087), generally follows the federal FMLA but does not cover pregnancy disability leave, which is covered by California's separate Pregnancy Disability Leave (PDL) law. CFRA, like FMLA, applies to employers of 50 or more employees and employees who have been employed for at least 12 months and worked at least 1250 hours in the 12 months immediately preceding their leave. CFRA allows up to 12 weeks off in a 12-month leave year for an employee's own serious health condition, the condition of a child, spouse, parent, registered domestic partner or same-sex partner in marriage with a serious health condition, or parental leave to care for and bond with a new child. CFRA leave is unpaid but California's State Disability Insurance (SDI) may provide pay to temporarily disabled employees, as well as six weeks of Paid Family Leave (PFL) upon the birth, adoption, or foster placement of a child.
- **PDL, the California Pregnancy Disability Leave law** (Cal. Gov. Code § 12945, <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=12001-13000&file=12940-12951>, and Cal. Code Regs., tit. 2, § 7291.2, http://www.fehc.ca.gov/act/pdf/code_regulations.pdf), part of the Fair Employment and Housing Act (FEHA), applies to California employers with five or more employees. Any female employee of a covered employer is eligible for PDL, regardless of time worked, and may take up to four months of PDL per pregnancy for any incapacity related to pregnancy, childbirth, and related medical conditions. California's PDL runs separately from CFRA but concurrently with federal FMLA leave, which covers pregnancy disability leave. Employers may not force the use of paid vacation during PDL, but may require the use of paid sick leave. California's State Disability Insurance (SDI) can cover pay for part of the PDL period. An employee has the right to maintenance of health benefits while on PDL, a separate and distinct entitlement from the right to maintenance of health benefits while on CFRA leave. (2 C.C.R. §§ 11044(c), 11092(c)(2).)
- **SDI, California's State Disability Insurance** (http://www.edd.ca.gov/Disability/FAQ_DI_Eligibility.htm), is a partial wage-replacement insurance plan for California workers, funded through employee payroll deductions. SDI has two programs that cover employees: Disability Insurance, and Paid Family Leave (PFL) (http://www.edd.ca.gov/Disability/FAQ_PFL_Eligibility.htm). The Disability Insurance program provides short-term benefits to eligible workers who suffer a loss of wages when they are unable to work due to a non work-related illness or injury, or due to pregnancy or childbirth. The Paid Family Leave program was established for workers who suffer a loss of wages when they need to take time off from work to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new minor child.
- **PFL, the Paid Family Leave Insurance Program** enacted in 2002 and administered by the California Employment Development Department (http://www.edd.ca.gov/Disability/FAQs_for_Paid_Family_Leave.htm), provides up to six weeks of paid leave benefits in a 12-month period, after a seven day waiting period. Employees covered by California's State Disability Insurance (SDI) are also covered by PFL, regardless of the number of employees in the business. The PFL insurance program, also known as **the Family Temporary Disability Insurance Program (FTDIP)**, covers individuals who take time off work to care for a seriously ill child, spouse, parent, or registered domestic partner, or to bond with a new minor child (within the first year after birth, adoption or foster care placement). Effective July 1, 2014, FTDIP also applies to individuals who take time off work to care for parents-in-law, grandchildren, grandparents and siblings. An employer may require that an employee use up to two weeks of accrued vacation before paid family leave begins. The employee must file a paid family leave claim

form to collect benefits. PFL insurance benefits are determined based on the earnings shown in an employee's base period (approximately 5 to 18 months before the start of a PFL claim) and not based on the employee's work hours or work period. Based on Assembly Bill No. 908 (AB 908), signed by California Governor Jerry Brown on April 11, 2016, effective January 1, 2017 the PFL wage replacement rate will increase from 55 percent to 60 or 70 percent (depending on the worker's income). PFL can run concurrently with FMLA and CFRA but does not otherwise impact those laws. PFL does not provide job protection, but rather provides partial wage replacement when an employee cannot work due to the need to care for a family member or bond with a new child. The PFL law requires that employers post a notice and provide employees with a brochure on the program.

- **FSPA, the Family-School Partnership Act**, Cal. Labor Code § 230.8 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=00001-01000&file=200-244>), allows parents the right to take protected leave from work to participate in their children's school or child care activities. The law, enacted in 1998, applies to employers that employ 25 or more employees working at the same location. Employees of such employers who are the parents, guardians, or grandparents having custody of one or more children enrolled in a California public or private school kindergarten, in grades 1 through 12 or in a licensed child day care facility, may take up to 40 hours off work each year (not to exceed eight hours in any one calendar month) to participate in activities of the school or licensed child day care facility of any of their children. The employee must provide reasonable notice to the employer of the planned absence, and the employer may require documentation from the school or day care facility as proof that the employee participated in the activities. The employer may require the employee to use accrued paid leave or to take unpaid time off during the FSPA leave. Effective January 1, 2016, California Senate Bill 579 amends the FSPA to also allow employees to take job-protected time off to find, enroll or reenroll their children in a school or with a licensed child care provider.
- **California "Kin Care" Statute**, Cal. Labor Code § 233, provides that "[a]ny employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, to attend to an illness of a child, parent, spouse, or domestic partner of the employee." Effective January 1, 2016, California Senate Bill 579 amends the "kin care" statute to also allow the use of sick leave for the any of the purposes specified in the Paid Sick Leave law (Labor Code section 245 et seq. – see "California Paid Sick Leave," below) and for "family members" as more broadly defined in that law, including leave for the illness or preventative care for a child, parent, spouse, registered domestic partner, grandparent, grandchild or sibling.
- **Crime Victim Leave**, Cal. Labor Code § 230(b) (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=00001-01000&file=200-244>), is authorized in California for any employee who has been the victim of a crime, or whose family member (spouse, child, sibling, parent, or registered domestic partner) has been the victim of a crime. Crime victim leave may be taken for the purpose of attending criminal proceedings.
- **Domestic Violence Leave**, Cal. Labor Code §§ 230(c), 230.1 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=00001-01000&file=200-244>), is authorized in California for any employee (of an employer of any size) related to domestic violence, sexual assault or *stalking*. Leave is allowed to provide for the employee's own safety or their child's health, safety or welfare, including time off for medical treatment, psychological counseling or other domestic or sexual assault victims' services, safety planning including relocation, or legal proceedings. Effective Jan. 1, 2014, the effective date of Senate Bill 400 (http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB400), the law's anti-retaliation provisions extend to employees who are known or suspected victims of domestic violence, sexual assault and *stalking*, and an employer is required to engage in an interactive process to provide reasonable safety accommodations to victims of domestic violence, sexual assault, and stalking. Effective in 2014, Labor Code § 230.1 also prohibits employers of 25 or more employees from retaliating against such employees who take leave for specified purposes, including seeking

medical attention, obtaining crisis services, obtaining psychological counseling, or participating in safety planning related to domestic violence, sexual assault or stalking.

- **Jury Duty Leave**, Cal. Labor Code § 230(a), is authorized in California for any employee taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is required to serve. Employers may not discharge or in any manner discriminate against an employee using such leave.
- **Voting Leave**, Elections Code § 14000, is required if a voter does not have sufficient time to vote outside of working hours. The voter may take off time to vote at the beginning or the end of the work shift, whichever provides the most free time to vote. The employee may take off no more than two hours without loss of pay, providing he or she has given at least two working days' notice that time off is desired.
- **Bone Marrow / Organ Donation Leave**, Cal. Labor Code § 1510, is authorized in California for employees who provide written notice of a medical necessity for the donation of bone marrow or of an organ. The law, as amended by 2011 Senate Bill 272 (http://ct2k2.capitoltrack.com/Bills/sen/sb_0251-0300/sb_272_bill_20110801_chaptered.html), requires employers of 15 or more employees to grant up to five days' paid leave for bone marrow donation and up to 30 days' paid leave for organ donation in any one-year period, measured in business days rather than calendar days. The employer may require the employee to use up to five days of PTO for bone marrow leave and up to two weeks of PTO for organ donation leave. The 12-month period for measuring the entitlement is a rolling-forward year based on the date the employee's leave begins. The organ and bone marrow donation leave entitlement is separate from, and in addition to, employee leave entitlements under CFRA.
- **San Francisco Paid Sick Leave Ordinance**, Chapter 12W of the San Francisco Administrative Code (<http://sfgsa.org/modules/ShowDocument.aspx?documentid=1611>), effective February 5, 2007, requires all employers to provide paid sick leave to each employee (including temporary and part-time employees) who performs work in San Francisco. The ordinance requires San Francisco employees to accrue one hour of paid sick leave for every 30 hours worked. There is a cap of 40 hours of accrued paid sick leave for employers of fewer than 10 employees and a cap of 72 hours of accrued sick leave for larger employers. Under the ordinance, employees are entitled to paid sick leave for their own medical care and also to aid or care for a family member or designated person (to be selected annually by an employee who has no spouse or registered domestic partner) when they are ill, injured, or receiving medical care, treatment, or diagnosis.
- **San Francisco Family Friendly Workplace Ordinance** (<http://sfgsa.org/modules/ShowDocument.aspx?documentid=7530> and <http://sfgsa.org/modules/showdocument.aspx?documentid=11033>) applies to employers with 20 or more employees and takes effect on January 1, 2014. The ordinance is a "right to request" law, allowing eligible employees who are caregivers, and who have been with the employer for six months or more and work 8 or more hours per day, the right to ask for flexible or predictable work arrangements and schedules such as part-time schedules, telecommuting or job sharing. Covered employers must meet with the employee within 21 days of a request and issue a decision on the request within 21 days following the meeting. The employer may deny the request for certain bona fide reasons such as loss or productivity and costs/impacts of additional hiring, training or job transfers.
- **Leave for Emergency Rescue Personnel and Reserve Peace Officers** (Cal. Labor Code § 230.4) is authorized effective Jan. 1, 2014 based on amendments to the statute enacted in the 2013 legislative session (Assembly Bill 11). The law mandates that employers of 50 or more employees provide temporary leaves of absence of up to 14 days per calendar year for volunteer firefighters, reserve peace officers, and emergency rescue personnel for the purpose of engaging in fire, law enforcement or emergency rescue training. (The prior legislation applied only to volunteer firefighters and did not

cover emergency rescue training.) Employers are prohibited from discriminating or retaliating against employees who take time off for these purposes.

- **California Paid Sick Leave**, AB 1522, Cal. Labor Code §§ 245-249 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=00001-01000&file=245-249>), effective July 1, 2015 and known as the “Healthy Workplaces, Healthy Families Act of 2014, allows an employee of any California employer to accrue paid sick leave if the employee works 30 or more days in California. Certain employees covered by collective bargaining agreements are not eligible. Eligible employees accrue paid sick leave at the rate of one hour (at the employee’s base pay rate) for every 30 hours worked. The employer may limit paid sick leave to three days (24 hours) in a 12-month period. Accrual carries over to the following year, but may be capped at six days or 48 hours. The paid sick leave may be used to care for the employee or sick family members (parents, children, foster and step-children, grandparents, siblings, domestic partners, and others). Existing PTO and sick leave plans can satisfy the requirements of this statute if they are at least as generous. The employee’s sick leave balance must appear on the wage statement, per Labor Code § 226. The law does not require payout of sick leave on termination. A new workplace poster will be required.
- **Temporary Military Leave and/or Reserve Duty** (Military and Veterans Code §§ 394, 394.5) requires an employer to grant temporary leave to any employee who is a member of the reserve corps of the armed forces of the United States, the National Guard or the National Militia while engaged in military duty ordered for purposes of military training, drills, encampment, naval cruises, special duty or like activity.
- **Literacy Assistance** (Labor Code § 1041, et seq.) requires employers with 25 or more employees to reasonably accommodate and assist any employee who reveals a literacy problem and requests employer assistance in either enrolling in a literacy program or in arranging visits of an instructor to the job site, provided such accommodation does not pose an undue hardship on the employer. In addition, the employer must make reasonable efforts to safeguard the employee’s privacy with regard to a literacy problem. An employee who satisfactorily performs his or her duties may not be discharged for disclosing a literacy problem.

