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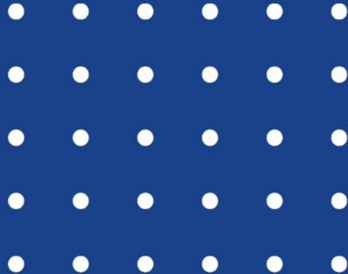
Oregon Employment Law



COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Oregon employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

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This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

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ACKNOWLEDGEMENTS

Erin M. Reid-Eriksen, Susie Papreck Wine, and Deanne Meyer would like to gratefully acknowledge the contributions of the attorneys who make this publication possible:

- Geetika Antani;
- Vincent Bates;
- Sebastian Chilco;
- Brittney Gibson;
- Maureen H. Lavery;
- Christine McDaniel Novak;
- Lilanthi Ravishankar;
- Rachel Simek;
- Mike Skidgel;
- Hannah Stilley; and
- Christine Sellers Sullivan.

Additional research and editing assistance was also rendered by Barb Olson.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

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[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

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3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Oregon, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. Oregon's state website notes that: "A worker providing services for pay is generally considered an employee by Oregon regulatory agencies—unless that worker meets the requirements for an independent contractor."[5] The state agencies responsible for the administration of state income tax laws, unemployment, and construction and landscape contractors regulation have agreed, by statute, "to cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600 [Oregon's independent contractor statute]."[6]

For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1). Oregon has also published its own table summarizing the criteria used by various state agencies in distinguishing between employees and independent contractors, and provides extensive guidance on this subject on its website.[7]

The Oregon Bureau of Labor and Industries (BOLI) has entered into an agreement with the U.S. Department of Labor (DOL), Wage and Hour Division to work cooperatively through information sharing,

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[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] *See* https://www.oregon.gov/ic/Pages/laws.aspx (access to Oregon's independent contractor laws).

[6] OR. REV. STAT. § 670.605. While the Department of Consumer and Business Services, which oversees workers' compensation, is included in the statute and implementing regulations as one of the agencies participating in the initiative to jointly define "independent contractor" under Oregon Revised Statute section 670.600, it does not appear that the Department of Consumer and Business Services is a participating agency. OR. ADMIN. R. 436-170-0002. Further, Oregon's state website specifically states that different criteria are used by the Department of Consumer and Business Services. *See Oregon's Independent Contractor Laws*, *available at* https://www.oregon.gov/ic/Pages/laws.aspx; *Employee or Independent Contractor?*, *available at* http://www.oregon.gov/ic/independent/Pages/EE-IC.aspx.

[7] *See State Agency Criteria for Independent Contractors*, *available at* https://www.oregon.gov/ic/Documents/State%20Agency%20Criteria%20TABLE.pdf (chart). Oregon has published several pages with information on independent contractor classification, including frequently asked questions and considerations for specific industries. *See* http://www.oregon.gov/ic/independent/Pages/default.aspx.

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joint enforcement efforts, and coordinated outreach and education efforts to reduce instances of misclassification of employees as independent contractors.[8]

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Fair Employment Practice Laws	BOLI, Civil Rights Division	Right to control test. For a worker to be classified as an independent contractor, the following four factors are weighed: 1. direct evidence of the right to or the exercise of control; 2. the method of payment; 3. the furnishing of equipment; and 4. the right to fire.[9] No single factor is determinative.[10]
Income Taxes	Oregon Department of Revenue	Statutory right to control test / modified ABC test, as codified at Oregon Revised Statute section 670.600.[11]

[8] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails.

[9] *Cantua v. Craeger*, 7 P.3d 693, 700 (Or. Ct. App. 2000) (setting forth the factors of the right to control test); *see also Technical Assistance for Employers: Independent Contractors*, *available at* http://www.oregon.gov/boli/TA/pages/t_faq_independent_contractors_11-2010.aspx.

[10] *See State Agency Criteria for Independent Contractors*, *available at* https://www.oregon.gov/ic/Documents/State%20Agency%20Criteria%20TABLE.pdf (chart).

[11] The statutory test under Oregon Revised Statute section 670.600is also used by the Oregon Employment Department (unemployment insurance), Construction Contractors Board, and Landscape Contractors Board. The agencies that apply section 670.600use the following definitions, as set forth in regulations, when interpreting and applying the direction and control test:

- *Means* are resources used or needed in performing services. To be free from direction and control over the means of providing services, an independent contractor must determine which resources to use and how to use them to perform the work. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.
- *Manner* is the method by which services are performed. To be free from direction and control over the manner of providing services, an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.
- *Free from direction and control* means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

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Table 1. State Tests for Classifying Workers		
		For a worker to be properly classified as an independent contractor, these four statutory requirements must all be met. The worker must be: 1. free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired result; 2. customarily engaged in an independently established business; 3. licensed under Oregon Revised Statute sections 671 or 701 (applicable to architect, landscape contractors, construction contractors boards), if a license is required for the service; and 4. responsible for obtaining licenses or certificates necessary to provide the service.[12] For a person to be "customarily engaged in an independently established business,"[13] three of the following five criteria must be met and the person must: 1. maintain a business location that is: a. separate from the business or work location of the service recipient; or b. in a portion of their own residence that is used primarily for business; 2. bear the risk of loss, shown by factors such as: a. entering into fixed price contracts; b. being required to correct defective work; c. warranting the services provided; or d. negotiating indemnification agreements or purchasing liability

OR. ADMIN. R. 471-031-0181(2)(b)-(3).

[12] OR. REV. STAT. § 670.600(2); *see also State Agency Criteria for Independent Contractors*, *available at* https://www.oregon.gov/ic/Documents/State%20Agency%20Criteria%20TABLE.pdf (chart).

[13] This section does not apply if the person files a Schedule F as part of an income tax return and the person provides farm labor or farm services that are reportable on Schedule C of an income tax return. OR. REV. STAT. § 670.600(4).

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Table 1. State Tests for Classifying Workers		
		insurance, performance bonds, or errors and omissions insurance; 3. provide contracted services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services; 4. make a significant investment in the business through means such as: a. purchasing tools or equipment necessary to provide the services; b. paying for the premises or facilities where the services are provided; or c. paying for licenses, certificates or specialized training required to provide the services; or 5. have the authority to hire and fire other persons to provide assistance in performing the services.[14]
Unemployment Insurance	Oregon Employment Department	See Income Tax test described above.[15]
Wage & Hour Laws	BOLI, Wage and Hour Division	Economic realities test.[16] For a worker to be classified as an independent contractor, the following factors are weighed: 1. the degree of control exercised by the alleged employer; 2. the extent of the relative investments of the worker and alleged employer; 3. the degree to which the worker's opportunity for profit and loss is determined by the alleged employer;

[14] OR. REV. STAT. § 670.600(3); *see also Oregon's Independent Contractor Laws*, *available at* https://www.oregon.gov/ic/Pages/laws.aspx.

[15] OR. REV. STAT. § 657.040.

[16] The Oregon Court of Appeals held that the economic realities test is the proper test to use in determining whether an individual was an independent contractor under state minimum wage provisions after undertaking an exhaustive analysis of various tests used by courts to determine status. *Cejas Commercial Interiors, Inc. v. Torres-Lizama*, 316 P.3d 389, 392-400 (Or. Ct. App. 2013). Moreover, Oregon has published guidance on its website specifically stating: "For purposes of wage and hour law, BOLI uses the "economic reality test" to determine whether there is an employment relationship." Oregon Bureau of Labor and Indus., *Technical Assistance for Employers: Independent Contractors*, *available at* http://www.oregon.gov/boli/TA/pages/t_faq_independent_contractors_11-2010.aspx.

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Table 1. State Tests for Classifying Workers		
		4. the skill and initiative required in performing the job; 5. the permanency of the relationship; and 6. the extent to which the work performed by the worker is an integral part of the alleged employer's business. No single factor is determinative.[17]
Workers' Compensation	Oregon Department of Consumer and Business Services, Workers' Compensation Division	Right to control test, as well as "nature of the work" test where the right to control test proves inconclusive.[18] The following factors are weighed under the right to control test: 1. direct evidence of the right to or the exercise of control; 2. the method of payment; 3. the furnishing of equipment; and 4. the right to fire.[19] As a supplement to the aforementioned test, the following factors regarding the nature of the work may be considered: 1. How much is the work a regular part of the hiring entity's business? 2. How skilled is it? 3. Is the work continuous or intermittent? 4. Is the duration sufficient to amount to the hiring of continuous services as distinguished from contracting for completion of a particular job?

[17] *See State Agency Criteria for Independent Contractors*, *available at* https://www.oregon.gov/ic/Documents/State%20Agency%20Criteria%20TABLE.pdf (chart).

[18] In determining the status of an individual under the workers' compensation insurance law, the Oregon Court of Appeals held that the "nature of the work test" must be applied in addition to the control test if there is some evidence of right to control. *SAIF Corp. v. Department of Consumer & Bus. Servs. Ins. Div.*, 284 P.3d 487, 488-93 (Or. Ct. App. 2012); *see also State Agency Criteria for Independent Contractors*, *available at* https://www.oregon.gov/ic/Documents/State%20Agency%20Criteria%20TABLE.pdf (chart).

[19] *See SAIF Corp.*, 284 P.3d at 490; *see also State Agency Criteria for Independent Contractors*, *available at* https://www.oregon.gov/ic/Documents/State%20Agency%20Criteria%20TABLE.pdf (chart); Oregon Workers' Comp. Div., *Independent Contractors: Overview*, *available at* http://wcd.oregon.gov/employer/indcon/Pages/index.aspx.

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Table 1. State Tests for Classifying Workers		
		5. To what extent may it be expected to carry its own accident burden?[20]
Workplace Safety: Oregon Occupational Safety and Health Act	Oregon Occupational Safety and Health Administration ("OR-OSHA")	Statutory right to control test. The term *employee* is defined by statute as "[a]ny individual, including a minor whether lawfully or unlawfully employed, who engages to furnish services for remuneration, financial or otherwise, *subject to the direction and control of an employer*."[21] The definition also includes public officials and any individual who is provided with workers' compensation coverage.[22]

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[23]

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[20] *See SAIF Corp.*, 284 P.3d at 490; *see also State Agency Criteria for Independent Contractors*, *available at* https://www.oregon.gov/ic/Documents/State%20Agency%20Criteria%20TABLE.pdf (chart).

[21] OR. REV. STAT. § 654.005(4) (emphasis added).

[22] OR. REV. STAT. § 654.005(4).

[23] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

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Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[24] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[25]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

Oregon does not have a generally applicable employment eligibility or verification statute. Therefore, private-sector employers in Oregon should follow federal law requirements regarding employment eligibility and verification.

However, construction labor contractors, farm labor contractors, and property service contractors[26] in Oregon are prohibited from knowingly employing noncitizens not legally present or legally employable in the United States.[27] These contractors must make reasonably diligent efforts to ascertain workers' employment eligibility.[28] Reasonably diligent efforts include, but are not limited to:

- making clear to all applicants, hires, and workers that they cannot work for the contractor unless they are legally present and legally employable in the United States;
- taking one of the following actions:
  - requiring that every new hire produce documentary proof that the new hire is legally present and legally employable in the United States before they begin work; or
  - asking all applicants for employment if they are U.S. citizens and requiring that any applicant who has indicated that they are not a U.S. citizen, and whom the contractor intends to hire, produce such proof.
- becoming familiar with pertinent U.S. customs regulations and procedures, types of required documentary proof of legal presence and employment status in the United States, as well as other types of documentary identification of noncitizens issued by U.S. customs officials; and
- making additional efforts to better discourage and detect the presence of aliens noncitizens not legally present and/or employable in the United States in the contractor's workforce, if

[24] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[25] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582(2011).

[26] OR. REV. STAT. § 658.405(5) (definitions).

[27] OR. REV. STAT. § 658.440(3)(d) as amended by S.B. 1560 (Or. 2022); OR. ADMIN. R. 839-015-0530.

[28] OR. ADMIN. R. 839-015-0530(2).

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the contractor knows or should know that the contractor's past efforts to accomplish that objective have been unsuccessful.[29]

Immigration Agency Inspection Notification. If an employer receives notice that a federal agency will inspect the documentation used by the employer to verify the identity and employment eligibility of its employees, the employer must notify its employees of the upcoming inspection. To do so, the employer must:

- post notice in a conspicuous and accessible location, in English and in the language the employer typically uses to communicate with the employees; and
- make reasonable attempts to individually distribute notice to employees in the employee's preferred language.

The notice must include:

- a copy of the federal agency's inspection notice;
- the date and scope of the inspection;
- the employer's obligations regarding providing information to the federal agency; and
- a telephone number, prescribed by the Bureau of Labor and Industries, for a hotline operated by an organization that provides information and advocacy related to immigrant and refugee workers' rights.[30]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[31] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.

[29] OR. ADMIN. R. 839-015-0530(2).

[30] OR. REV. STAT. § 652.752.

[31] EEOC, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42U.S.C. § 2000e *et seq.* (Apr. 25, 2012), available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

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2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Under Oregon law, an employer may access criminal record information, including arrest records,[32] for employment purposes only after the employer or applicant has been advised that the information might be sought.[33] Employers may only access arrest records that are less than one year old and that have not resulted in acquittal or dismissal.[34]

Oregon Ban-the-Box Law. Under Oregon's "ban-the-box" law, it is an unlawful practice for an employer to exclude an applicant from an initial interview solely because of a past criminal conviction.[35] Thus, an employer may not require an applicant to:

- disclose on an employment application a criminal conviction;
- disclose, prior to an initial interview, a criminal conviction; or
- if no interview is conducted, disclose, prior to making a conditional offer of employment, a criminal conviction.[36]

However, this law does not prevent an employer from considering an applicant's conviction history when making a hiring decision.

Additionally, these requirements do not apply where:

- federal, state, or local law requires an employer to consider an applicant's criminal history;
- the employer is a law enforcement agency;
- the employer is in the criminal justice system; or

[32] OR. REV. STAT. § 181A.010(2) (definition of *criminal offender information* includes arrest records).

[33] OR. REV. STAT. § 181A.230(2). The employer must also notify the state police at the time of the request as to how and when the individual was advised that information would be sought. OR. REV. STAT. § 181A.230(2).

[34] OR. REV. STAT. § 181A.245(1).

[35] OR. REV. STAT. § 659A.360(1).

[36] OR. REV. STAT. § 659A.360(2).

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- the employer is seeking a nonemployee volunteer.[37]

1.3(a)(iii) *Local Guidelines on Employer's Use of Arrest Records*

Portland Ban-the-Box Ordinance. The City of Portland has a local law prohibiting employers of six or more employees from excluding a job applicant from consideration solely because of the applicant's criminal history, including the applicant's arrest records and criminal convictions.[38]

An employer may consider an applicant's criminal history in the hiring process only after making a conditional offer of employment.[39] A conditional offer of employment means any offer for a position that is conditioned solely on: (1) the results of an employer's inquiry into or gathering of information about arrest or conviction history; or (2) some other contingency expressly communicated to the applicant at the time of the offer.[40]

An employer may rescind a conditional offer of employment based upon an applicant's criminal history if the employer determines in good faith after an individualized assessment that a specific offense or conduct is job related for the position in question and is consistent with business necessity.[41]

The individualized assessment must consider:

- the nature and gravity of the criminal offense;
- the time that has elapsed since the offense took place; and
- the nature of the employment held or sought.[42]

Under Portland's ordinance, a covered employer may not, at any time, consider:

- convictions that have been judicially voided or expunged;
- arrests not leading to conviction, except where the crime is unresolved or where charges are pending against an applicant; and
- charges that have been resolved through the completion of a diversion or deferral of judgment program for offenses not involving physical harm or attempted physical harm to a person.[43]

If an employer decides to rescind the conditional offer of employment, the employer must notify the applicant in writing of its decision and identify the relevant criminal convictions on which the decision is based.[44]

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[37] OR. REV. STAT. § 659A.360(3)-(4).

[38] PORTLAND, OR., CITY CODE §§ 23.10.020(B), (C); 23.10.030(A).

[39] PORTLAND, OR., CITY CODE § 23.10.030(B).

[40] PORTLAND, OR., CITY CODE § 23.10.020(D).

[41] PORTLAND, OR., CITY CODE § 23.10.030(C)-(D).

[42] PORTLAND, OR., CITY CODE § 23.10.030(D).

[43] PORTLAND, OR., CITY CODE § 23.10.030(E).

[44] PORTLAND, OR., CITY CODE § 23.10.030(F).

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Portland's prohibition against criminal history inquiries does not apply to certain categories of employers and job positions.[45]

1.3(a)(iv) *State Guidelines on Employer's Use of Conviction Records*

As discussed in **1.3(a)(ii)**, under Oregon law, an employer may access criminal record information, including conviction records,[46] for employment purposes only after the employer or applicant has been advised that the information might be sought.[47] Oregon's ban-the-box law, discussed in **1.3(a)(ii)**, also affects an employer's request for conviction records.

1.3(a)(v) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

There is no law in Oregon that generally restricts employers from using sealed or expunged criminal records, except for juvenile records.

Juvenile Records. An employer may not inquire into expunged juvenile records, including arrest records, of a prospective employee. It is an unlawful labor practice under Oregon state law for an employer to refuse to hire or to bar or discharge from employment an individual due to an expunged juvenile record unless based on a *bona fide* occupational qualification; nor may an employer otherwise discriminate against an individual on the basis of an expunged juvenile record.[48]

1.3(a)(vi) *State and Local Enforcement, Remedies & Penalties*

Oregon Ban-the-Box Law. Oregon's ban-the-box law is enforced by the Commissioner of the Bureau of Labor and Industries ("Bureau").[49] If the Bureau finds substantial evidence that an employer has violated the law, the Bureau may attempt to settle the matter or conduct an administrative hearing where monetary damages may be awarded to the aggrieved applicant. If the Bureau files its own complaint on behalf of the aggrieved applicant and an unlawful practice is found, the Bureau may impose civil penalties of up to $1,000 per violation.[50]

Portland Ban-the-Box Ordinance. Portland's ban-the-box ordinance is enforced by the Oregon Bureau of Labor and Industries (BOLI).[51]

Juvenile Records. An employer that commits an unlawful labor practice by accessing and using expunged juvenile record information in a prohibited way commits a misdemeanor.[52]

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[45] PORTLAND, OR., CITY CODE § 23.10.040.

[46] OR. REV. STAT. § 181A.010(2) (definition of *criminal offender information* includes the disposition of criminal charges, including sentencing, confinement, parole, and release).

[47] OR. REV. STAT. § 181A.230(2).

[48] OR. REV. STAT. § 659A.030.

[49] OR. REV. STAT. § 659A.362.

[50] OR. REV. STAT. §§ 659A.820(2), 659A.825, 659A.855(1).

[51] PORTLAND, OR., CITY CODE § 23.10.060; *see also* Oregon Civil Rights Div., *Enforcing Civil Rights Laws*, *available at* http://www.oregon.gov/boli/CRD/Pages/C_Crprotoc.aspx.

[52] OR. REV. STAT. § 659A.990.

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1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[53] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[54] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[55]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Most employers in Oregon may not obtain or use information contained in the credit history of an applicant or an employee for the purpose of making employment decisions.[56] *Credit history* means any

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[53] 15 U.S.C. §§ 1681 *et seq*.

[54] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

[55] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

[56] OR. REV. STAT. § 659A.320(1); OR. ADMIN. R. 839-005-0070(1); *see also Technical Assistance for Employers: Credit History*, *available at* https://www.oregon.gov/boli/TA/pages/t_faq_credit_history_july_2010.aspx.

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written or other communication of information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, or credit capacity.[57]

Adverse Action / Antiretaliation Provisions. It is an unlawful employment practice for an employer to discriminate or retaliate against an applicant or an employee with regard to promotion, compensation, or the terms, conditions, or privileges of employment based on information in the applicant or employee's credit history.[58] It is also an unlawful employment practice for an employer to discharge, expel, or otherwise discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding in connection with acts prohibited by the law.[59]

Exceptions. There are narrow exceptions to the Oregon prohibition on credit checks for the following entities:

- federally insured banks and credit unions;
- businesses required by law to consider employee credit history for employment purposes; and
- police and other public employers hiring for law enforcement and airport security.[60]

There is also an exception allowing any employer in Oregon to obtain or use the credit history of an applicant or employee if it is "substantially job-related." Prior to obtaining the credit history, the employer must disclose its reasons for the use of the information to the employee or applicant in writing. Credit history information is *substantially job-related* if:

- an essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit;
- financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or
- the position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.[61]

1.3(b)(iii) *State Enforcement, Remedies & Penalties*

The restrictions on obtaining credit history are enforced by the Oregon Civil Rights Division of the Bureau of Labor and Industries.[62] An employee or applicant may file a complaint for violations of the credit history provisions, and may bring a civil action to recover relief.[63]

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[57] OR. REV. STAT. § 659A.320(4).

[58] OR. REV. STAT. § 659A.320(1).

[59] OR. ADMIN. R. 839-005-0085.

[60] OR. REV. STAT. § 659A.320(2); OR. ADMIN. R. 839-005-0070(3), 839-005-0075.

[61] OR. ADMIN. R. 839-005-0070(3), 839-005-0080.

[62] OR. REV. STAT. §§ 659A.320(3), 659A.820; OR. ADMIN. R. 839-005-0085.

[63] OR. REV. STAT. § 659A.320(3); OR. ADMIN. R. 839-005-0085.

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1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Oregon law restricts an employer's access to an applicant's or employee's social media accounts.[64] *Social media* is defined as "an electronic medium that allows users to create, share and view user-generated content, including, but not limited to, uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet website profiles or locations."[65] A personal social media account is one used by an applicant or employee exclusively for personal uses that are unrelated to any business purposes and that is not provided by or paid for by the employer or prospective employer.[66] An employer cannot:

- require or request an employee or applicant to disclose or provide access to their personal social media account through the individual's username and password, password, or other means of authentication;
- require an employee or applicant to authorize the employer to advertise on the individual's personal social media account;
- compel an employee or applicant to add the employer or its agent to the individual's social media website contacts list;
- compel an employee or applicant to access a personal social media account in the employer's presence in a manner enabling the employer to view the account's contents which are only

64 OR. REV. STAT. § 659A.330; OR. ADMIN. R. 839-005-0400.

65 OR. REV. STAT. § 659A.330(8)(b).

66 OR. REV. STAT. § 659A.330(8)(a).

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visible when the account holder accesses the account using their username and password, password, or other means of authentication;

- require or request that an employee or applicant establish or maintain a person social media account; and
- threaten to or actually discharge, discipline, or otherwise penalize an employee, or fail or refuse to hire an applicant, because they refused to take the actions above.[67]

Exceptions. Employers are not prohibited, however, from accessing information about an employee or applicant that is publicly available through an online account.[68] Moreover, an employer may not be held liable for failing to request or require an employee or applicant to disclose information specified above. The law does not apply to employers that are law enforcement units.[69]

Two exceptions in the law relate only to current employees:

1. **Investigation Exception.** Notwithstanding the above prohibitions, an employer is permitted to conduct certain investigations with respect to an employee's social media accounts. An employer may conduct an investigation to ensure compliance with laws, regulations, or prohibitions against work-related employee misconduct.[70] In addition, an employer may conduct a permitted investigation that requires an employee to share content reported to the employer that is necessary for the employer to make a factual determination about the matter.[71] Such investigations must be based on the employer receiving specific information about the employee's personal online account or service activity.[72] However, the employer must conduct such investigations without requiring an employee to provide a username and password, password, or other means of authentication providing access to the employee's personal social media account.[73]
2. **Rules for Employer-Provided Devices & Online Accounts.** Separate rules apply to accounts accessed via an employer-provided device or online account. An employer can require an employee to disclose any username and password, password, or other means of accessing an account provided by the employer or to be used on the employer's behalf.[74] If an employer inadvertently receives an employee's personal social media account username and password, password, or other means of authentication through the use of an electronic device or program that monitors usage of the employer's network or employer-provided devices, the employer is not liable for having the information. However, the employer cannot use the information to access the employee's personal social media account.[75]

[67] OR. REV. STAT. § 659A.330(1).

[68] OR. REV. STAT. § 659A.330(5).

[69] OR. REV. STAT. § 659A.330(3), (7).

[70] OR. REV. STAT. § 659A.330(4).

[71] OR. REV. STAT. § 659A.330(4).

[72] OR. REV. STAT. § 659A.330(4).

[73] OR. REV. STAT. § 659A.330(4).

[74] OR. REV. STAT. § 659A.330(2).

[75] OR. REV. STAT. § 659A.330(6).

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1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[76] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Oregon employers cannot require an applicant or employee to take a polygraph test or any other form of "a so-called lie detector test" as a condition for employment or continued employment.[77]

In addition, under the state's fair employment practices statute, it is an unlawful employment practice for employers to directly or indirectly subject an applicant or employee to a polygraph examination or psychological stress test.[78]

1.3(d)(iii) *State Enforcement, Remedies & Penalties*

Under Oregon's fair employment practices statute, an aggrieved individual can file a complaint with the Commissioner of the Bureau of Labor and Industries within one or five years of the alleged violation,

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[76] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

[77] OR. REV. STAT. § 659.840(1).

[78] OR. REV. STAT. § 659A.300. *Polygraph examination* or *psychological stress test* means a test to detect deception or to verify the truth of statements through the use of instrumentation or mechanical devices. OR. REV. STAT. § 659A.300.

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depending on the type of violation. There is also a private right of action under the law.[79] Violations of Oregon's law prohibiting polygraph examination are Class A misdemeanors.[80]

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[81] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[82] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Oregon law contains no express provisions regulating preemployment drug or alcohol screening by private employers. However, while Oregon law does not specifically address drug or alcohol testing for applicants or employees, the state's website recommends that employers have a clear policy regarding testing, articulate the standards for testing, and apply the policy regarding testing consistently.[83]

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *Salary History Inquiry Restrictions*

It is an unlawful employment practice under the state antidiscrimination statute (see **3.11(a)(ii)**) for an employer to:

- seek the salary history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee before the employer makes an offer of employment to the applicant that includes an amount of compensation;
- screen job applicants based on current or past compensation; or

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[79] OR. REV. STAT. §§ 659A.820, 659A.885.

[80] OR. REV. STAT. § 659.990(6).

[81] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[82] 41 U.S.C. §§ 8101 *et seq.*; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[83] *See Technical Assistance for Employers: Drug Testing of Employees*, available at https://www.oregon.gov/boli/TA/pages/t_faq_drugtesting.aspx.

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- determine compensation for a position based on an applicant's current or past compensation.[84]

The statute does not prevent an employer from considering a current employee's compensation during a transfer, move, or hire of the employee to a new position with the same employer.

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[85] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[86] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[87] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[88]

[84] OR. REV. STAT. §§ 652.220, 659A.357; OR. ADMIN. R. 839-008-0005.

[85] 26 U.S.C. § 36B.

[86] 42 U.S.C. § 18071.

[87] 29 U.S.C. § 218b.

[88] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[89] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[90]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[91] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[92] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[93]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature.

[89] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[90] 29 C.F.R. § 2590.606-1.

[91] 29 C.F.R. § 825.300(a).

[92] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[93] 29 C.F.R. § 825.300(a).

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[94] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[95]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[96]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[97]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

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[94] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[95] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[96] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[97] 29 C.F.R. § 531.59.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
Arbitration Agreements	Employers that wish to require employees to enter into an arbitration agreement must comply with pre-hire notice procedures in order for the arbitration agreement to be deemed enforceable. At least 72 hours prior to the start of employment, the employer must provide notice to the employee in a written employment offer that an arbitration agreement is required as a condition of employment, and must also provide the employee with the required arbitration agreement.[98]
Benefits & Leave Documents: Sick Time	Employers must provide written notice of the requirements of Oregon's Sick Time Law to each employee in accordance with rules adopted by the Commissioner of the Bureau of Labor and Industries.[99] Employers may comply with the requirement to provide the written notice by: • distributing the written notice to each employee personally, by regular mail or email, or by including it with a paycheck; • incorporating the written notice into a handbook or manual made available to employees, whether in a print or electronic format; or • posting the written notice in a conspicuous and accessible location in each workplace of the employer. The notice must be given in the language the employer typically uses to communicate. The notice must be given at the end of the first pay period for new employees.[100]
Benefits & Leave Documents: Family Leave and Medical Leave Insurance Program Notice	An employer must provide written notice to each employee of the duties and rights of an eligible employee under the Oregon Family Leave and Medical Leave Insurance program. The law does not specify when this notice must be given to employees; thus, this requirement is not specific to hiring. At a minimum, the notice must advise the employee of the following: • The right of an eligible employee to claim and receive family and medical leave insurance benefits; • The procedure for filing a claim for benefits; • That an eligible employee must provide notice to an employer before the employee commences leave, as required under the law, and a description of the penalties for failure to comply with the notice requirements;

[98] OR. REV. STAT. § 36.620.

[99] OR. REV. STAT. § 653.631.

[100] OR. ADMIN. R. 839-007-0050. The notice is available in English at https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_SickLeave.pdf and in Spanish at https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_SickLeave_Spanish.pdf.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
	• The right of an eligible employee to job protection and benefits continuation; • The right of an eligible employee to appeal a decision or determination made by the Director of the Employment Department; • That discrimination and retaliatory personnel actions against an employee for inquiring about the family and medical leave insurance program, giving notification of leave under the program, taking leave under the program or claiming family and medical leave insurance benefits are prohibited; • The right of an eligible employee to bring a civil action or to file a complaint for violation of the law; and, • That any health information related to family leave, medical leave or safe leave provided to an employer by an employee is confidential and may not be released without the permission of the employee, unless state or federal law or a court order permits or requires disclosure. This notice must be provided in the language the employer typically uses to communicate with the employee.[101]
Benefits & Leave Documents: Oregon Saves	The Oregon Retirement Savings Program (Oregon Saves or Program) began to be phased in beginning November 15, 2017[102] for employers with 100 or more employers. Oregon Saves requires employers that do not offer an employer-sponsored retirement plan for their employees to register for the state-run Program.[103] Other employers must certify an exemption from the Program.[104] At least 30 days before the Initial Enrollment Date, the *Facilitating Employer* will provide each of its

[101] OR. REV. STAT. § 657B.440; OR. ADMIN. R. 471-070-1300. This notice is available at https://paidleave.oregon.gov/employers/toolkits/.

[102] The requirements are phased in based on employer size. On or before the registration date, employers must register with the Program or file a certificate of exemption if it offers a qualified plan. The registration dates for employers are: (1) for those with 100 or more employees, November 15, 2017; (2) for those with 50 to 99, May 15, 2018; (3) for those with 20 to 49, December 15, 2018; (4) for those with 10 to 19, May 15, 2019; (5) for those with 5 to 9, November 15, 2019; (6) for those with 4 or fewer, January 15, 2021; (7) for those with 3-4 employees, March 1, 2023; (8) for those with 1-2 employees, July 31, 2023; and (9) for those that utilize a Professional Employer Organization or Leasing Agency, July 31, 2023. OR. ADMIN. R. 170-080-0015.

[103] OR. ADMIN. R. 170-080-0010 (definitions), 170-080-0055.

[104] An employer may file a Certificate of Exemption with the Program by certifying, through the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator, that the employer offers a qualified plan to some or all of its employees. A Certificate of Exemption is valid for three years from the date the employer files the certificate with the Program Administrator, so long as the employer continues to offer a qualified plan to some or all of its employees. A Certificate of Exemption may be renewed by following a process of recertification established by the Board. OR. ADMIN. R. 170-080-0025.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
	Employees with the informational materials that have been provided to the employer by the Oregon Retirement Savings Program Administrator. *Facilitating Employer* means an employer whose registration date has passed and who is not an exempt employer. For subsequently hired employees, within 30 days of hire, the Facilitating Employer must provide the informational materials provided by the *Program Administrator*. *Program Administrator* means a third-party administrator chosen by the Oregon Retirement Savings Board (Board) to assist in carrying out the requirements of the law. Facilitating Employers must provide informational materials either directly, or by supplying the employee with the internet location where the information may be found, along with Board -provided instructions about how to obtain the information if the employee does not have internet access.[105] Additionally, the Facilitating Employer must document that the informational materials were given to the employee. Documentation may consist of a notation in the Facilitating Employer's records identifying the employee and the date the materials were distributed. Facilitating Employers may choose to comply with the requirement to document the delivery of informational materials to Employees if the Program Administrator maintains such documentation on their behalf, either electronically or in any other medium allowable under applicable law. The Facilitating Employer may request that the employee acknowledge receipt of the informational materials, but may not request or require that the employee take any additional steps, including returning any forms to the Facilitating Employer.[106]
Fair Employment Practices Documents - Pregnancy	An employer with six or more employees must provide written notice informing employees of the employment protections under the pregnancy accommodation law, including the right to be free from discrimination because of pregnancy, childbirth and related medical conditions, and the right to reasonable accommodation, to: (1) a new employee at the time of hire; and (2) an employee who informs the

[105] OR. ADMIN. R. 170-080-0010, 170-080-0055. The informational materials and general information about the program are available from the Oregon Retirement Savings Board, Oregon Saves website, available at https://www.oregonsaves.com/.

[106] OR. ADMIN. R. 170-080-0055. Where the Facilitating Employer timely provides the Program Administrator with the contact information (*e.g.*, designated email address(es)) of Participating Employees, the Facilitating Employer may choose to satisfy its obligations to provide the informational materials to Participating Employees by allowing the Program Administrator to do so on its behalf. Delivery by the Program Administrator must be at such time and in such manner as is otherwise specified in this Rule. OR. ADMIN. R. 170-080-0055.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
	employer of the employee's pregnancy within 10 days after the employer receives the information.[107]
Fair Employment Practices Documents – Discrimination Policy Requirement	Every employer in the state of Oregon must adopt a written policy containing procedures and practices for the reduction and prevention of unlawful employment discrimination, including sexual assault. The Oregon Bureau of Labor and Industries (BOLI) will prepare and distribute model policies and procedures for employer use. At a minimum, the policy must include: (1) process for employees to report prohibited conduct; (2) the identity of the person designated by the employer to receive reports of prohibited conduct, including an individual designated as an alternate to receive such reports; (3) description of the applicable statute of limitations; (4) statement that an employer may not require or coerce an employee to enter into a nondisclosure or nondispargement agreement, and a description of the meaning of those terms; (5) an explanation that an employee claiming to be aggrieved by unlawful conduct may voluntarily request to enter into such an agreement, including a statement that explains that the employee has at least 7 days to revoke the agreement; and, (6) a statement that advises employers and employees to document any incidents involving unlawful employment discrimination or sexual assault. The employer must: make the policy available to employees within the workplace; provide a copy of the policy to each employee at the time of hire; provide a copy to each person the employer seeks to enter an agreement with in the language the employer typically uses to communicate with them, and require any individual who is designated by the employer to receive complaints to provide a copy of the policy to an employee at the time that the employee discloses information regarding prohibited discrimination or harassment.[108]
Noncompetition Agreements	Employers that wish to require employees to enter into a noncompetition agreement must comply with pre-hire notice procedures for the agreement to be deemed enforceable. At least two weeks prior to the start of employment, the employer must inform the

[107] Or. Rev. Stat. § 659A.146-148. The Bureau of Labor and Industries (BOLI) has developed a template(link is external) for this notice which employers may adapt. English template is available at: https://www.oregon.gov/boli/employers/Documents/NoticeTemplatePregnancyDiscrimination.docx; Spanish template is available at: https://www.oregon.gov/boli/employers/Documents/NoticeTemplatePregnancyDiscriminationSpanish.docx.

[108] OR. REV. STAT. § 659A.375 as amended by S.B. 1586 (Or. 2022). An employment discrimination policy template is available at: https://www.oregon.gov/boli/workers/Pages/sexual-harassment.aspx.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
	employee in a written employment offer that a noncompetition agreement is required as a condition of employment.[109]
Tax Documents	Employers should provide Form OR-W-4 to employees for Oregon withholding allowances. The Department of Revenue may require a withholding statement to be filed in order to instruct the employee's employer on the correct amount of withholding in most cases (exceptions apply for some agricultural employees). If the statement is not provided to the employer, the employer must withhold tax from the employee at the rate of eight percent..[110]
Wage & Hour Documents	No notice requirement located.
Warehouse Quota Notice	Effective January 1, 2025, employers must provide warehouse employees with written documentation summarizing any quota to which the employees are subject while completing their work. The documentation must include: • the number of tasks to be performed, materials to be produced or handled, within a defined time period; and • a description of the potential consequences, including adverse employment actions, that the employee may face for failure to meet the quota. The warehouse employer must provide the documentation in the language the employer regularly uses to communicate with the employee, and provide the documentation: • at the time of hire; • to existing employees within two business days of a change to their quota; and • to an employee when the employer takes an adverse employment action due to the employee's failure to meet the quota. An employer is defined as a person who directly or indirectly, including through the services of a third-party, temporary services or staffing agency or any other similar entity, employs or exercises control over the wages, hours or working conditions of a warehouse distribution center of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in Oregon. Employers subject to a collective bargaining agreement with performance metrics subject to the bargaining

[109] OR. REV. STAT. § 653.295.

[110] OR. REV. STAT. § 316.182; Oregon Dep't of Revenue, *W-4 Information for Employers*, *available at* https://www.oregon.gov/DOR/forms/FormsPubs/w-4-information_150-211-602.pdf.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
	agreement and that provides rights substantially equivalent to the rights established in this law are not covered.[111]

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[112] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[113]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must

[111] H.B. 4127.

[112] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[113] 42 U.S.C. § 653a.

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notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[114] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Oregon's new hire reporting law.[115]

Who Must Be Reported. Newly-hired or rehired employees who reside or work in the state and to whom the employer anticipates paying earnings. For purposes of the statute, *rehire* means to reemploy any individual who was laid off, separated, furloughed, granted an unpaid leave, or terminated for more than 60 days.

Effective January 1, 2024, newly engaged or reengaged independent contractors who reside in the state and to whom the employer anticipates paying earnings must be reported, as well. The term *independent contractor* applies to an individual who must file a federal form W-9 under the Internal Revenue Code and who is anticipated to be performing services for more than 20 days. For purposes of independent contractor reporting under the statute, *reengage* means to engage an independent contractor who previously performed services as an independent contractor for the employer but who has not performed services for the employer within the previous 60 days.

[114] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[115] OR. REV. STAT. § 25.790.

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Report Timeframe. Oregon employers must submit new hire information for employees no later than 20 days after their hiring date. Employers submitting magnetically or electronically must report new employees, if any, at least twice per month by transmissions not less than 12 days and no more than 16 days apart. An employer may submit a cumulative report for all employees hired or rehired during the previous reporting period.

Information Required. The information required to be reported includes the employee's name, address, and Social Security number. The report must also include the employer's name, address, and state and federal tax registration or identification numbers.

Form & Submission of Report. The information should be submitted via a federal Form W-4, the Oregon Employer New Hire Reporting Form, or a similar form developed by the employer. **Effective January 1, 2024**, a W-9 form may be used for independent contractors. Reports may be submitted by mail other means in accordance with rules adopted by the Department of Justice.

Location to Send Information.

Department of Justice
Division of Child Support
Employer New Hire Reporting Program
1495 Edgewater NW, Suite 120
Salem, OR 97304-9902
(503) 378-2868
(503) 378-2863 (fax)
(877) 877-7415 (fax)
https://employerportal.oregonchildsupport.gov/index.aspx?ReturnUrl=%2f

Multistate Employers. An employer that is a multistate employer must also report that they are a multistate employer and has designated to HHS that Oregon is the reporting state.

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

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Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[116] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Oregon law permits an employee and employer to enter into a noncompetition agreement at the time of initial employment or upon *bona fide* advancement during employment.[117] However, noncompete agreements will not be enforced unless they meet several significant statutory requirements. Under Oregon law, a noncompete agreement is voidable and may not be enforced unless all of the following requirements are met:

1. 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 the noncompete is a condition of employment or the noncompete is entered into upon a subsequent bona fide advancement of the employee;
2. the employee is an administrative, executive, or professional employee;118
3. the employer has a protectable interest, defined as access to a trade secret; access to competitively sensitive confidential business or professional information that would not otherwise qualify as a trade secret; or employed as on-air talent in broadcasting and subject to additional requirements;
4. the employee's compensation at termination exceeds the median family income for a four-person family as determined by the census bureau (this requirement does not apply to an individual employed as an on-air talent); and
5. the employer provides the employee with a signed, written copy of the terms of the noncompetition agreement within 30 days after the date of the termination of the employee's employment; and
6. the term of a noncompete entered into after January 1, 2016 does not exceed 18 months from termination (agreements entered into before that date may be for two years). Any portion of a noncompete term that is in excess of these lengths is voidable.[119]

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[116] 18 U.S.C. §§ 1832 *et seq.*

[117] OR. REV. STAT. § 653.295.

[118] *See* OR. REV. STAT. § 653.020(3).

[119] OR. REV. STAT. § 653.295(1), (2).

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The above requirements do not apply to: (1) bonus restriction agreements; or (2) covenants not to solicit the employer's employees or solicit or transact business with an employer's customers.[120] Further, the Oregon noncompete statute does not restrict an employer's right to protect trade secrets or proprietary information.

The statute also contains a savings provision that allows employers to keep a noncompete agreement in place for employees who are nonexempt or paid so low they would fail the above requirements by paying the employee during the period of time the employee is restrained from working the greater of: (1) compensation equal to at least 50% of the employee's annual gross base salary and commissions at the time of the employee's termination; or (2) 50% of the median family income for a four-person family as determined by the census bureau.[121]

For agreements entered into on or after January 1, 2022, an employee's compensation at termination must exceed $100,533, adjusted annually for inflation, to be enforceable. Further, the maximum term for a noncompete agreement will be 12 months.[122]

Oregon cases suggest that it is not enough for a noncompete to meet the statutory requirements of section 653.295 of the Oregon Revised Statutes. In addition, a noncompete must also meet three requirements to be enforceable:

1. partial or restricted in its operation with respect to time or place;
2. on good consideration; and
3. reasonable—meaning, it must "afford only a fair protection to the interests of the party in whose favor it is made" and not interfere with the public interest.[123]

A 2015 case decided by the Oregon Court of Appeals presented a potential new avenue for an employer seeking to enforce a noncompete against a former employee. In *Bernard v. S.B., Inc.*, the court evaluated the effect of a legislative change in section 653.295 of the Oregon Revised Statutes that previously referred to noncompetes that do not meet the statutory requirements as "void" and was then changed to "voidable."[124] The court determined that although the timing of the noncompete signed by the plaintiff on or after the day of hire did not meet the requirements of section 653.295, the noncompete was only "voidable" and not automatically "void." Because the plaintiff failed to take affirmative steps to void the agreement, the agreement was valid at the time the employer attempted to enforce it and the plaintiff's claim against the employer for intentional interference with economic relations could not proceed.[125]

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[120] OR. REV. STAT. § 653.295(4)(b).

[121] OR. REV. STAT. § 653.295(6).

[122] OR. REV. STAT. § 653.295.

[123] *See Nike, Inc. v. McCarthy*, 379 F.3d 576, 584 (9th Cir. 2004) (citing *Eldridge v. Johnson*, 245 P.2d 239, 250 (Or. 1952)).

[124] *Bernard v. S.B., Inc.*, 350 P.3d 460 (Or. Ct. App. 2015).

[125] *See also Brinton Bus. Ventures, Inc. v. Searle*, 248 F. Supp. 3d 1029 (D. Or. 2017) (departing employee did not take steps to void his noncompete until five months after he resigned his employment and after he received a demand letter from his former employer in response to his starting a competing business).

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For a noncompete to be valid, an employer must provide a signed, written copy of the noncompete agreement to the employee within 30 days of termination. This requirement, however, only applies to agreements entered into after January 1, 2020.[126]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

Under Oregon law, a noncompete signed at the inception of employment is sufficient so long as the employer provided notice in a written employment offer—received at least two weeks before the first day of employment—that stated that the noncompete was a condition of employment.[127] In contrast, continued employment alone is not sufficient consideration.[128] A noncompete entered into after employment has begun must be supported by the *bona fide* advancement of the employee, as indicated by "new, more responsible duties, different reporting relationships, a change in title and higher pay."[129]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

In Oregon, courts can provide a reasonable limit if no time or geographic limitation was provided in the covenant.[130]

2.3(b)(iv) *State Trade Secret Law*

In 1973, Oregon enacted the Oregon Uniform Trade Secret Act (OUTSA), which largely follows the Uniform Trade Secrets Act.[131]Under the OUTSA, a trade secret means information, including a drawing, cost data,

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[126] OR. REV. STAT. § 653.295.

[127] OR. REV. STAT. § 653.295(1)(a)(A).

[128] OR. REV. STAT. § 653.295(1)(a).

[129] *Nike, Inc.*, 379 F.3d at 583-84; *see also First Allmerica Fin. Life Ins. Co. v. Summer*, 212 F. Supp. 2d 1235, 1241 (D. Or. 2002) (*bona fide* advancement requires some alteration in job status or responsibilities beyond a raise or improved benefit package).

[130] *Lavey v. Edwards*, 505 P.2d 342, 344-45 (Or. 1973); *see also Eldridge v. Johnson*, 245 P.2d 239 (Or. 1952) (the legal part of a noncompete will be enforced where separable from the illegal part).

[131] OR. REV. STAT. §§ 646.461 to 646.475.

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customer list, formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value from not being generally known to the public and is subject to reasonable efforts to maintain secrecy.[132] To establish a claim under the OUTSA, a plaintiff must demonstrate that:

1. the subject of the claim qualifies as a statutory trade secret;
2. the plaintiff employed reasonable measures to maintain the secrecy of its trade secrets; and
3. the conduct of the defendant constitutes statutory misappropriation.[133]

The existence of a trade secret alone does not prohibit its use by another, provided the information is acquired in a legitimate manner. Despite the fact that a trade secret and duty not to disclose may exist, no liability arises unless the trade secret has been misappropriated. Under the OUTSA, *misappropriation* means:

- acquisition of a trade secret of another person who knows or has reason to know that the trade secret was acquired by improper means;
- disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret;
- disclosure or use of a trade secret of another without express or implied consent by a person who, before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake; or
- disclosure or use of a trade secret of another without express or implied consent by a person, who at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was:
  - derived from or through a person who had utilized improper means to acquire it;
  - acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
  - derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.[134]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Inventions and ideas developed or generated by employees during the course of their employment involve a combination of the law of contracts, the statutory protection of trade secrets, and the general statutory prohibitions against noncompete agreements. Since there are no statutory mandates and virtually no case law in Oregon that deal directly with the assignability of employee inventions and ideas, employers must tread carefully when seeking to acquire and/or protect inventions or ideas developed by employees.

[132] OR. REV. STAT. § 646.461.

[133] *Vesta Corp. v. Amdocs Mgmt. Ltd.*, 80 F. Supp. 3d 1152, 1163-67 (2015).

[134] OR. REV. STAT. § 646.461(2).

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3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[135]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[136]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[137]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[138]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language

[135] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[136] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[137] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[138] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	common to migrant or seasonal agricultural workers who are not fluent or literate in English.[139]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[140]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[141]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[142]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[143] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[144]

[139] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[140] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[141] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[142] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[143] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[144] 41 C.F.R. §§ 60-300.44, 60-741.44.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[145]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[146]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[147]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[148]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[149]

[145] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[146] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[147] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[148] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[149] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[150]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[151] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[152]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[153]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where

[150] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[151] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

[152] 29 C.F.R. § 13.5.

[153] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
(contracts entered into on or after January 30, 2022)	accessible to employees, summarizing the applicable minimum wage rate and other required information.[154]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Benefits & Leave: Family and Medical Leave Insurance Program (Paid Leave)	All employers must post a model notice at each work site and provide the notice electronically or by mail to remote workers. The notice should be sent in the language the employer uses to communicate with employees.[155]
Benefits & Leave: Oregon Family Leave Act	Employers, with 25 or more persons in Oregon, for each working day during each of 20 or more calendar workweeks in the year, must post notice informing workers of their rights and obligations under the Oregon Family Leave Act, including eligibility and notice requirements.[156]
Benefits & Leave: Oregon Sick Time Law	Employers must provide written notice of the requirements of Oregon's Sick Time Law to each employee in accordance with rules adopted by the Commissioner of the Bureau of Labor and Industries.[157] Employers may comply with the requirement to provide the written notice by: • distributing the written notice to each employee personally, by regular mail, or email, or by including it with a paycheck (if the employer is providing the poster to each employee personally, it must be provided no later than the end of the first pay period);

[154] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[155] OR. REV. STAT. § 657B.440. This poster is available at https://paidleave.oregon.gov/resources/resources.html..

[156] OR. REV. STAT. § 659A.180; OR. ADMIN. R. 839-009-0300. This poster is available at http://www.oregon.gov/boli/TA/Pages/Req_Post.aspx. It is available in English at https://www.oregon.gov/boli/employers/Documents/BOLI_SickLeave.pdf and in Spanish at https://www.oregon.gov/boli/employers/Documents/BOLI_SickLeave_Spanish.pdf.

[157] OR. REV. STAT. § 653.631. A model notice is available at http://www.oregon.gov/boli/ta/pages/req_post.aspx.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	• incorporating the written notice into a handbook or manual made available to employees, whether in a print or electronic format; or • posting the written notice in a conspicuous and accessible location in each workplace of the employer. The notice must be given in the language the employer typically uses to communicate. The notice is due at the end of the first pay period for new employees.[158] Employers must also provide notice to employees, on a quarterly basis, of sick leave that has been accrued and remains unused. This information may be included on a paystub.[159]
Benefits & Leave: Protections for Victims of Domestic Violence, Sexual Assault, (effective January 1, 2024, bias), or Stalking	All employers with six or more employees must post notice informing employees of their rights to take leave time and to be provided reasonable safety accommodations (*i.e.*, transfer, modified schedule, changed work phone number) in response to actual or threatened domestic violence, harassment, sexual assault, (effective January 1, 2024, bias), or stalking.[160]
Immigration Agency Inspection Notification	All employers must, within three business days of receiving a notice of an inspection from a federal agency compelling the employer to provide access to documentation used by the employer to verify the identity and employment eligibility of the employees hired by the employer, notify employees of the upcoming inspection by posting a notice in a conspicuous and accessible location, in English and the language the employer typically uses to communicate with employees, and making reasonable attempts to distribute notifications individually in the employee's preferred language. The notice must include: • a copy of the federal agency's notice of inspection; • the date of the inspection; • the scope of the inspection; • the employer's obligations with respect to providing information within the scope of the inspection; and

[158] OR. ADMIN. R. 839-007-0050. This poster is available at http://www.oregon.gov/boli/WHD/OST/Pages/OST-Notice-Instructions.aspx. It is available in English at http://www.oregon.gov/boli/WHD/OST/Documents/Sick-Time-Poster.pdf and in Spanish at http://www.oregon.gov/boli/WHD/OST/Documents/Sick-Time-Poster-Spanish.pdf.

[159] A description of this requirement and a template quarterly notice are available at http://www.oregon.gov/boli/WHD/OST/Documents/Quarterly-Notice.pdf.

[160] OR. REV. STAT. § 659A.279. This poster is available at http://www.oregon.gov/boli/TA/Pages/Req_Post.aspx. It is available in English at https://www.oregon.gov/boli/TA/docs/DVHSAS-Poster.pdf and in Spanish at https://www.oregon.gov/boli/TA/docs/DVHSAS-Poster-Spanish.pdf.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	• a telephone number, prescribed by the state, for a hotline operated by an organization that provides information and advocacy related to immigrant and refugee-workers' rights.[161]
Predictive Scheduling	All covered employers (generally, retail, hospitality, and food service establishments that employ 500 or more employees worldwide) must post written work schedules at least 14 calendar days before the first day of the work schedule in a conspicuous and accessible location, in English and in the language the employer typically uses to communicate with the employees. Additionally, covered employers must post notice of the rights provided under the statute, in English. If displaying the poster is not feasible, the employer may provide the poster on an individual basis in a physical or electronic format that is reasonable conspicuous and accessible.[162]
Pregnancy Accommodations	Employers with six or more employees, must post signs that notify employees of the employment protections of state law, including the right to be free from discrimination because of pregnancy, childbirth and related medical conditions, and the right to reasonable accommodation. The signs must be posted in a conspicuous and accessible location.[163]
Tax Documents – Earned Income Tax Credit Notification	Employers are required to provide written notice to employees about state and federal earned income tax credits. The notice must be in English and in the language the employer typically uses to communicate with the employee, be sent annually with the employee's federal W-2 form, and provide internet website addresses where the employee can find information about the state and federal earned income tax credits.[164]
Unemployment Compensation	Employers with at least a $1,000 payroll in a calendar quarter, and employers of one or more workers during 18 different weeks in a calendar year, are obligated to post a notice (Form 11) from the Employment Department informing employees about unemployment benefits.[165] Form 11 is provided by the Employment Department after an account is established or reopened.

[161] OR. REV. STAT. § 652.752.

[162] OR. REV. STAT. §§ 653.412, *et seq.*; OR. ADMIN. R. 839-026 *et seq*.

[163] OR. REV. STAT. § 659A.147. A template notice is available at https://www.oregon.gov/boli/workers/Pages/pregnancy-and-nursing-accommodations.aspx.

[164] OR. REV. STAT. § 652.755.

[165] OR. REV. STAT. §§ 657.020, 657.025; OR. ADMIN. R. 471-031-0010. Duplicate copies of Form 11 can be ordered. The Employment Department's contact information is available at http://www.oregon.gov/boli/TA/Pages/Req_Post.aspx.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Wages, Hours & Payroll: Child Labor	In addition to the required minimum wage poster, employers that employ minors under the age of 16 must post conspicuous notice, accessible to all minors, indicating the schedule of maximum hours of work each minor is to work each day and each week.[166]
Wages, Hours & Payroll: Equal Pay	All employers must post notice of the requirements of the law in every establishment where employees work. Oregon's Bureau of Labor and Industries has created a template.[167]
Wages, Hours & Payroll: Minimum Wage	All employers must post notice informing employees about the applicable minimum wage rates and other working conditions (*i.e.*, overtime, tips, deductions, meal and rest periods, final paychecks, etc.).[168]
Wages, Hours & Payroll: Breaks, Meals, Overtime & Paychecks	All employers must post notice informing employees about rest and meal periods. The poster must be in a conspicuous and accessible place where all employees can see it.[169]
Warehouse Quota Notice	Effective January 1, 2025, employers must provide warehouse employees with written documentation summarizing any quota to which the employees are subject while completing their work. The documentation must include: • the number of tasks to be performed, materials to be produced or handled, within a defined time period; and • a description of the potential consequences, including adverse employment actions, that the employee may face for failure to meet the quota. The warehouse employer must provide the documentation in the language the employer regularly uses to communicate with the employee, and provide the documentation: • at the time of hire; • to existing employees within two business days of a change to their quota; and

[166] OR. REV. STAT. § 653.315; OR. ADMIN. R. 839-021-0180. This poster is available at https://www.oregon.gov/boli/TA/docs/Work_Schedules_Poster.pdf.

[167] OR. REV. STAT. § 652.220(7). This poster is available at https://www.oregon.gov/boli/employers/pages/required-worksite-postings.aspx.

[168] OR. REV. STAT. § 653.050; OR. ADMIN. R. 839-020-0085. This poster is available at http://www.oregon.gov/boli/TA/Pages/Req_Post.aspx. It is available in English at http://www.oregon.gov/boli/WHD/docs/oregonminimumwage_eng_2016-07.pdf and in Spanish at http://www.oregon.gov/boli/WHD/docs/oregonminimumwage_span_2016-07.pdf.

[169] OR. ADMIN. R. 839-020-0050. This poster is available at https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_Break_Pay.pdf.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	• to an employee when the employer takes an adverse employment action due to the employee's failure to meet the quota. An employer is defined as a person who directly or indirectly, including through the services of a third-party, temporary services or staffing agency or any other similar entity, employs or exercises control over the wages, hours or working conditions of a warehouse distribution center of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in Oregon. Employers subject to a collective bargaining agreement with performance metrics subject to the bargaining agreement and that provides rights substantially equivalent to the rights established in this law are not covered.[170]
Workers' Compensation	All employers that are required to provide workers' compensation coverage must post notice informing employees about that coverage. The Workers' Compensation Division sends this compliance notice after employers purchase insurance.[171]
Workplace Safety	Employers subject to the Oregon Safe Employment Act must post a copy of the 300A Summary form in each establishment, in a conspicuous place where notices to employees are customarily posted. They must ensure that the summary is not altered, defaced, or covered by other materials. It must be posted by no later than February 1 of the year following the year covered by the records, and kept posted until April 30.[172]
Workplace Safety: "It's the Law" Poster	Employers with one or more employees must post notice informing employees of their rights under the Oregon Safe Employment Act.[173]

[170] H.B. 4127.

[171] OR. REV. STAT. § 656.056. Employers that do not receive the notice or require duplicates can place an order. The Workers' Compensation Division's contact information is available at http://www.oregon.gov/boli/TA/Pages/Req_Post.aspx.

[172] OR. ADMIN. R. 437-001-0700(17)(d).

[173] OR. REV. STAT. § 654.196. This poster is available at http://osha.oregon.gov/pubs/Pages/safety-and-health-poster.aspx. It is available in English at http://osha.oregon.gov/OSHAPubs/1507.pdf and in Spanish at http://osha.oregon.gov/OSHAPubs/1507s.pdf.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Workplace Safety: No Smoking Signs, etc.	Generally speaking, smoking is prohibited in Oregon workplaces and public places. Numerous exceptions apply.[174] Employers with smoke-free establishments must post signs, which must include the warning "No smoking within 10 feet" near entrances and exits. Ashtrays are also prohibited within workplaces and within 10 feet of entrances, exits, windows that open, ventilation intakes, and accessibility ramps.[175]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[176]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings;	At least 1 year from the date of the personnel action to which any records relate.

[174] OR. REV. STAT. § 433.850.

[175] OR. REV. STAT. § 433.850; OR. ADMIN. R. 333-015-0040; *see also* OR. ADMIN. R. 333-015-0045. This poster is available at https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/TOBACCOPREVENTION/EDUCATIONALRESOURCES/Pages/index.aspx..

[176] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[177]	
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[178]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[179]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the

[177] 29 C.F.R. § 1627.3(b).

[178] 29 C.F.R. § 1627.3(b).

[179] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[180]	date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[181]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[182]	At least 3 years following the date on which the polygraph examination was conducted.
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This	At least 6 years after documents are filed or would have been filed but

[180] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[181] 29 C.F.R. § 1602.7.

[182] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	includes vouchers, worksheets, receipts, and applicable resolutions.[183]	for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[184]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[185]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;	3 years from the last day of entry.

[183] 29 U.S.C. § 1027.

[184] 29 C.F.R. § 1620.32(a).

[185] 29 C.F.R. § 1620.32(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[186] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[187]	

[186] 29 C.F.R. §§ 516.2, 516.5.

[187] 29 C.F.R. § 516.28.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[188]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[189]	At least 3 years from the last effective date.
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[190]	At least 2 years from the date of last entry.

[188] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[189] 29 C.F.R. § 516.5.

[190] 29 C.F.R. § 516.6.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records*	At least 3 years.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	required by the second series with respect to any secondary employees. *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[191]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration:	At least 4 years after the date the tax is due or paid, whichever is later.

[191] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[192]	
Immigration	Employers must retain all completed Form I-9s.[193]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross	Required to be maintained for "so long as the contents [of the records] may become

[192] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[193] 8 C.F.R. § 274a.2.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[194]	material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[195]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[196]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation;	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.

194 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

195 26 C.F.R. §§ 31.6001-1, 31.6001-5.

196 26 C.F.R. §§ 31.6001-1, 31.6001-5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[197]	
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance,	At least 30 years.

[197] 26 C.F.R. § 31.6001-4.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[198]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[199]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided	At least 30 years.

[198] 29 C.F.R. § 1910.1020(d).

[199] 29 C.F.R. § 1910.1020(d).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	that the analysis has been provided to the employer or no further work is being done on the analysis.[200]	
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[201]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[202]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not

200 29 C.F.R. § 1910.1020(d).

201 29 C.F.R. §§ 1904.33, 1904.44.

202 41 C.F.R. § 60-1.12(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[203]	have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[204]	Until final disposition of the complaint, compliance review or action.

[203] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[204] 41 C.F.R. §§ 60-1.12, 60-741.80.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[205]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests;	During the course of the covered contract as well as after the end of the contract.

[205] 29 C.F.R. § 23.260.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[206]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[207]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:*	At least 3 years from the completion of

[206] 29 C.F.R. § 13.25.

[207] 29 C.F.R. § 5.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[208]	the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[209]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements. As set forth in Table 8, Oregon law mandates separate record-keeping requirements under a variety of laws and regulations, including state wage and hour laws,[210] state laws regarding personnel files,[211] the state's workers' compensation law,[212] Oregon's unemployment compensation regulations,[213] and the Oregon Safe Employment Act (OSEA).[214]

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208 29 C.F.R. § 4.6.

209 41 C.F.R. § 50-201.501.

210 OR. REV. STAT. §§ 652.750(3), 653.045, and 653.310; OR. ADMIN. R. 471-031-0005.

211 OR. REV. STAT. § 652.750.

212 OR. ADMIN. R. 436-050-0210, 436-050-0220, and 436-060-0010(4).

213 OR. REV. STAT. § 657.660; OR. ADMIN. R. 471-031-0005.

214 OR. REV. STAT. § 654.120(2); OR. ADMIN. R. 437-001-0700.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Benefits & Leave: Family and Medical Leave Insurance Program	Covered employers must maintain payroll records, including account records that document employee contributions and expenses, and employment records that reflect the total hours worked by all employees and the amount of leave taken under the law.[215]	Current calendar year plus 3 years.
Paid Family Medical Leave Insurance Employer Equivalent Plans[216]	Employers with an approved equivalent plan must retain the following documents: • Oregon Quarterly Tax Reports and related Oregon Employee Detail Report that includes PFMLI subject wages and other reports as may be required by the Department; • information and records relating to the equivalent plan, including: ▪ any amendments to the equivalent plan; ▪ financial information regarding the employer's administrative cost, maintenance, and claim documentation for the plan; and ▪ copy of any written notice(s) provided to employees about the plan as required under the law. • employee benefit applications with the current status of pending, approved, or denied along with the reason for denial; • information regarding any disputes and appeals; and • records regarding each employee's leave taken and any benefits paid or denied and the reason for denial under the equivalent plan.	6 years from the date the equivalent plan became effective.
Predictive Scheduling	All covered employers (generally, retail, hospitality, and food service establishments that employ 500 or more employees worldwide) must retain records that document the employer's compliance with the statute. This includes: • The written work schedules provided by the employer to employees and the written work schedules posted; • An employee's written request to change the employee's work schedule after the employer has provided the employee with a written work schedule; • A copy of the good faith estimate of the employee's work schedule provided to a new employee;	3 years.

[215] OR. REV. STAT. § 657B.390.

[216] OR. ADMIN. R. 471-070-2240.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• If the employer maintains a voluntary standby list, the employer's notification to the employee about the list and the employee's request or agreement to be included on the list; • If an employer provides a poster giving notice of the rights described in the law to an employee on an individual basis, a copy of the communication or materials provided to the employee to satisfy the notice requirement or other documentation verifying receipt of the poster by the employee; and, • Documents demonstrating that the employer had just cause to subtract hours from an employee's work schedule for disciplinary reasons.[217]	
Public Works Contracts: Prevailing Wage	*All contractors and subcontractors performing work on public works contracts must make and maintain records necessary to determine whether prevailing wage and overtime has been paid. Such records must include, for each employees:* • Payroll and Certified Statement (Form WH-38); • name and address; • work classification(s); • rate(s) of monetary wages and fringe benefits paid; • rate(s) of fringe benefit payments made in lieu of those required to be provided; • total daily and weekly compensation paid; • daily and weekly hours worked; • Apprenticeship and Training Agreements (apprentices must be distinguished from other employees in the records); • any deductions, rebates, or refunds taken from total compensation and actual wages paid; and • any payroll and other such records pertaining to employment of employees on a public work. *When a contractor or subcontractor employs a worker on public works and nonpublic works project during the same week, and the worker is paid less than the prevailing wage for nonpublic works projects, the contractor or subcontractor must separately record the hours worked on the public works project and the hours worked elsewhere.*[218]	3 years from completion of the work.

[217] OR. REV. STAT. § 653.465; OR. ADMIN. R. 839-026-0050.

[218] OR. ADMIN. R. 839-025-0025.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**

Unemployment Compensation	*Employers must keep true and accurate records relating to unemployment compensation obligations. Such records must include, with respect to each employee:*
	• name and Social Security number;
	• total remuneration for each pay period, and total remuneration for all pay periods in each calendar quarter showing separately:
	  ▪ all wages not excluded under the unemployment law;
	  ▪ all wages excluded under the unemployment law; and
	  ▪ cash value of all noncash remuneration;
	• date of each pay period;
	• fate hired, rehired or returned to work after vacation, illness, temporary layoff, or other;
	• date of termination; and
	• number of hours worked each calendar quarter.
	
	In addition, employers must maintain records with the following information, for each calendar quarter:
	• date each pay period ends within such quarter;
	• total wages, by pay periods, ending within such quarter; and
	• total number of employees in each pay period.[219]
		3 years.

Wages, Hours & Payroll: Current Employees	*Oregon employers must keep the following wage records.* *For each nonexempt employee, records must include:* • name in full and any identifying number or symbol used on records; • home address including zip code; • date of birth if under 19; • occupation; • time of day and day of week when the workweek begins for each employee; • regular hourly rate of pay for any workweek in which overtime is due with an explanation of the basis of pay, indicating the monetary amount paid per hour, per day, per week, per piece, commission on sales, or other basis, and the amount and nature of each payment, which is	Not less than 2 years.

[219] OR. REV. STAT. § 657.660; OR. ADMIN. R. 471-031-0005.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	excluded from the "regular rate of pay" pursuant to section 653.261(1) of the Oregon Revised Statutes; • hours worked each workday and total hours worked each pay period and workweek; ▪ Note that records relating to employees on fixed schedules need show only the schedule of daily and weekly hours the employee normally works—provided the employee indicates which weeks the employee adhered to the schedule, and shows the exact number of hours worked in weeks if the schedule is not followed; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime, excluding straight-time earnings for overtime hours; • total additions and deletions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period and date of payment and pay period covered by payment; • a record of retroactive wage or compensation payments, including amount of payment, period covered by such payment, and date of payment; and • notation identifying employees who receive tips.[220] *For each exempt employee, records must include:* • name in full and identifying number or symbol if any; • home address including zip code; • date of birth if under 19; • occupation; • time of day and day of week when workweek begins; and • the basis on which wages are paid including fringe benefits and perquisites. *Special rules apply to hospitals and institutions engaged in the care of sick people*.[221]	

[220] OR. REV. STAT. § 653.045; OR. ADMIN. R. 839-020-0080(1), (3), (6).

[221] *See* OR. ADMIN. R. 839-020-0080(5).

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Wages, Hours & Payroll: Terminated Employees	Employers must also retain time and pay records for terminated employees.[222]	Not less than the period required by the FLSA, which is 3 years.
Wages, Hours & Payroll: Personnel Records	Employers must preserve personnel records, including all records used to determine the employee's qualification for employment, promotion, additional compensation, disciplinary action or termination, but not including criminal history records or confidential reports received from previous employers.[223]	At least 60 days after termination of employment.
Workers' Compensation	If an employer is not obligated to notify the insurer of an employee injury (*i.e.*, if the worker requires first aid only and chooses not to file a claim), the employer must maintain records showing the employee's name, date and nature of the injury, and the first aid provided.[224]	5 years.
Workers' Compensation: Self-Insured Employer	Self-insured employers must maintain true and accurate records, including all claims for compensation made to the employer, the number of workers, wages paid, employee occupations, and the number of days (or parts thereof) the workers were employed.[225]	None specified.
Workplace Safety	*Employers of 11 or more employees must maintain records of work-related deaths and serious injuries and illnesses. Such records must include:* • OSHA 300 (Log of Work-Related Injuries and Illnesses), including newly-discovered recordable injuries or illnesses to show any changes in the classification of previously recorded injuries and illnesses; • privacy case list, if any; • annual summary; • OSHA 300-A (Summary of Work-Related Injuries and Illnesses); • DCBS Form 801 (Worker's and Employer's Report of Occupational Injury or Disease); and • Old OSHA 200 and 801.	5 years following the year to which they relate or that they cover. During storage period, employers must update stored OSHA 300 Logs to include newly-discovered

[222] OR. REV. STAT. § 652.750.

[223] OR. REV. STAT. § 652.750.

[224] OR. ADMIN. R. 436-060-0010(4)(b).

[225] OR. ADMIN. R. 436-050-0003, -0120.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Alternative, equivalent forms may be used.[226]	recordable injuries, illness and changes that occurred in classification of previously recorded illnesses and injuries.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

Requests for Access to Personnel Files. An employee or former employee may ask to view their personnel records. *Personnel records* subject to inspection include records used to determine an employee's qualifications for employment, promotion, additional compensation, employment termination, and any other disciplinary action, and time and pay records.[227] The rules differ based on whether the files are for a current or former employee:

- **Current Employees:** an employer must provide a reasonable opportunity at the place of employment or place of work assignment for employees to inspect their personnel files within 45 days after receipt of the employee's request. If requested, an employer may also need to provide a certified copy of the records within 45 days.[228]
- **Former Employees:** personnel records must be maintained by the employer for at least 60 days after the termination of the employee.[229] Note, however, that employers must also maintain an employee's time and pay records for not less than the period required by the federal FLSA.[230]

An employer may charge employees the amount reasonable calculated to recover the actual cost of providing certified copies.

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[226] OR. REV. STAT. § 654.120; OR. ADMIN. R. 437-001-0700.

[227] OR. REV. STAT. § 652.750.

[228] OR. REV. STAT. § 652.750.

[229] OR. REV. STAT. § 652.750; *see also* Bureau of Labor and Industries Technical Assistance for Employers*, Employee's Right to View "Personnel Records," available at:* http://www.oregon.gov/boli/TA/pages/t_faq_taperfil.aspx.

[230] OR. REV. STAT. § 652.750.

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An employer is not required to provide access to:

- conviction, arrest, or investigation records;
- confidential reports from previous employers; or
- personnel records maintained by educational institutions governed by the state Board of Higher Education pursuant to section 351.065 of the Oregon Revised Statutes.[231]

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

Certain Oregon laws pertaining to pre-hire background screening also apply in the post-hire context. With respect to criminal background checks, state law prohibits an employer from accessing criminal record information, including arrest and conviction records, for employment purposes unless the employee is first advised that the information might be sought.[232] Likewise, Oregon's laws regarding credit history usage restrictions, employer access to employees' social media accounts, and polygraph testing restrictions also apply to both job applicants and current employees.[233] For information on these laws, see **1.3**.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Oregon law contains no express provisions regulating drug or alcohol testing by private employers. For additional information, see **1.3(e)(ii)**.

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[234]

3.2(c)(ii) *State Guidelines on Marijuana*

The Oregon Medical Marijuana Act permits registered users with specified debilitating medical conditions to use marijuana for medicinal purposes.[235] However, an employer is not required to accommodate the

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[231] OR. REV. STAT. § 652.750.

[232] OR. REV. STAT. § 181.555(2)(b).

[233] OR. REV. STAT. §§ 659A.300 (polygraph testing), 659A.320 (credit history), and 659A.330 (social media).

[234] 21 U.S.C. §§ 811-12, 841 *et seq*.

[235] OR. REV. STAT. §§ 475.300, 475.346.

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medical use of marijuana in the workplace.[236] Further, an employer's group health plan need not accommodate the use of medical marijuana, and a private health insurer is not required to reimburse a person for costs associated with the medical use of marijuana.[237] The state's antidiscrimination law does not address prohibitions on discrimination against medical marijuana users.

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[238]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[239]

3.2(d)(ii) *State Data Security Breach Guidelines*

Oregon's data security breach statute requires a covered entity to provide notice to affected Oregon residents when the entity discovers or is notified of a data security breach.[240] The statute defines *security breach* as unauthorized access and acquisition of computerized data that materially compromises the

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[236] OR. REV. STAT. § 475.340; *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 230 P.3d 518 (Or. 2010) (state employment discrimination statute does not require employer to accommodate employee's use of medical marijuana because use prohibited under federal law). *See also, e.g.*, *Freightliner, Ltd. Liab. Co. v. Teamsters Local 305*, 336 F. Supp. 2d 1118 (D. Or. 2004) (vacating arbitration award requiring reinstatement of medical marijuana using employee terminated for violating CBA's "under the influence" provision).

[237] OR. REV. STAT. § 475.340.

[238] I.R.S. Announcement 2015-22, Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims (Aug. 14, 2015), available at https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[239] I.R.S. Announcement 2015-22, Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims (Aug. 14, 2015).

[240] OR. REV. STAT. § 646A.604(1).

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security or confidentiality of personal information of Oregon residents maintained or possessed by the covered entity.[241]

Notification is not required if, after an appropriate investigation or after consultation with relevant federal, state, or local law enforcement agencies, a determination is made that the breach has not and will not likely result in a significant risk of identity theft to the Oregon residents whose personal information has been acquired.[242]

Personal information is defined as an individual's first name or first initial and last name in combination with any one or more of the following: (1) Social Security number; (2) driver's license number or state identification card number issued by the Department of Transportation; (3) passport number or other United States issued identification number; (4) financial account number or credit or debit card number in combination with any required security code, access code, password, or any other information that would permit access to the account or any other information or combination of information that a person reasonably knows or should know would permit access to the consumer's financial account; (5) any data elements or any combination of data elements listed above that would be sufficient to permit a person to commit identity theft against the individual; (6) a health insurance policy number or identification number; or a consumer's medical history, condition, diagnosis, or treatment; (7) data from automatic measurements of a consumer's physical characteristics, such as an image of a fingerprint, retina, or iris, that are used to authenticate the consumer's identity in the course of a financial transaction or other transaction; or a username or other means of identifying a consumer for the purpose of permitting access to the consumer's account, together with any other method necessary to authenticate the username or means of identification.

Coverage & Exceptions. An Oregon employer is a covered entity within the meaning of the statute if the employer owns, maintains, or otherwise possesses data that includes state residents' personal information, or if the employer licenses personal information that the employer uses in the course of its business, vocation, occupation, or volunteer activities. Additionally, if the employer receives notice of that breach from another person that maintains or otherwise possesses personal information on behalf of the employer, notice must be given.[243]

Certain entities are not subject to the statute's notification requirements, including the following:

- A covered entity that maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information complies with the law's requirements if the policy affords the same or greater protection to the affected individuals as the data security breach statute.
- Any person who complies with the notification requirements or security breach procedures of their primary or functional federal regulator. The policy must afford the same or greater protection to the affected individuals as the statute.
- Any person who is subject to and complies with title V of the Gramm-Leach-Bliley Act.

[241] OR. REV. STAT. § 646A.602(1).

[242] OR. REV. STAT. § 646A.604(7).

[243] OR. REV. STAT. § 646A.604(1), (2).

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- Any person who is subject to and complies with the security breach provisions of the federal Health Insurance Portability and Availability Act (HIPAA).
- Any person who complies with a state or federal law that affords the same or greater protection to the affected individuals as the statute.[244]

Content & Form of Notice. Notice to individuals affected by a security breach must include the following:

- a description of the incident in general terms;
- approximate date of the breach;
- the type of personal information subject to the unauthorized access and acquisition;
- contact information of the covered entity;
- contact information for national consumer reporting agencies; and
- advice to report suspected identity theft to law enforcement, including the Federal Trade Commission.[245]

Notice may be in one of the following formats:

- written notice to the last known home address of the individual;
- telephonic, if contact is made directly with the individual;
- electronic notice, if the covered entity's customary method of communication with the individual is by electronic means or is consistent with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $250,000;
  - the affected class of persons to be notified exceeds 350,000; or
  - the covered entity does not have sufficient contact information.[246]

Substitute notice must include conspicuous posting of the notice on the covered entity's website if it maintains a website and notification by statewide media.

Timing of Notice. Notice must be made in the most expeditious manner possible, without unreasonable delay, but not later than 45 days after discovering or receiving notice of the breach.[247] However, notification may be delayed if:

- A law enforcement agency determines and advises the covered entity in writing specifically referencing the statute that the notification will impede a civil or criminal investigation or national or homeland security. Notification must be made after the law enforcement agency determines that disclosure will not compromise the investigation. This determination must be made in writing to the covered entity.

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[244] OR. REV. STAT. § 646A.604(8).

[245] OR. REV. STAT. § 646A.604(5).

[246] OR. REV. STAT. § 646A.604(4).

[247] OR. REV. STAT. § 646A.604(1)(a).

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- A covered entity needs time to determine the scope of the breach.
- A covered entity needs time to restore the reasonable integrity, security, and confidentiality of the data system.
- A covered entity needs time to determine sufficient contact information.[248]

Additional Provisions. In addition to notifying individuals affected by the breach, the statute requires that a covered entity notify law enforcement and credit reporting agencies. If the number of individuals to be notified is 250 or more, the covered entity must notify the state attorney general.[249] The state attorney general must be notified of the breach within a reasonable timeframe by providing at least one copy of any notice the entity sends to consumers. If more than 1,000 individuals at a single time will be notified of a security breach, then the covered entity must also notify, without unreasonable delay, all nationwide consumer reporting agencies of the timing, distribution, and number of notices, as well as any police report associated with the security breach.[250]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[251] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[252]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[253]

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[248] OR. REV. STAT. § 646A.604(3).

[249] OR. REV. STAT. § 646A.604(1)(b).

[250] OR. REV. STAT. § 646A.604(6).

[251] 29 U.S.C. § 218(a).

[252] 29 U.S.C. § 206.

[253] 29 U.S.C. §§ 203, 206.

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An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[254]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[255] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

When resolving any question about an employee's wages, Oregon employers must consider their obligations under state law in addition to an employer's minimum wage and overtime obligations under federal law. Oregon regulates these obligations under the state's wage and hour statutes and accompanying regulations issued by the Oregon Bureau of Labor and Industries (BOLI).

3.3(b)(i) *State Minimum Wage*

Because Oregon's minimum wage is higher than the federal minimum wage, Oregon nonexempt employees must be paid at least the state minimum wage. A three-tier minimum wage system exists with future increases (see Table 9).[256] Beginning July 1, 2023, and on each subsequent July 1, the minimum wage will be adjusted annually based on changes to the Consumer Price Index.

Table 9. State Minimum Wage

Date	Minimum Wage (General)	Minimum Wage (Urban/Metropolitan Service District)	Minimum Wage (Nonurban Counties)
Currently	$14.70	$15.95	$13.70
July 1, 2025	TBD	TBD (General + $1.25)	TBD (General - $1.00)

3.3(b)(ii) *Tipped Employees*

Oregon does not permit a tip credit. Thus, employers may not include any amount received by employees as tips in determining the amount required to be paid to meet the Oregon minimum wage.[257]

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

Volunteers. Volunteers who meet the following criteria are not considered "employees" under the Oregon and federal wage and hour laws and are, therefore, not required to be paid minimum wage. The volunteer's work must be performed:

- without compensation or without expectation of pay;

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254 29 U.S.C. § 3(m)(2)(B).

255 29 U.S.C. § 207.

256 OR. REV. STAT. § 653.025.

257 OR. REV. STAT. §§ 653.025, 653.035.

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- for community service, religious, or humanitarian reasons; and
- for a public employer for a religious, charitable, educational, public service, or similar nonprofit corporation or organization for community service.[258]

If volunteer work is to be performed for an employee's regular employer, the volunteer work must meet the criteria listed above, be performed outside the volunteer's normal work hours, and the volunteer's duties may not be the same as those performed in the course of the volunteer's regular employment.[259]

Interns. BOLI takes the position that:

> Certain interns and trainees are not considered employees if they work for their own advantage on the premises of another, without any express or implied compensation agreement. Often, the arrangement is one in which a student intern earns high school or college credit in exchange for participating in a training program conducted by the employer.[260]

BOLI uses the FLSA test articulated by the U.S. Department of Labor to determine whether an individual is an intern,[261] and also lists the following additional elements present in an internship program:

- A planned program of job training and work experience for the student, appropriate to the student's abilities, which includes training related to preemployment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate.
- The learning experience encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills.
- The learning experience has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills.
- The learning experience provides for real or simulated tasks or assignments that push students to develop higher-order critical thinking and problem-solving skills.[262]

Other Exceptions. The following list sets forth the major categories of employees that are excluded from the Oregon minimum wage and overtime provisions:

- **White Collar Workers:** executive, administrative, and professional employees who meet the "salary basis" and "duties" tests (see following sections) and are paid at least the minimum FLSA salary of $455 per week.

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[258] OR. REV. STAT. § 657.015.

[259] 29 C.F.R. § 785.44; OR. ADMIN. R. 839-020-0046(3).

[260] Oregon Bureau of Labor and Indus., *Interns and Trainees*, *available at* http://www.oregon.gov/boli/ta/Pages/t_faq_interns.aspx.

[261] U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet No. 71: Internship Programs Under the FLSA*, *available at* https://www.dol.gov/whd/regs/compliance/whdfs71.htm (April 2010).

[262] Oregon Bureau of Labor and Indus., *Interns and Trainees*, *available at* http://www.oregon.gov/boli/ta/Pages/t_faq_interns.aspx.

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- **Outside Salespersons:** employees whose primary duties are making sales, and who are regularly engaged outside of the employer's primary place of business. Nonsales work must not exceed 30% of the hours worked in a week. There is no minimum salary requirement.[263]
- **Companions to the Elderly:** persons employed in a family home as a companion to an elderly or infirm person.[264]
- **Babysitter/ChildCare Providers:** Oregon law exempts from overtime and the minimum wage individuals who provide child care in the home of the individual or the child.[265] Federal law exempts only childcare providers who are employed on a casual basis.
- **Managers, Assistant Managers, Maintenance Workers Employed by and Residing in Multi-Unit Accommodations:** these workers are exempt from minimum wage and overtime requirements under Oregon law only.[266] Federal minimum wage and overtime rates still apply if the employer is covered by the FLSA.
- **Managers, Assistant Managers, Maintenance Workers Employed by and Residing in Mobile or Manufactured Home Parks:** these workers are exempt from Oregon minimum wage and overtime requirements. They must be paid federal minimum wage and overtime if the employer is subject to the FLSA.[267]
- **Resident Managers of Adult Foster Homes:** managers of licensed adult foster homes who are "domiciled" at the home and who are directly responsible for the residents' day-to-day care are exempt from Oregon minimum wage and overtime requirements.[268] Federal minimum wage and overtime requirements apply if the employer is subject to the FLSA.
- **Employees of Nonprofit Centers Operated for Religious, Charitable, or Educational Purposes:** these workers are exempt from Oregon minimum wage and overtime requirements.[269] They are exempt from federal minimum wage and overtime laws if the center is not operated more than seven months in a calendar year, or if the average receipts for any six-month period in the prior year do not exceed 1/3 of the average receipts for the remaining six months of that year.[270]
- **Seasonal Employees of Educational or Organized Camps:** these seasonal workers are exempt from Oregon minimum wage and overtime laws if the camp grosses less than $50,000 annually or if it is a nonprofit organized camp.[271] They are exempt from federal minimum wage and overtime laws if the camp is not operated more than seven months in a calendar year, or if the average receipts for any six-month period in the prior year does not exceed 1/3 of the average receipts for the remaining six months of that year.[272]

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263 29 C.F.R. §§ 541.500-541.502; OR. REV. STAT. §§ 653.010(7), 653.020(6).

264 OR. REV. STAT. § 653.020(14).

265 OR. REV. STAT. § 653.020(13).

266 OR. REV. STAT. § 653.020(9).

267 OR. REV. STAT. § 653.020(17).

268 OR. REV. STAT. §§ 443.705 to 443.825, 653.020(16).

269 OR. REV. STAT. § 653.020(11).

270 29 U.S.C. § 213(a)(3).

271 OR. REV. STAT. § 653.020(10).

272 29 U.S.C. § 213(a)(3).

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- **Nonprofessional Ski Patrollers:** they are exempt from the FLSA and Oregon's minimum wage and overtime requirements if they receive no wage or compensation other than ski passes for ski patrol services or services directly related to skiing and snowboarding events organized by nonprofit corporations.[273]

- **Soccer Referees:** recreational soccer referees and assistant referees are defined as independent contractors under Oregon law and are, therefore, exempt from Oregon's minimum wage and overtime laws.[274]

- **Golf Caddies:** caddies are exempt from Oregon's minimum wage and overtime requirements when employed at a golf course in a supervised training program.[275]

- **Volunteer Campground Hosts:** volunteers who reside on campgrounds owned by public agencies in Oregon and provide information and emergency assistance to campers and travelers are exempt from Oregon's minimum wage and overtime requirements,[276] but not from FLSA requirements.

- **Inmate Labor:** inmates of the Oregon Department of Corrections are exempt from Oregon's minimum wage and overtime requirements.[277]

- **Agriculture:** employees engaged in any stage of the production of agricultural or horticultural commodities, dairy products, livestock, bees or bee products, fur-bearing animals, poultry, forestry products, or lumber, and who do not perform any nonagricultural work in a given workweek, are exempt from the FLSA's overtime requirements in that workweek.[278]

The following categories of agriculture workers are exempt from the minimum wage requirements under both Oregon rules and the FLSA:

- immediate family members of the agricultural employer;

- hand harvesters who commute daily from their principal residence, are paid a piece rate, and who have been employed in agriculture less than 13 weeks in the preceding year. Oregon law also includes pruners;[279]

- minors 16 years of age and under;[280]

- certain workers on small farms. Under federal law, farms that employed 500 or fewer man-days in any quarter of the preceding calendar year.[281] Under Oregon law, only hand harvesters and pruners employed on farms that employed 500 or fewer piece-rate workdays in any calendar quarter of the preceding calendar year are exempt. A piece-rate workday is any day

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273 OR. REV. STAT. § 653.020(19).

274 OR. REV. STAT. § 670.610.

275 OR. REV. STAT. § 653.020(15).

276 OR. REV. STAT. § 653.020(18).

277 OR. REV. STAT. § 144.480.

278 29 C.F.R. § 780.11.

279 OR. REV. STAT. § 653.020.

280 OR. REV. STAT. § 653.020.

281 29 C.F.R. § 780.301.

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in which an employee performs agricultural labor on a piece-rate basis for at least one hour;[282] and

- employees engaged in range production of livestock in Oregon who earn a salary (defined by section 653.010 of the Oregon Revised Statutes) and are paid on a salary basis.[283]

3.3(c) *State Guidelines on Overtime Obligations*

Under both federal and state law, the general overtime rule requires that nonexempt employees be paid 1 1/2 times their regular rate of pay for any time worked over 40 hours in one workweek (seven consecutive days).[284] Special rules apply to firefighters and private employees in hospitals, canneries, and manufacturing establishments.[285]

3.3(d) *State Guidelines on Overtime Exemptions*

Most employees in Oregon are covered by the FLSA's and Oregon's minimum wage law and must be paid an overtime rate if they work more than 40 hours in a workweek.

Both the FLSA and Oregon law provide limited exceptions to overtime obligations for "white collar" employees (executives, administrators, and professionals), certain commissioned and outside sales employees, and employees in particular industries and occupations.[286] To be exempt from the overtime requirements, an employee in Oregon must qualify to be exempt under both Oregon and federal law.[287] Note that the Oregon overtime provisions do not apply to the categories of employees detailed in **3.3(b)(iii)** as exempt from the state minimum wage requirements. If employees are exempt, it simply means that the overtime rules do not apply to them. Employers may, however, still be required to comply with other wage-related laws for exempt employees.

3.3(d)(i) *Executive Exemption*

Under Oregon law, an employee is covered by the executive exemption if the employee meets these requirements:

- primary duty consists of the management of the employing enterprise, or of a customarily recognized department or subdivision;
- customarily and regularly directs the work of two or more other employees;
- has the authority to hire or fire other employees, or suggestions and recommendations concerning hiring or firing, and advancement and promotion of any other change of status, of other employees will be given particular weight;
- customarily and regularly exercises discretionary powers; and

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[282] OR. REV. STAT. §§ 653.020(1)(a), 653.022.

[283] OR. REV. STAT. § 653.020(1)(e).

[284] 29 C.F.R. § 778.107; OR. ADMIN. R. 839-020-0030.

[285] OR. REV. STAT. §§ 652.050 - 652.080, 653.261; *see also* Oregon Bureau of Labor and Indus., *Manufacturing: Daily Overtime and Maximum Hours Restrictions*, *available at* http://www.oregon.gov/boli/TA/pages/t_faq_tahrlbr.aspx.

[286] 29 U.S.C. §§ 203(e)(2)-(3), 213; OR. REV. STAT. § 653.020.

[287] 29 C.F.R. § 778.5; OR. REV. STAT. § 653.020.

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- earns a salary and is paid on a salary basis, exclusive of board, lodging, or other facilities. The salary must be no less than the state minimum wage multiplied by 2,080 hours per year then divided by 12 months.[288]

The management-as-primary-duty requirement does not apply to an employee who is in sole charge of an independent establishment or a physically separated branch establishment or who owns at least 20% interest in the employing enterprise.[289]

3.3(d)(ii) *Administrative Exemption*

Under Oregon law, an employee is covered by the administrative exemption if the employee meets these requirements:

- primary duty consists of either:
  - performing office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers; or
  - performing functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision, in work directly related to the academic instruction or training.
- customarily and regularly exercises discretion and independent judgment; and
- earns a salary and is paid on a salary basis, exclusive of board, lodging, or other facilities (the salary must be no less than the state minimum wage multiplied by 2,080 hours per year then divided by 12 months); and
- either:
  - regularly and directly assists a proprietor, or an employee employed in a *bona fide* executive or administrative capacity; or
  - performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or
  - executes special assignments and tasks under only general supervision.[290]

3.3(d)(iii) *Professional Exemption*

Under Oregon law, an employee is covered by the professional exemption if the employee meets these requirements:

- primary duty consists of the performance of:
  - work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as

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[288] OR. REV. STAT. §§ 653.010, 653.020; OR. ADMIN. R. 839-020-0004, 839-020-0005; Oregon Bureau of Labor and Indus., *Classifying Exempt Employees*, *available at* https://www.oregon.gov/boli/TA/pages/t_faq_taclass.aspx.

[289] OR. ADMIN. R. 839-020-0005(1)(a).

[290] OR. REV. STAT. §§ 653.010, 653.020; OR. ADMIN. R. 839-020-0004, 839-020-0005; Oregon Bureau of Labor and Indus., *Classifying Exempt Employees*.

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distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

- work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or
- teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which the employee is employed.

- work requires the consistent exercise of discretion and judgment in its performance;
- work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- earns a salary and is paid on a salary basis, exclusive of board, lodging, or other facilities. The salary must be no less than the state minimum wage multiplied by 2,080 hours per year then divided by 12 months.[291]

3.3(d)(iv) *Computer Employees Exemption*

Under Oregon law, an employee is covered by the computer professional exemption if the employee meets these requirements:

- paid a rate of not less than the equivalent of $27.63 per hour;
- is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty consists of the following:
  - the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
  - the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
  - a combination of these duties; the performance of which requires the same level of skills.[292]

3.3(d)(v) *Commissioned Sales Exemption*

In addition to the white collar exemptions, Oregon law, like federal law, recognizes an exemption for commissioned salespeople. The state overtime provisions do not apply to an employee of a retail or service establishment if:

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[291] OR. REV. STAT. §§ 653.010, 653.020; OR. ADMIN. R. 839-020-0004, 839-020-0005; Oregon Bureau of Labor and Indus., *Classifying Exempt Employees*.

[292] OR. REV. STAT. § 653.020; OR. ADMIN. R. 839-020-0125; Oregon Bureau of Labor and Indus., *Classifying Exempt Employees*.

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- the employee's regular rate of pay of such employee exceeds 1.5 times the state minimum wage; and
- more than half the employee's compensation for a representative period (not less than 1 month) represents commissions on goods or services.[293]

In determining the proportion of compensation representing commission, all earnings resulting from the application of a *bona fide* commission rate are deemed commissions on goods or services without regard to whether the computed commissions exceed the draw of guarantee.[294]

3.3(d)(vi) *Outside Sales Exemption*

Oregon's overtime provisions likewise do not apply to an *individual engaged in the capacity of an outside salesperson*, which is defined as an employee who is employed for the purpose of and who is customarily and regularly engaged away from the employer's place or places of business in:

- making sales; or
- obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- whose hours of work spent engaged in activities other than the above activities do not exceed 30% of the hours worked in the workweek; however, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, is not regarded as nonexempt work.[295]

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[296] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[297]

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[293] OR. ADMIN. R. 839-020-0004, 839-020-0125.

[294] OR. ADMIN. R. 839-020-0004, 839-020-0125.

[295] OR. REV. STAT. § 653.020; OR. ADMIN. R. 839-020-0005.

[296] 29 C.F.R. § 785.19.

[297] 29 C.F.R. § 785.18.

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3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[298] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[299] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[300] Exemptions apply for smaller employers and air carriers.[301]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[302] Lactation is considered a related medical condition.[303] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[304] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

Meal Periods. In Oregon, employers must provide to each employee, for each work period between six and eight hours, a meal period of not less than 30 continuous minutes during which the employee is relieved of all duties.[305] If an employee is not relieved of all duties for 30 continuous minutes during the meal period, the employer must pay the employee for the entire 30-minute meal period.[306] An employer is not required to provide a meal period to an employee for a work period of less than six hours. A *work period* does not include a meal period unless the meal period is paid work time. It does, however, include a rest period and any period of one hour or less (not designated as a meal period) during which the

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[298] 29 U.S.C. § 218d.

[299] 29 U.S.C. § 218d(b)(2).

[300] 29 U.S.C. § 218d(a).

[301] 29 U.S.C. § 218d(c), (d).

[302] 42 U.S.C. § 2000gg–1.

[303] 29 C.F.R. § 1636.3.

[304] 29 C.F.R. § 1636.3.

[305] OR. REV. STAT. § 653.261; OR. ADMIN. R. 839-020-0050.

[306] OR. REV. STAT. § 653.261; OR. ADMIN. R. 839-020-0050.

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employee is relieved of all duties.[307] If the work period is seven hours or less, the meal period is to be taken between the second and fifth hour worked.[308] If the work period is more than seven hours, the meal period is to be taken between the third and sixth hour worked.[309]

An employer's duty is to ensure a meal period is taken, not just to provide a meal period. A state appellate court has held that "[i]n the absence of a waiver of the meal period… an employer who is not exempt must require a 30-minute meal period without work duties and…pay wages to an employee who is not relieved of duties during the entirety of the required minimum 30-minute meal period," *i.e.*, "the employer must pay the employee's wages for the full 30-minutes."[310]

The meal period requirements do not apply to exempt employees.[311] Further, where a collective bargaining agreement governs the terms of employment, the meal period requirements set forth above may be modified by the terms of the agreement, if the terms of the agreement specifically prescribe rules concerning meal periods.[312]

Meal Period Waiver. Employers in Oregon are responsible for ensuring that their employees take the appropriate meal breaks. The meal breaks may *not* be waived and are only excused under the following exceptions:

1. The failure to provide a meal period was caused by unforeseeable equipment failures, acts of nature, or other exceptional and unanticipated circumstances that only rarely and temporarily preclude the provision of a meal period.
2. Industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which the employee is relieved of all duties. The Oregon Bureau of Labor and Industries (BOLI) rarely, if ever, recognizes this exception.
3. Providing a 30-minute, unpaid meal period where the employee is relieved of all duties would impose an undue hardship on the operation of the employer's business. When an employer can demonstrate that providing an employee a meal period would impose an undue hardship on the operation of the business and it does not provide the full 30-minute meal period, employees must still be provided with adequate time to consume a meal, rest, and use the restroom, and they must be paid for this time, in addition to being provided all rest periods required by law for the number of hours worked in any given shift. The employer must also give notice to each employee affected by the undue hardship provision on a form prescribed by BOLI. The employer must keep a copy of the notice for the duration of the employee's employment and for at least six months after the employee's employment ends.[313]

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[307] OR. REV. STAT. § 653.261; OR. ADMIN. R. 839-020-0050.

[308] OR. REV. STAT. § 653.261; OR. ADMIN. R. 839-020-0050.

[309] OR. REV. STAT. § 653.261; OR. ADMIN. R. 839-020-0050.

[310] *Maza v. Waterford Operations, L.L.C.*, 455 P.3d 569 (Or. Ct. App. 2019), rev. denied (2020).

[311] OR. REV. STAT. § 653.020; Oregon Bureau of Labor and Indus., *Meal and Rest Period Rules*, *available at* http://www.oregon.gov/boli/TA/pages/t_faq_meal_and_rest_period_rules.aspx.

[312] OR. ADMIN. R. 839-020-0050.

[313] OR. ADMIN. R. 839-020-0050(3).

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An additional exception exists that allows tipped employees to voluntarily waive meal periods. If the employer agrees, an employee may waive a meal period if all of the following conditions are met:

- the employee is employed to serve food or beverages, receives tips, and reports the tips to the employee's employer;
- the employee is at least 18 years old;
- the employee voluntarily requests to waive meal periods no less than seven calendar days after beginning employment;
- the employee's request to waive meal periods is in writing in the language used by the employer to communicate with the employee, on a form provided by the state labor department, and is signed and dated by both the employee and employer;
- the employer retains and keeps available to the state labor department a copy of the employee's waiver request during the duration of the employee's employment and for no less than six months after the employee's termination date;
- the employee is provided with a reasonable opportunity to consume food during any work period of six hours or more while continuing to work;
- the employee is paid for any and all meal periods during which the employee is not completely relieved of all duties;
- the employee is not required to work longer than eight hours without receiving a 30-minute meal period during which the employee is relieved of all duties;
- the employer makes and keeps available to state labor department accurate records of hours worked by each employee that clearly indicate whether the employee has received meal periods; and
- the employer posts a notice provided by the state labor department regarding rest and meal periods in a conspicuous and accessible place where all employees can view it.[314]

An employer cannot coerce an employee into waiving a meal period. An employer will be considered to have coerced an employee under the following circumstances:

- the employer requests or requires an employee to sign a meal period waiver;
- the employee is required to waive meal periods as a condition of employment at the time of hire or at any time while employed;
- the employer requests or requires any person, including another employee, to request or require an employee to waive meal periods; or
- the employee signs a form requesting to waive meal periods prior to being employed for seven calendar days.[315]

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[314] OR. ADMIN. R. 839-020-0050; *see also* Oregon Bureau of Labor and Indus., *Waiver and Notice Requirements: Tipped Food and Beverage Servers*, *available at* http://www.oregon.gov/boli/WHD/pages/meal_waivers.aspx.

[315] OR. ADMIN. R. 839-020-0050(8)(e).

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BOLI also takes the position that allowing an employee to work through a meal period so the employee can leave 30 minutes early is unlawful.[316]

Rest Periods. Employers must provide each employee, for each segment of four hours or major part thereof worked in a work period, a rest period of not less than 10 continuous minutes during which the employee is relieved of all duties. As the nature of the work allows, employers must provide the rest period approximately in the middle of each segment of 4 hours or major part thereof worked in a work period. The rest period is paid.[317]

Employers must provide rest periods in addition to and taken separately from meal periods. An employer cannot require or allow an employee to add the rest period to a meal period or deduct the rest period from the beginning or end of the employee's work period to reduce the overall length of the work period.[318]

A narrow exception to the Oregon rest break requirements exists for employees who work alone in retail or service locations. Employers are not required to provide a rest period to an employee when all of the following conditions are met:

- employee is 18 years old or older;
- employee works less than five hours in any period of 16 continuous hours;
- employee is working alone;
- employee is employed in a retail or service establishment; and
- employee is allowed to leave their assigned station when the employee must use the restroom facilities.[319]

As with meal periods, the rest period requirements do not apply to exempt employees.[320]

3.4(b)(ii) *State Meal & Rest Periods for Minors*

Oregon law sets forth special meal and rest break requirements for minors. If the nature of the work prevents minors age 16 or older from being relieved from all duty, they must be provided a paid 30-minute meal period. Such minors can perform duties or remain on-call during the meal period.[321] Minors under age 16 are entitled to an unpaid 30-minute meal period. The minor must be relieved of all duties during the meal period, which must begin within the first five hours and one minute after reporting for work.[322]

Minor employees must be provided a paid rest period of not less than 15 minutes for every four hours worked or major part thereof. Rest periods are in addition to a meal period.[323] As much as is feasible, the

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[316] Oregon Bureau of Labor and Indus., *Meal and Rest Period Rules*, *available at* http://www.oregon.gov/boli/TA/pages/t_faq_meal_and_rest_period_rules.aspx.

[317] OR. ADMIN. R. 839-020-0050; Oregon Bureau of Labor and Indus., *Meal and Rest Period Rules*.

[318] OR. ADMIN. R. 839-020-0050; Oregon Bureau of Labor and Indus., *Meal and Rest Period Rules*.

[319] OR. ADMIN. R. 839-020-0050; Oregon Bureau of Labor and Indus., *Meal and Rest Period Rules*.

[320] OR. REV. STAT. § 653.020; Oregon Bureau of Labor and Indus., *Meal and Rest Period Rules*.

[321] OR. ADMIN. R. 839-021-0072.

[322] OR. ADMIN. R. 839-021-0072.

[323] OR. ADMIN. R. 839-021-0072.

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rest period must be provided approximately in the middle of the four-hour work period. The employee must be relieved of all duties during rest periods.[324]

3.4(b)(iii) *State Enforcement, Remedies & Penalties*

Each violation of the meal and rest period provisions is a separate and distinct offense. In the case of continuing violations, each day that the violation continues is a separate and distinct violation.[325]

In addition to any other penalty provided by law, the state Labor Commissioner may assess a civil penalty of up to $1,000 against any person who willfully violates various provisions, including but not limited to the meal and rest period provisions.[326] Notwithstanding the general civil penalty for general employment statute or rule violations[327] in addition to any other penalty provided by law, the Labor Commissioner may assess a civil penalty up to $2,000 against an employer if the Commissioner finds the employer coerced an employee into unlawfully waiving a meal period.[328]

A violation of the meal and rest period provisions is also a misdemeanor, and carries the associated fines and sentences.[329] Enforcement mechanisms are discussed in **3.7(b)(x)**.

3.4(b)(iv) *Lactation Accommodation Under State Law*

Oregon's lactation accommodation and break requirements apply to all employers. Employees should provide employers reasonable notice that they intend to express milk when they return to work.[330] Under the law, an employee must provide notice when possible, but failure to do so is not grounds for discipline.

Employers must provide reasonable unpaid rest periods to accommodate exempt and non-exempt employees who need to express milk for their children who are aged 18 months or younger.[331] Unlike the state's meal and rest break requirements, the lactation accommodation requirements do apply to exempt executive, administrative, and professional employees.[332] However, employers with 10 or fewer employees are not required to provide rest periods to express milk if doing so would impose an undue hardship on the employer's business operations.[333]

Employers must provide a reasonable rest period to express milk each time the employee needs to express milk. [334]

[324] OR. ADMIN. R. 839-021-0072.

[325] OR. ADMIN. R. 839-020-1000.

[326] OR. REV. STAT. § 653.261.

[327] OR. REV. STAT. § 653.256.

[328] OR. REV. STAT. § 653.261.

[329] OR. REV. STAT. §§ 161.615, 161.635, 161.655, and 653.991.

[330] OR. REV. STAT. § 653.077; OR. ADMIN. R. 839-020-0051.

[331] OR. REV. STAT. § 653.077; OR. ADMIN. R. 839-020-0051.

[332] OR. REV. STAT. § 653.077; OR. ADMIN. R. 839-020-0051.

[333] OR. REV. STAT. § 653.077; OR. ADMIN. R. 839-020-0051.

[334] OR. REV. STAT. § 653.077; OR. ADMIN. R. 839-020-0051.

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Employers must make reasonable efforts to provide a location (other than a public restroom or toilet stall) in close proximity to the employee's work area for the employee to express milk in private.[335] The location may include, but is not limited to:

- the employee's work area if it meets the other statutory requirements;
- a room connected to a public restroom, such as a lounge, if the room allows the employee to express milk in private;
- a childcare facility in close proximity to the employee's work location where the employee may express milk in private; or
- an empty or unused office, conference room, or storage space.[336]

An employer must also allow the employee to bring a cooler or other insulated container to store the expressed milk. If the employer allows employees to use a refrigerator for personal use, the employee must be permitted (but may not be required by the employer) to use the available refrigeration to store the milk.[337]

The civil penalty for general employment statute or rule violations applies to lactation accommodation violations. In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed $1,000 against any person that intentionally violates these provisions.[338]

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[339] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[340]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties*

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[335] OR. REV. STAT. § 653.077; OR. ADMIN. R. 839-020-0051.

[336] Oregon Bureau of Labor & Industries, *Technical Assistance for Employers: Breaks: Rest Periods for Expression of Breast Milk*, July 2019, available at https://www.oregon.gov/boli/TA/Pages/FactSheetsFAQs/ExpressionOfMilk.aspx.

[337] Oregon Bureau of Labor & Industries, *Technical Assistance for Employers: Breaks: Rest Periods for Expression of Breast Milk*, January 2018, available at http://www.oregon.gov/boli/TA/Pages/T_FAQ_Expression_breast_milk.aspx.

[338] OR. REV. STAT. § 653.256(2).

[339] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29U.S.C. § 203(g).

[340] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

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include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

It is Oregon public policy that no person shall be "hired, nor permitted to work for wages, under any conditions or terms, for longer hours or days of service than is consistent with the person's health and physical well-being and ability to promote the general welfare by the person's increasing usefulness as a healthy and intelligent citizen."[341] Certain industries, including the mining, manufacturing, and lumber industries, have limitations on the number of hours an employee may work in a day or in a week.[342]

Under Oregon law, *employ* means "to suffer or permit to work," and work time includes both actual time worked and "time of authorized attendance."[343] There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time.

Reporting Time. Some states expressly require employers to compensate an employee when the employee has reported to work, but is subsequently excused from working their shift. Oregon does not have a provision addressing reporting time pay for adult employees; however, special rules apply to reporting time pay for minor employees.[344]

On-Call Time. Under Oregon law, if employees are required to remain on-call on the employer's premises or so close to it that they cannot use the time effectively for their own purposes, the on-call time is compensable. If employees are not required to remain on the employer's premises, but are merely required to be reachable, the on-call time is not compensable because the employees are able to use the time effectively for their own purposes. However, if the calls are so frequent or the conditions so restrictive that employees cannot use the time effectively for their own benefit, the time spent waiting or on-call is compensable.[345]

Travel Time. Normal commuting between work and home is not compensable whether the employee works at a fixed location or at different job sites. However, time spent in travel as part of the employee's principal activity is compensable. If an employee is required to report to a meeting place to receive

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341 OR. REV. STAT. § 652.010.

342 Oregon law sets forth a limit of 48 hours per week for certain lumber industry employees and 55 hours per week for certain mill, factory, and other manufacturing workers; 55 hours per week for agricultural workers (in 2023 and 2024 – the number decreases to 48 hours in 2025 and 2026, and 40 hours in 2027 and for each year thereafter). OR. REV. STAT. § 652.020; H.B. 4002 (Or. 2022). Employers may not take adverse action against any employee employed in a manufacturing establishment classified within the North American Industry Classification System under code 3118 (bakeries and tortilla manufacturers) who refuses to work a mandatory overtime shift unless the employer has provided the employee with at least five days' advance notice of the shift. Notice must include the date and time of the overtime shift. OR. REV. STAT. § 652.020, as amended by S.B. 1513 (Or. 2022).

343 OR. REV. STAT. § 653.010(2), (11).

344 OR. ADMIN. R. 839-021-0087.

345 OR. ADMIN. R. 839-020-0041; Oregon Bureau of Labor and Indus., *Technical Assistance for Employers: Working Time: Questions & Answers*.

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instructions or to perform other work, the travel from the meeting place to the workplace is compensable, as is jobsite to jobsite travel.[346]

If an employee regularly works at a fixed workplace, travel time to another city outside of a 30-mile radius of the normal workplace, where the employee does not stay overnight, is compensable. Travel that keeps an employee away from home overnight is compensable when it cuts across the hours of an employee's workday (including travel on nonworkdays).[347]

3.5(c) *State Predictive Scheduling Laws*

Oregon's predictive scheduling law requires covered employers to provide a good faith estimate of an employee's work schedule at the time of hire, among other things. The law covers employers of retail, hospitality, and food service establishments that employ 500 or more employees worldwide, including chain establishments.[348] The law requires that employers:

- provide a written good-faith estimate of the employee's work schedule at the time of hire and provide employees with a written work schedule at least 14 calendar days before the first day of the work schedule;
- refrain from scheduling an employee during the first 10 hours following the end of the previous calendar day's work shift or on-call shift, or the first 10 hours following the end of a work shift of on-call shift that spanned two calendar days, unless the employee consents. Employers must compensate employees that work these shifts at one and one-half times the employee's regular rate of pay, with some exceptions;
- allow employees to provide input into their schedule by identifying any limitations or changes in the employee's work schedule availability, including, but not limited to, childcare needs; and
- provide compensation to an employee for each employer-requested schedule change without the required advance notice, subject to a variety of exceptions.

Employers may also maintain a voluntary standby list of employees whom the employer will request to work additional hours to address unanticipated customer needs or unexpected employee absences. The law also requires employers to post a notice of worker rights and maintain records that document the employer's compliance with the statute for three years.

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[346] OR. ADMIN. R. 839-020-0045; Oregon Bureau of Labor and Indus., *Technical Assistance for Employers: Travel Time Compensation: Questions & Answers*, *available at* http://www.oregon.gov/boli/TA/pages/t_faq_tatrav.aspx.

[347] OR. ADMIN. R. 839-020-0045; Oregon Bureau of Labor and Indus., Technical Assistance for Employers: *Travel Time Compensation: Questions & Answers*.

[348] Oregon law sets forth a limit of 48 hours per week for certain lumber industry employees and 55 hours per week for certain mill, factory, and other manufacturing workers; 55 hours per week for agricultural workers (in 2023 and 2024 – the number decreases to 48 hours in 2025 and 2026, and 40 hours in 2027 and for each year thereafter). OR. REV. STAT. § 652.020. Employers may not take adverse action against any employee employed in a manufacturing establishment classified within the North American Industry Classification System under code 3118 (bakeries and tortilla manufacturers) who refuses to work a mandatory overtime shift unless the employer has provided the employee with at least five days' advance notice of the shift. Notice must include the date and time of the overtime shift. OR. REV. STAT. § 652.020, as amended by S.B. 1513 (Or. 2022).

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Retaliation Prohibited. The law prohibits employers from interfering with or restraining an employee's exercise of rights under the statute. An employee may file an administrative complaint with the Bureau of Labor and Industries. The labor commissioner may assess penalties of $500 for any violation of the posting and recordkeeping requirements, $1,000 for a violation of the scheduling, compensation, written notice, and nonretaliation requirements, and $2,000 against any employer found to have coerced an employee into requesting or agreeing to be added to the standby list.[349]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[350] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[351] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

The employment of minors is heavily regulated in Oregon. Oregon employers that intend to hire minors must apply for and obtain an annual employment certificate, and there are strict limitations on the types of work and number of hours a minor may work. For purposes of employment, a *minor* is anyone under the age of 18.

Except under rare circumstances, a minor must be at least 14 years of age to work in Oregon. In general, the same laws that protect adults apply to minors in Oregon. Minors must be paid the same minimum wage as adults, and laws regulating overtime, final pay, and deductions from wages are identical to the laws for adults.

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. In Oregon, minors cannot work in any occupation declared particularly hazardous or detrimental to their health or well-being.[352] Both state and federal law include a lengthy list of occupations deemed to be particularly hazardous or detrimental to the health and well-being of minors.[353] Although minors with valid driver's licenses may drive to and from work in Oregon, they may not drive on

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[349] OR. REV. STAT. §§ 653.432, 653.480.

[350] 29 C.F.R. §§ 570.36, 570.50.

[351] 29 C.F.R. § 570.6.

[352] OR. REV. STAT. § 653.360; OR. ADMIN. R. 839-021-0104, 839-021-0106, and 839-021-0265.

[353] OR. ADMIN. R. 839-021-0097, 839-021-0102.

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public roads as part of their work assignments. Table 10 summarizes the state restrictions on type of employment by age.

Table 10. Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Ages 16-17	Minors aged 16 or 17 may not work in any occupation declared particularly hazardous or detrimental to their health or well-being, except under terms and conditions specifically set forth by rules of the Oregon Wage and Hour Commission. The Commission has adopted the federal restrictions barring minors from certain such occupations, and has also included occupations involving the use of explosives.[354] Minors aged 16 and 17 may not be employed as door-to-door canvassers without a valid registration certificate.[355] Such minors are permitted work as assistants on chartered fishing or pleasure boats.[356]
Under Age 16	In addition to the restrictions for minors aged 16 and 17, no minor under age 16 may be employed: • in door-to-door sales; • around unenclosed commercial docks or wharves, or in unenclosed buildings over water (subject to exceptions); • on or around certain fishing vessels (subject to exceptions); or • in an occupation or type of work declared hazardous by the Commission.[357] These minors may only perform office work in connection with: • auto wrecking yards; • junk dealers; • motor vehicle transportation; • lumbering; or • water works.[358]
Under Age 14	In addition to the restrictions for minors aged 15 to 17, no child under age 14 may work: • in, or in connection with, any factory, workshop, mercantile establishment, store, business office, restaurant, bakery, hotel, or apartment house; • in any enterprise subject to the federal FLSA; • in any establishment where alcoholic beverages are dispensed or served; • in any theater or amusement park; or

[354] OR. ADMIN. R. 839-021-0104, 839-021-0106.

[355] OR. ADMIN. R. 839-021-0265.

[356] OR. REV. STAT. § 653.360.

[357] OR. ADMIN. R. 839-021-0097. An extensive list of hazardous occupations appears at OR. ADMIN. R. 839-021-0097.

[358] OR. ADMIN. R. 839-021-0102.

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Table 10. Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• in any establishment catering to adults only.[359]

Restrictions on Selling or Serving Alcohol. Oregon law sets forth the following guidelines on minors selling or serving alcohol or working in an establishment that sells or serves alcohol:

- Persons aged 18, 19, and 20 may work for a licensee under the alcoholic liquors laws, taking orders for, serving, and selling alcoholic liquor in any part of the licensed premises (aside from areas classified by the Oregon Liquor and Cannabis Commission as prohibited to the use of minors), when that activity is incidental to the serving of food.
- No person aged 18, 19, or 20 may mix, pour, or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.
- A person aged 18, 19, or 20 may enter areas classified by the Commission as being prohibited to the use of minors only for the purpose of ordering and picking up alcoholic liquor for service in other parts of the premises. The minor may not remain in the areas longer than is necessary to perform those duties.
- The Commission may permit access to prohibited areas by any minor for nonalcoholic liquor employment purposes, as long as the minor does not remain longer than is necessary to perform the duties.[360]

A minor other than a licensee's employee who has a legitimate business purpose may be in an area of the licensed premises normally prohibited to minors. For example, a minor who is a delivery person may enter the premises to make a delivery.[361]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

Oregon law prohibits minors aged 16 and 17 from working more than 44 hours per week, subject to the same overtime regulations as adults.[362] Special rules apply to such minors when employed in organized youth camps, as messengers, in agriculture, or in canneries.

Fourteen and 15-year olds may not work during school hours, may only work three hours per day on school days and eight hours per day on nonschool days, and may only work between the hours of 7:00

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[359] OR. REV. STAT. § 653.320; OR. ADMIN. R. 839-021-0246.

[360] OR. REV. STAT. § 471.482. Oregon also provides comprehensive details regarding prohibitions on minors' presence in various establishments designated by the commission charged with regulating alcohol. The commission excludes minors from establishments to varying degrees based on the type of alcohol posting requirements. For example, minor employees and minor service permittees are prohibited from the entire licensed premises required to post a Number 1 minor posting. These are establishments such as taverns where drinking alcohol predominates a majority of the time. Details of prohibitions based on the required postings are provided in OR. ADMIN. R. 845-006-0335. Definitions of establishments required to post poster numbers 1, 2, 3, 3A, 4, 5, 6, and 7 are listed in OR. ADMIN. R. 845-006-0340.

[361] OR. ADMIN. R. 845-006-0335.

[362] OR. REV. STAT. § 653.340; OR. ADMIN. R. 839-021-0067.

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a.m. and 7:00 p.m. during the school year.[363] Between June 1st and Labor Day, the available work hours are extended to 9:00 p.m. In addition, 14- and 15-year-olds may work no more than 18 hours per week during the school year and 40 hours per week when school is not in session.[364]

There is an inconsistency concerning the maximum daily hours a minor under 16 can work. Oregon Administrative Rule 839-021-0070 states that a minor under 16 cannot work more than eight hours in one day when school is not in session. However, Oregon Revised Statutes section 653.315 states that a minor under 16 years of age cannot work more than 10 hours in one day, and does not differentiate between school being in or out of session. The Oregon Bureau of Labor and Industries (BOLI), Wage and Hour Division, takes the position that the administrative rule controls. It contends that Oregon Revised Statutes section 653.525 confers on BOLI the power to adopt rules regulating the employment of minors, and that Rule 839-021-0070 is demonstrative of that authority.

Minors under age 14 cannot be employed when school is in session. Permits may be obtained during a school vacation lasting more than two weeks.[365]

3.6(b)(iii) *State Child Labor Exceptions*

Minors delivering newspapers or engaged in domestic work such as mowing lawns or babysitting in private residences are not covered under Oregon's child labor laws. Minors working at nonprofit youth camps are not subject to Oregon's minimum wage or overtime laws. Employment of minors in movie, television, and video productions in Oregon requires a special permit from BOLI.

3.6(b)(iv) *State Work Permit or Waiver Requirements*

An employer that hires minors must apply to BOLI's Child Labor Unit for an annual employment certificate to employ minors. The employer must post validated employment certificates in a conspicuous place that is readily visible to all employees. Employers must keep on file an annual employment certificate and a complete list of all minors employed, which must be accessible to school authorities, the police, and the state labor department.[366]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

BOLI enforces the state's child labor laws. In addition to any other penalty provided by law, the BOLI Commissioner may impose a civil penalty not to exceed $10,000 for each violation of the child labor statutes and administrative rules. However, the Commissioner may not impose a penalty for a violation for which the employer has already paid a penalty to the federal authorities for the same violation under the federal FLSA.[367]

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[363] OR. REV. STAT. § 653.315; OR. ADMIN. R. 839-021-0070.

[364] OR. REV. STAT. § 653.315; OR. ADMIN. R. 839-021-0070.

[365] OR. ADMIN. R. 839-021-0246.

[366] OR. REV. STAT. §§ 653.307, 653.310; OR. ADMIN. R. 839-021-0220.

[367] OR. REV. STAT. § 653.370; OR. ADMIN. R. 839-019-0025.

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3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[368]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[369]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[370]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[371] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[372]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that

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[368] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[369] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

[370] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[371] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[372] 12 C.F.R. § 1005.2(b)(3)(i)(A).

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must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[373] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[374]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[375]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[376]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in 3.7(a)(ii), wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

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373 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

374 12 C.F.R. § 1005.18.

375 *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr.. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

376 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

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3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[377] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[378] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[379] tools and equipment,[380] and business transportation and travel.[381] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[382]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[383]

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[377] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[378] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[379] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[380] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[381] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[382] 29 C.F.R. § 778.217.

[383] 29 C.F.R. § 531.38.

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- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[384]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[385]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[386]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[387] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[388]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[389]

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[384] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15U.S.C. §§ 1671 *et seq*.

[385] 29 C.F.R. § 531.40.

[386] 29 C.F.R. § 531.40.

[387] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[388] 29 C.F.R. § 825.213.

[389] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

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An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[390] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[391]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[392]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[393]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[394]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Authorized Instruments. In Oregon, wages may be paid by cash, negotiable check, money order, memorandum, or other instrument of indebtedness. Paychecks must be payable without discount in cash on demand at a bank or other established business in the county where the check was issued.[395]

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[390] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[391] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[392] 29 C.F.R. § 531.36.

[393] 29 C.F.R. § 531.37.

[394] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[395] OR. REV. STAT. § 652.110.

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Direct Deposit. Mandatory direct deposit is not permitted in Oregon. An employer can pay wages via direct deposit, without discount, in the employee's account at a financial institution. However, upon an employee's oral or written request, an employer must pay wages by check.[396]

Payroll Debit Card. An employer may elect to pay its employees by payroll debit card, so long as:

- the employer and employee agree to wage payment via debit card;
- it is possible to make an initial withdrawal of the entire amount of net pay without cost to the employee; and
- the employee may choose another means of wage payment that involves no cost to the employee.[397]

The payroll debit card agreement must be written in the language with which the employer principally uses to communicate with employees. An employee may revoke the agreement by giving the employer written notice of the revocation. Unless the employer and employee agree otherwise, the agreement is revoked 30 days after notice is received by the employer.[398]

Special rules apply to seasonal employees engaged in agriculture and related work.[399]

3.7(b)(ii) *Frequency of Payment Under State Law*

Employers are required to establish and maintain regular paydays, and may pay employees on a monthly or semi-monthly basis. Paydays may not be more than 35 days apart; however, an employer may elect to establish more frequent paydays.[400] With respect to changing regular paydays or an employee's rate of pay, Oregon law does not include any general payday and pay rate notice requirements. However, it is recommended that employees receive advance written notice before a change occurs.

3.7(b)(iii) *Final Payment Under State Law*

With respect to final wages, the timing of payment in Oregon depends on whether an employee quit or was terminated. An employer must pay final wages to a discharged employee no later than the end of the first business day after discharge. Striking employees must be paid at the next regular payday or 30 days after the commencement of the strike, whichever is sooner.[401]

When an employee quits, earned and unpaid wages become due and payable immediately if the employee has given at least 48 hours' notice (excluding Saturdays, Sundays, and holidays) of their intention to quit. If notice is not provided, final wages become due and payable within five days (excluding Saturdays, Sundays, and holidays) after the employee quits or on the next regularly scheduled payday, whichever comes first.[402]

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396 OR. REV. STAT. § 652.110; OR. ADMIN. R. 839-001-0450.

397 OR. REV. STAT. § 652.110.

398 OR. REV. STAT. § 652.110.

399 OR. REV. STAT. § 652.110(7)(b).

400 OR. REV. STAT. § 652.120.

401 OR. REV. STAT. §§ 652.140, 652.170.

402 OR. REV. STAT. § 652.140.

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3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

On regular paydays and at other times when wages, salaries, or commissions are paid, Oregon employers must provide each employee with a written, itemized statement that includes the information listed below. The statement may be attached to or be a part of the check, draft, voucher, or other instrument by which payment is made, or may be delivered separately.[403]

The statement must include:

- date of the payment;
- dates of work covered by the payment;
- name of the employee;
- name and business registry number or business identification number;
- address and telephone number of employer;
- rate or rates of pay;
- whether employee is paid by the hour, shift, day, or week or on a salary, piece, or commission basis;
- gross wages;
- net wages;
- the amount and purpose of each deduction made during the respective period of service that the payment covers;
- allowances, if any, claimed as part of the minimum wage;
- 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, overtime rate, or rates of pay, number of regular and overtime hours worked, and the pay for those hours; and
- for piece-rate employees, the applicable piece rate or rates of pay, number of pieces completed at each piece rate, and the total pay for each rate.

The itemized statement may be provided in an electronic format if the employee agrees and is able to print or store the electronic itemized statement at the time of receipt.[404]

3.7(b)(v) *Wage Transparency*

In Oregon, it is an unlawful employment practice for an employer to discharge, demote, suspend, or otherwise discriminate or retaliate against an employee who has:

- inquired about, discussed, or disclosed in any manner the wages of the employee or of another employee; or

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[403] OR. REV. STAT. § 652.610; OR. ADMIN. R. 839-020-0012.

[404] OR. ADMIN. R. 839-020-0012.

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- made a charge, filed a complaint, or instituted, or caused to be instituted, an investigation, proceeding, hearing, or action based on the disclosure of wage information by the employee.[405]

However, the law does not apply to employees who have access to employees' wage information as part of their job functions and who disclose the employees' wages to individuals not authorized to access the information, unless the disclosure is in response to a charge or complaint or is in furtherance of an investigation, proceeding, hearing, or action (including an investigation conducted by the employer).[406]

An employee alleging a violation of the wage disclosure provisions may file a civil action within two years of the alleged violation.[407]

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

There are no general notice requirements under Oregon law regarding making a change to regular paydays or an employee's rate of pay. Employers, however, should consider providing employees with advance written notice before a change occurs.

3.7(b)(vii) *Paying for Expenses Under State Law*

Under Oregon law, work expense reimbursements are excluded from an employee's regular rate when calculating overtime wages.[408] Additionally, per the Oregon Bureau of Labor and Industries (BOLI), minimum wage employees cannot be required to pay per diem expenses (*e.g.*, mileage). If requiring an employee who earns more than the minimum wage to pay per diem costs would bring their pay below the minimum wage, the employer must pay these costs.[409]

Uniform Expenses. An employer cannot deduct from the minimum wage for uniforms, which include but are not limited to: suits, dresses, aprons, and other garments worn by employees as a condition of employment. Apparel of a similar design, color, or material, or forming part of the establishment's decorative patent which distinguishes an employee as an employee is presumed to be worn as a condition of employment.[410] Deductions are also prohibited for laundering, cleaning or maintaining uniforms, for breakage, or loss of uniforms. Also, an employer cannot deduct for other items it requires an employee to wear as a condition of employment.[411]

According to BOLI, minimum wage employees can be required to purchase a "generic uniform" (*e.g.*, black skirt/pants and a white blouse/shirt which are suitable for street wear), though payroll deductions are not

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[405] OR. REV. STAT. § 652.355(1).

[406] OR. REV. STAT. § 652.355(2).

[407] OR. REV. STAT. §§ 659A.875, 659A.885.

[408] OR. ADMIN. R. 839-020-0030.

[409] Oregon Bureau of Labor and Indus., *Technical Assistance for Employers: Travel Time Compensation: Questions & Answers*, *available at* http://www.oregon.gov/boli/TA/pages/t_faq_tatrav.aspx.

[410] OR. ADMIN. R. 839-020-0020.

[411] OR. ADMIN. R. 839-020-0020.

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permitted. However, employees earning more than the minimum wage can be required to purchase required items if the purchase does not cause an employee's pay to fall below the minimum wage.[412]

Tools & Equipment. An employer cannot deduct from the minimum wage for providing, maintaining, or replacing due to breakage or loss of tools or equipment.[413] Employees earning more than the minimum wage can be required to purchase required items if the purchase does not cause an employee's pay to fall below the minimum wage. However, the item's costs cannot be averaged over more than one pay period, and payroll deductions are not permitted.[414]

3.7(b)(viii) *Wage Deductions Under State Law*

Permissible Deductions. Oregon law strictly limits deductions from employees' paychecks. Employers may make deductions from the wages of Oregon employees only under the following circumstances:

- The employer is required by law to make the deduction (*e.g.*, federal or state taxes, garnishment order).[415]
- The employee has voluntarily signed an authorization for the deduction, the deduction is for the employee's benefit, and the deduction is recorded in the employer's books.[416]
- The deduction is made in accordance with a collective bargaining agreement to which the employer and the employee's representative are parties (*e.g.*, union dues).[417]
- The employee has voluntarily signed an authorization, the employer is not the ultimate recipient of the money, and the deductions are recorded in the employer's books.[418]
- The deduction is made from the final paycheck for the repayment of money lent to the employee provided:
    - the employee has voluntarily signed a written agreement;
    - the employee received the loan funds in cash, by check, or other negotiable instrument;
    - the loan was for the employee's sole benefit and was not used in connection with the employee's job;
    - the amount to be deducted from the final paycheck does not exceed the amount that may be garnished; and
    - the deduction is recorded in the employer's books.[419]

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412 Oregon Bureau of Labor and Indus., *Technical Assistance for Employers: Employer Deductions: Questions & Answers*, *available at* http://www.oregon.gov/boli/TA/pages/t_faq_tadeduct.aspx.

413 OR. ADMIN. R. 839-020-0020.

414 Oregon Bureau of Labor and Indus., *Technical Assistance for Employers: Employer Deductions: Questions & Answers*.

415 OR. REV. STAT. § 652.610(3)(a).

416 OR. REV. STAT. § 652.610(3)(b).

417 OR. REV. STAT. § 652.610(3)(d).

418 OR. REV. STAT. § 652.610(3)(b).

419 OR. REV. STAT. § 652.610(3)(f).

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- The deduction is permitted by law for processing a garnishment order,[420] as discussed in 3.7(b)(ix).

Prohibited Deductions. An employer cannot deduct the following items from wages if doing so would cause an employee's pay to fall below the minimum wage:

- tools;
- equipment;
- uniforms;
- laundry or cleaning of uniforms;
- maintenance of tools, equipment, or uniforms;
- breakage or loss of tools, equipment, or uniforms; or
- any other item required by the employer to be worn or used by the employee as a condition of employment.[421]

Additionally, employers may not make deductions from Oregon employees' paychecks for till shortages, bad checks, or lost, damaged, or stolen company property, whether equipment or cash.[422]

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Oregon employers are required to comply with an order of wage garnishment issued against an employee. When a creditor or "garnishor" issues a proper writ of garnishment and delivers the document to the employer within 60 days of its issuance, the employer ("garnishee") must respond within seven calendar days.[423] The garnishee need not respond if:

- certain required items are not delivered with the writ (response form, instructions, and wage exemption calculation form);
- the garnishment has been released; or
- any other law or court order directs that no response be made.[424]

Even if a response is not required, the garnishee may wish to send a letter to the court administrator and/or the garnishor explaining the basis for not responding, to avoid being ordered to appear in person and explain the failure or refusal to respond. The employer is required to withhold wages of the employee, or "debtor," for a period of 90 days from receipt of the writ, unless satisfied or released, and must pay the withheld amounts to the garnishor every time wages are paid to the employee, with the final payment made when the garnishee next pays wages to the employee after the writ expires.[425] If the garnishee fails to deliver payment, underreports property of the employee held by the garnishee, or fails to respond to

[420] OR. REV. STAT. § 18.385.

[421] OR. ADMIN. R. 839-020-0020.

[422] OR. REV. STAT. § 652.610; OR. ADMIN. R. 839-020-0020.

[423] OR. REV. STAT. §§ 18.385, 18.735.

[424] OR. REV. STAT. § 18.854.

[425] OR. REV. STAT. § 18.735.

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the writ, the employer may be liable to the garnishor for the amounts that were required to be withheld, plus the creditor's costs.[426]

It is an unlawful employment practice to terminate an employee because of a garnishment or support order.[427]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

When an employer has been put on notice that an employee in Oregon has been underpaid, and if some or all of the underpayment is not disputed, the employer must pay the undisputed amount within three business days if the amount is more than 5% of the employee's gross pay, or on the next regular payday if the amount is less than 5% of the gross.[428] In case of a dispute over wages, the employer must pay, without condition, and within the time set by Oregon Revised Statutes section 652.140, all wages conceded by the employer to be due, leaving the employee all remedies the employee might otherwise have or be entitled to as to any balance the employee might claim.[429]

If the employee still believes that the employer owes the employee wages, the employee may file a claim with the Wage and Hour Division of BOLI within six months of termination or one year of the violation. BOLI will then require the employer to provide a written statement of position and a BOLI investigator will conduct an investigation. At the conclusion of the investigation, BOLI will issue an opinion. Regardless of the opinion, the employee will then have 90 days to initiate a civil suit against the employer.[430]

An employer found to have paid an employee less than the wages to which the employee is entitled under is liable for back pay (the full amount of the wages, less any amount actually paid to the employee) and for civil penalties.[431]

The penalty for unpaid wages in Oregon is calculated by multiplying the former employee's regular hourly rate of pay times eight hours per day for each day the total remains unpaid, up to a maximum of 30 days.[432] Penalty wages are limited to 100% of the amount owed the former employee unless, following written notification of the shortage, the employer fails to respond within 12 days.[433] An employer may avoid liability by proving financial inability to pay the wages at the time they accrued, although this can be a difficult standard to meet.[434]

State law offers antiretaliation protections for an employee involved in a wage claim proceeding. An employer is prohibited from retaliating against employees who have made wage claims or reported violations of the minimum wage law.[435]

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[426] OR. REV. STAT. § 18.775.

[427] OR. REV. STAT. § 18.385.

[428] OR. REV. STAT. § 652.120(5).

[429] OR. REV. STAT. § 652.160.

[430] OR. REV. STAT. § 652.332.

[431] OR. REV. STAT. § 653.055.

[432] OR. REV. STAT. § 652.150.

[433] OR. REV. STAT. § 652.150(2).

[434] OR. REV. STAT. § 652.150(5).

[435] OR. REV. STAT. §§ 652.335, 653.060.

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3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[436] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[437] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[438]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

There is no requirement under Oregon law that an employer must offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. However, once an employer does establish a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

In Oregon, vacation pay is considered a matter of contract or employment policy. However, when vacation is earned pursuant to such a policy or contract, it constitutes wages. Employers may place conditions on the right to vacation pay, for example, conditioning the earning of vacation days on reaching a certain number of days of employment.[439] Because vacation pay is a matter of contract, "use it or lose it" policies, policies that cap accrual, and forfeiture of accrued vacation time upon termination of employment is permissible so long as employees are provided notice of the policy.[440]

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[436] 29 U.S.C. § 1002.

[437] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[438] 490 U.S. 107, 119 (1989).

[439] *See State ex. rel. Nilsen v. Oregon State Motor Ass'n*, 432P.2d 512 (Or. 1967); *State ex. rel. Roberts v. Public Fin. Co.*, 662P.2d 330 (Or. 1983); *Erickson v. American Golf Corp.*, 96P.3d 843 (Or. Ct. App. 2004).

[440] *See Richardson v. Sunset Science Park Credit Union*, 268F.3d 654 (9th Cir. 2001); *State ex rel. Stevenson v. Kenneth D. Rutherford, Inc.*, 576P.2d 808 (Or. Ct. App. 1978).

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3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Oregon does not require employers to provide employees with a day of rest each week, or compensate employees at a premium rate for work performed on the seventh consecutive day of work or on holidays. However, an employer must provide time off on Veterans Day to qualified veterans.[441]

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[442] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[443] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[444] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

Oregon's Family Fairness Act treats domestic partners as spouses, so domestic partnerships provide the equivalent of state-level spousal rights.[445] For the domestic partnership to have legal effect, domestic partners must register as such with the state.[446] For purposes of employee insurance benefits, terms, and

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[441] OR. REV. STAT. § 408.495.

[442] 29 U.S.C. § 1144.

[443] 29 U.S.C. § 1161.

[444] 29 U.S.C. § 1167(3).

[445] OR. REV. STAT. § 106.340.

[446] OR. REV. STAT. §§ 106.310-106.325.

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provisions in the Insurance Code and in rules adopted under the Code that refer to or indicate the marital relationship, its dissolution, and dependents in a marital relationship will apply in the same manner to domestic partnerships, to their dissolution, and to dependents in the partnership.[447] Accordingly, an employee may include a domestic partner as a dependent on their group health coverage policy, and the employee's partner will also be entitled to protection under the state mini-COBRA statute in the event the employee's employment terminates.

In addition, for purposes of administering Oregon tax laws, partners in a domestic partnership, surviving partners in a domestic partnership, and the children of partners in a domestic partnership have the same privileges, immunities, rights, benefits, and responsibilities as are granted to or imposed on spouses in a marriage, surviving spouses, and their children.[448]

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[449]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[450]
- to take medical leave when the employee is unable to work because of a serious health condition;[451]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[452] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the

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[447] Oregon Dep't of Consumer & Bus. Servs., Insurance Division Bulletin INS 2008-2 (Feb. 5, 2008), *available at* http://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2008-02.pdf.

[448] OR. REV. STAT. § 106.340.

[449] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[450] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

[451] 29 C.F.R. §§ 825.112, 825.113.

[452] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

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last 12 months at a location where 50 or more employees work within 75 miles of each other.[453] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Leave law in Oregon includes overlapping, but not quite duplicative, requirements under the federal FMLA, the Oregon Family Leave Act (OFLA), the Oregon paid sick leave law, and several other state and federal leave of absence statutes. Thus, Oregon employers must identify and apply a tangle of federal and state leave regulations that sometimes yields unexpected results.

Oregon employers covered by the OFLA also must be aware of both state and federal requirements because employees may be protected under the OFLA and the FMLA. The OFLA differs in some important respects from the FMLA (*e.g.*, the OFLA covers more employers than the FMLA). This publication highlights some, but not all, of those differences.

Where an employee requesting leave is eligible for both OFLA and FMLA leave, the two leaves must be taken concurrently when both are available—in other words, leave taken under the FMLA counts as OFLA leave.[454] Employers subject to both the OFLA and the FMLA must apply the provision that is more beneficial to the employee's circumstances.[455] However, **effective July 1, 2024**, OFLA leave is taken in addition to and not concurrently with any leave taken under Paid Leave Oregon (the Family and Medical Leave Insurance Program).[456]

Coverage & Eligibility

Covered Employers. The OFLA applies to employers with 25 or more employees in Oregon during each of 20 or more calendar weeks in the year in which the leave is taken or in the preceding year.[457] When determining coverage, it is important for employers to count all full-time, part-time, leased and/or temporary employees, as well as employees who are on paid or unpaid leave. If two entities share common ownership, management, or operations, both entities' employees should be counted together to determine coverage requirements.[458]

Employers meeting both coverage requirements for the OFLA and the FMLA are subject to both state and federal laws, and they must track both OFLA and FMLA leaves. As noted above, when the laws differ, the employer must apply the law that is most beneficial to the employee. If both laws apply in a given situation, OFLA and FMLA leaves may run concurrently.[459]

Employers that are not covered under either the FMLA or OFLA may determine their own medical leave policies for Oregon employees, provided that these policies are established and administered in a nondiscriminatory manner.

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[453] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[454] OR. REV. STAT. § 659A.186(2).

[455] OR. ADMIN. R. 839-009-0220.

[456] S.B. 1515 (Or. 2024).

[457] OR. REV. STAT. § 659A.153(1); OR. ADMIN. R. 839-009-0210(3).

[458] 29 C.F.R. § 825.104(c)(2); OR. ADMIN. R. 839-009-0220.

[459] OR. ADMIN. R. 839-009-0220.

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Covered Employees. Employees are eligible for OFLA leave after 180 days of employment if they have worked an average of 25 or more hours per week during that period.[460] Special rules apply to employees re-employed after a period of uniformed service.[461] Special eligibility rules apply to employees during a public health emergency.[462]

In contrast with the FMLA, the OFLA does not require an employer to have a certain number of employees within a fixed distance from the workplace in order for an employee to be eligible for OFLA leave. In addition, unlike the FMLA, the OFLA does not contain an exemption for highly compensated employees.

Purpose of Leave

Effective July 1, 2024, an eligible employee may use OFLA leave for the following purposes:

- to care for a child who is suffering from an illness, injury, or condition that requires home care;
    - sick child leave includes absence to care for an employee's child whose school or child care provider has been closed in conjunction with a statewide public health emergency declared by a public health official;
    - a Child Care Provider for purposes of sick child leave during a statewide public health emergency is a place of care or person who cares for a child. This includes persons paid to provide child care, such as nannies, or babysitters, as well as individuals who provide care at no cost and without a license on a regular basis, such as grandparents or neighbors. The place of care is a physical location in which care is provided for a child, including day care facilities, preschools, before and after-school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs. The physical location does not have to be solely dedicated to care. Closure means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider. Intermittent leave includes sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency.
- pregnancy disability leave or prenatal care; and
- bereavement leave to attend a funeral, make arrangements as necessitated by the death, or to grieve.

Effective July 1, 2024 through January 1, 2025, an employee may receive two weeks of leave to effectuate the legal process required for placement of a foster child or the adoption of a child. The employee must provide oral notice to the employer within 24 hours of the commencement of leave and written notice within three days after the employee returns to work.[463]

<u>**Note:**</u> Effective July 1, 2024, OFLA no longer covers family leave (aka parental bonding leave), or serious health condition leave for an employee or their family member. Family leave and serious health condition leave are solely covered under Paid Leave Oregon. For employees who were already approved or

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460 OR. REV. STAT. § 659A.156.

461 OR. ADMIN. R. 839-009-0210(6)(c), (d).

462 OR. REV. STAT. § 659A.156.

463 S.B. 1515 (Or. 2024).

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designated for OFLA leave occurring on or after July 1, 2024, employers may rescind the leave previously protected by OFLA with written notice to the employee on or before June 1, 2024. In situations where an eligible employee would be entitled to OFLA leave on June 30, 2024, but will no longer be entitled to OFLA leave on July 1, 2024, employers must, as soon as practicable but no later than June 1, 2024, notify the employee in writing that the leave will not be protected by OFLA on and after July 1, 2024.

Additionally, employers must provide written information to eligible employees who were designated or approved for leave previously protected by OFLA of the ability to apply for Paid Leave Oregon benefits. The notice must include contact information for Paid Leave Oregon or the administrator of the employer's equivalent plan. This notice must be provided with the written notice of leave rescission, or as soon as practicable but within 14 calendar days of the employee's providing the employer with information that before July 1, 2024, would have been sufficient for the employer to provisionally designate the leave as leave previously protected by OFLA.[464]

Child, for the purposes sick child leave, means a biological, adopted, foster, or stepchild, the child of an employee's same-gender domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. The child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.[465] Sick child leave need not be provided to an eligible employee if another family member is willing and able to care for the child.[466]

Family member, for purposes of bereavement leave, means the spouse of a covered individual; a child of a covered individual or the child's spouse or domestic partner; a parent of a covered individual or the parent's spouse or domestic partner; a sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner; a grandparent of a covered individual or the grandparent's spouse or domestic partner; a grandchild of a covered individual or the grandchild's spouse or domestic partner; the domestic partner of a covered individual; or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.[467]

Length of Leave

OFLA-eligible employees are generally entitled to up to 12 workweeks within any one-year period.[468] However, a female employee is allowed to take an additional 12 weeks of leave for a disabling illness, injury, or condition related to pregnancy or childbirth.[469]

Bereavement leave may be taken for up to two weeks for each death of a family member in a one-year period with a maximum of four weeks per leave year.[470] An employer may not require an employee to take multiple periods of leave concurrently if more than one family member dies within the one-year

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[464] OR. ADMIN. R. 839-009-0201.

[465] OR. ADMIN. R. 839-009-0210(2).

[466] OR. ADMIN. R. 839-009-0240(7).

[467] OR. REV. STAT. § 659A.150 as amended by S.B. 999 (Or. 2023); OR. ADMIN. R. 839-009-0210(7).

[468] OR. REV. STAT. § 659A.162(1).

[469] OR. ADMIN. R. 839-009-0240(2), (3).

[470] S.B. 1515 (Or. 2024).

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period. Bereavement leave must be taken within 60 days from the date that the employee receives notice of the death.[471]

Family members working for the same employer may not take family leave at the same time unless one employee needs to care for a sick child while another employee is taking leave to care for an illness, injury, or condition related to the employee's own pregnancy or childbirth, or one or more of the employees is taking bereavement leave.[472]

Intermittent & Reduced Schedule Leave

Like the FMLA, the OFLA permits an eligible employee to take leave intermittently or using a reduced work schedule. For the purpose of intermittent leave, OFLA leave entitlement is calculated by multiplying the number of hours an employee normally works per week by 12. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period must be used for calculating the employee's normal work week. If an employee takes intermittent or reduced work schedule OFLA leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of OFLA leave to which the employee is entitled.[473]

An employer may transfer an employee on intermittent OFLA leave or a reduced work schedule into an alternative position if:

- the employee voluntarily accepts the transfer;
- the transfer is temporary;
- the transfer complies with applicable collective bargaining agreements and law;
- the transfer is only used when there is no other reasonable option available that would allow the employee to use intermittent or reduced schedule leave; and
- the transfer is not used to discourage the employee from using intermittent or reduced schedule leave.[474]

At the conclusion of the leave, the transferred employee must be returned to their former position.[475]

In permitting an employee to take reduced schedule leave, an employer must take into account an employee's status as exempt or nonexempt for overtime purposes. When OFLA leave is also covered by the FMLA, an employer may reduce an exempt employee's salary for partial day absences without loss of the employee's exempt status. However, when OFLA leave is not also covered by the FMLA, an employer will jeopardize the employee's exempt status if the employer reduces the employee's salary for partial day absences.[476]

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[471] OR. ADMIN. R. 839-009-0240(6).

[472] S.B. 1515 (Or. 2024).

[473] OR. ADMIN. R. 839-009-0240(12).

[474] OR. ADMIN. R. 839-009-0245.

[475] OR. ADMIN. R. 839-009-0245.

[476] OR. ADMIN. R. 839-009-0240(14).

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Employer Obligations

Reinstatement. The employer must restore the employee to the same position the employee held prior to taking leave if the position still exists, regardless of whether the employer filled the position with a replacement worker during the leave. If the position no longer exists, the employer must restore the employee to any available equivalent position. If an equivalent position is not available at the jobsite, the employer may offer the employee an equivalent position at a jobsite within 50 miles, if such a position is available. However, an employee is not entitled to reinstatement to their former position if the employee would have been removed from the position even if OFLA leave were not taken.[477]

If an employee provides unequivocal notice of intent not to return from OFLA leave, the employee may complete the leave period (if the need still exists), but the employer is under no obligation to hold the employee's position open or to restore the employee to their prior position or benefits except as required by COBRA.[478]

Compensation & Benefits During Leave. In general, leave under the OFLA is unpaid under that statute, unless compensation during OFLA leave is required by a contract, a collective bargaining agreement, or the employer's internal policy.[479] However, Oregon's paid sick leave law may require paid leave by certain employers for OFLA-covered leaves (see 3.9(b)(ii)). Under OFLA, an employee may elect, or an employer may require, the employee to use accrued paid sick leave, personal leave, vacation leave, or any other paid leave offered in lieu of vacation leave. In such cases, the employer may determine the order in which paid leave is to be used if consistent with a collective bargaining agreement or other contract between the employee and the employer or an employer policy. The employer must provide written notice, prior to the commencement of the leave, that accrued paid leave is to be used during OFLA leave.[480]

An employee on OFLA leave does not accrue seniority, production bonuses, or other non-health-related benefits during a period of family leave unless continuation or accrual is required by contract, a collective bargaining agreement, or an employer's policy.[481] If the employee is provided group health insurance, the employee is entitled to the continuation of group health insurance coverage during the period of family leave on the same terms as if the employee had continued to work. If family member coverage is provided to the employee, family member coverage must be maintained during the period of family leave. The employee must continue to make any regular contributions to the cost of the health insurance premiums.[482]

An employer that elects to continue other insurance during an OFLA leave may require the employee to pay the share the employee paid prior to the leave. If the employee does not pay the costs, the employer may discontinue coverage unless doing so will make the employee unable to restore the full benefits upon return. An employer that pays a portion of an employee's coverage for non-OFLA leave must likewise pay that portion during an OFLA leave.[483]

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[477] OR. REV. STAT. § 659A.171 as amended by S.B. 999 (Or. 2023); OR. ADMIN. R. 839-009-0270.

[478] OR. ADMIN. R. 839-009-0270.

[479] OR. REV. STAT. § 659A.174; OR. ADMIN. R. 839-009-0280(1).

[480] OR. REV. STAT. § 659A.174; OR. ADMIN. R. 839-009-0280(3).

[481] OR. REV. STAT. § 659A.171(5); OR. ADMIN. R. 839-009-0270(5)(a).

[482] OR. REV. STAT. § 659A.171(5)(b); OR. ADMIN. R. 839-009-0270(6).

[483] OR. ADMIN. R. 839-009-0270(6).

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If an employer pays any portion of the employee's share of premiums while the employee is on leave, the employer may deduct the amount from the employee's pay when the employee returns until the amount advanced is paid. The deduction may not exceed 10% of the employee's gross pay each pay period.[484] If the employee does not return to work after taking leave, the employer may deduct any amounts paid for the cost of insurance from any amounts owed to the employee, or may seek to recover these amounts by any legal means, unless the employee fails to return to work due to circumstances beyond the employee's control.[485] The deduction may be made with or without the employee's authorization, and the employer must notify the employee before the deduction is made.[486]

Antiretaliation Provisions. Denial of OFLA leave to an eligible employee is an unlawful employment practice. Additionally, interfering with an employee's OFLA rights or retaliating or in any way discriminating against any person with respect to hiring, tenure, or any other term or condition of employment because the person has inquired about OFLA leave, submitted a request for OFLA leave or invoked any provision of the OFLA is prohibited. Thus, the OFLA makes it unlawful to count OFLA leave against an employee in determining the employee's compliance with attendance policies or to count OFLA leave against an employee when determining eligibility for bonuses based on attendance.[487]

Employee Rights & Obligations

Required Notice. An eligible employee who wishes to take OFLA leave must provide written notice to the employer 30 days in advance of the leave if the need for leave is foreseeable.[488]

If an employee starts leave without prior notice, the employee must provide written or oral notice to the employer within 24 hours of the start of the leave, and written notice within three days after returning to work.[489] An eligible employee may take leave without prior notice in the following instances: (1) an unexpected illness, injury or condition of a child that requires homecare; and (2) the death of a family member, or (3) an illness, injury, or condition related to the employee's own pregnancy or childbirth.[490]

The OFLA sets forth guidelines for the content of an employee's notice. The employer may require the employee to include an explanation in general, nonmedical terms of the need for the leave in the notice.[491] An employer may request additional information to determine whether a leave qualifies as OFLA leave. An employer may provisionally designate leave as OFLA leave until sufficient information is received.[492]

The OFLA also sets forth consequences for an employee who fails to provide the required notice. As a result of an employee's failure to provide notice, the employer may reduce a requested period of family leave by three weeks and subject the employee to disciplinary action under a uniformly applied policy or practice of the employer. However, an employer may not impose such consequences in the case of

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[484] OR. REV. STAT. § 659A.171(5); OR. ADMIN. R. 839-009-0250.

[485] OR. REV. STAT. § 659A.171(6).

[486] OR. ADMIN. R. 839-009-0250.

[487] OR. REV. STAT. § 659A.183; OR. ADMIN. R. 839-009-0320.

[488] OR. REV. STAT. § 659A.165(1).

[489] OR. REV. STAT. § 659A.165(3); OR. ADMIN. R. 839-009-0250.

[490] S.B. 1515 (Or. 2024).

[491] OR. REV. STAT. § 659A.165(1); OR. ADMIN. R. 839-009-0250(1).

[492] OR. REV. STAT. § 659A.165; OR. ADMIN. R. 839-009-0250.

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bereavement leave.[493] In addition, an employer may not impose such consequences unless it has posted the required Oregon Family Leave Act notice[494] or can establish the employee had actual notice of the notice requirement.[495] Employers subject to both the FMLA and OFLA must be cautious in penalizing an employee for failing to provide notice of the need for leave. The FMLA prohibits reducing the leave period as a consequence, but permits an employer to delay the start of a leave due to improper notice.[496]

During OFLA leave, an employer may require an employee to periodically report to the employer on their status and intention to return.[497] If an employee does not return to work after the end of the authorized period of OFLA leave, an employer having reason to believe that the continuing absence may nonetheless be for an OFLA-qualifying reason must request additional information from the employee. The employer may not treat the continuing absence as unauthorized unless the employee does not provide the requested information or the information provided does not support OFLA qualification.[498]

Medical Certification. An employer may require medical certification that leave is OFLA-qualifying when leave is requested for sick child leave or for pregnancy disability leave. In the case of foreseeable leave, the employer may require that medical certification be provided before the leave starts. If prior notice is not given, medical verification must be provided within 15 days of the employer's request. An employer may not require medical verification for parental leave or for the death of a family member.[499]

The employer must pay the cost of medical verification.[500]

In the interest of employee confidentiality, an employer may not directly ask the health care provider for additional information. Rather, a health care provider representing the employer may contact the employee's health care provider, with the employee's permission, for purposes of clarifying the medical verification.[501]

An employer may require that an employee provide a fitness for duty certification before returning to work, but only if the employer has a uniformly applied policy of requiring such certification from employees returning from other types of leave. The employer may not ask for a second opinion.[502]

Employers may not request medical verification of the need for sick child leave due to the closure of a child's school or childcare provider as a result of a public health emergency or for the death of a family member.[503]

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[493] OR. REV. STAT. § 659A.165.

[494] OR. REV. STAT. § 659A.180.

[495] OR. ADMIN. R. 839-009-0250(5).

[496] 29 C.F.R. § 825.304.

[497] OR. REV. STAT. § 659A.171(4).

[498] OR. ADMIN. R. 839-009-0250(1).

[499] OR. REV. STAT. § 659A.168; OR. ADMIN. R. 839-009-0260.

[500] OR. ADMIN. R. 839-009-0260(1).

[501] OR. REV. STAT. § 659A.168; OR. ADMIN. R. 839-009-0260(8).

[502] OR. REV. STAT. § 659A.171(4); OR. ADMIN. R. 839-009-0270(7).

[503] OR. REV. STAT. § 659A.168; OR. ADMIN. R. 839-009-0250, -0260.

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Family and Medical Leave Insurance Program (Paid Leave Oregon)

Oregon's family and medical leave insurance benefits program provides eligible employees with up to 12 weeks of paid family, medical, and safe leave benefits in certain circumstances. Payroll contributions and employer notifications to employees began January 1, 2023, and employees began using leave benefits September 3, 2023.[504]

Covered Employers and Employees

An employer is any person that employs one or more employees working anywhere in Oregon, or any agent or employee of such person to whom the duties of the person have been delegated. Portions of the law apply only to employers with fewer than 25 employees. An employer's size is determined based on the average number of employees in the preceding 12 months, based on the number of employees on payroll (both in Oregon and outside of the state) for the pay period that includes the 12th day of each month. Workers hired to temporarily replace an employee who is out on leave under the law will not be counted.[505]

An employee is an individual performing services for an employer for remuneration or under any contract of hire, written or oral, express or implied or a home care worker. However, "employee" does not include:

- an independent contractor;
- a participant in a work training program administered under a state or federal assistance program;
- a participant in a work-study program that provides students in secondary or postsecondary educational institutions with employment opportunities for financial assistance or vocational training;
- a railroad worker exempted under the federal Railroad Unemployment Insurance Act; or
- a volunteer.

An employee is eligible for benefits under the law if the employee has earned at least $1,000 in wages during the base year, or, if an employee has not earned at least $1,000 in wages during the base year, an employee who has earned at least $1,000 in wages during the alternate base year.[506]

Permissible Reasons for Leave

An employee may take family leave to:

- care for and bond with a child during the first year after the child's birth or during the first year the child through foster care or adoption;
- care for a family member with a serious health condition; or
- **effective January 1, 2025**, to effectuate the legal process required for placement of a foster child or the adoption of a child.[507]

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[504] OR. REV. STAT. §§ 657B.010 *et seq* .

[505] OR. REV. STAT. § 657B.010; OR. ADMIN. R. 471-070-3150, -3160.

[506] OR. REV. STAT. § 657B.010.

[507] S.B. 1515 (Or. 2024).

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An employee may take medical leave due to the employee's own serious health condition.

An employee may take safe leave for any purpose provided under Oregon's paid sick and safe time statute or domestic violence, harassment, sexual assault, bias, or stalking leave statute, that is:

- to seek legal or law enforcement assistance or remedies;
- to seek medical treatment for or to recover from injuries caused by harassment, domestic violence, sexual assault, bias, or stalking;
- to obtain or assist a minor child or dependent in obtaining counseling related to an experience of harassment, domestic violence, sexual assault, bias, or stalking;
- to obtain services from a victim services provider; or
- to relocate or try to secure an existing home.[508]

An employee may qualify for up to 12 weeks of family and medical leave insurance benefits per benefit year, taken in any combination of family leave, medical leave, or safe leave. The total amount of leave may not exceed 14 weeks per benefit year. Employees may request leave in continuous or intermittent periods of time, and may take leave in increments of one day or one week. Benefits are then prorated based on how many days of leave an employee takes in one week.[509]

Employee Rights and Obligations

Notice to Employers. An employer may require an employee to give written notice at least 30 days before commencing a period of leave and may also require the employee to include in the notice an explanation of the need for the leave. However, an employee may commence leave without 30 days' advance notice if the leave is not foreseeable, such as for:

- an unexpected serious health condition of the employee or a family member of the employee;
- a premature birth, unexpected adoption, or unexpected foster placement by or with the employee; or
- safe leave.

If an employee begins leave without prior notice, the employee must give oral notice to the employer within 24 hours of the commencement of the leave and must provide the written notice required within three days after the commencement of leave. If an employee fails to give notice as required, the Director of the Employment Department may reduce the first weekly benefit amount payable to the employee under the law by up to 25%.

An employer may require an employee's written notice to include:

- the employee's first and last name;
- the type of leave;
- an explanation of the need for leave; and

[508] OR. REV. STAT. § 659A.272, as amended by H.B. 3443 (Or. 2023).

[509] OR. REV. STAT. §§ 657B.010, 657B.020; OR. ADMIN. R. 471-070-1010; S.B. 1515 (Or. 2024).

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- the anticipated timing and duration of leave.

An employee is only required to provide this notice once, if the leave is continuous. If the leave is intermittent, the employee should provide oral notice within 24 hours of the commencement of each period of leave, or earlier if known. Employees may provide the notice via handwritten or typed documents, email, or text messages, as long as the method of delivery follows the employer's policies.

Employers that require written notice must make the requirement known in its policies and procedures, a copy of which must be given to new employees upon hire, and each time that the policy or procedure changes. Additionally, the employer must include in its policies and procedures a description of the penalties that the state may impose on an employee for not following the employer's notice procedures. An employer must provide the notice in the language that the employer typically uses to communicate with the employee.

An employee who takes safe leave must give the employer reasonable advance notice of their intention to take safe leave, unless giving advance notice is not feasible.[510]

Employment Protections. The law provides employment protections to employees who were employed by the employer for at least 90 days before taking leave, including reinstatement after leave, continuation of health care benefits during leave, and continuation of seniority and pension rights.[511]

Applications for Benefits. The rules set forth the information and documentation necessary for employees to submit in order to claim benefits under the program. Applications for leave can be submitted up to 30 calendar days before the leave is set to begin, up through 30 calendar days after the leave has started, unless the claimant can demonstrate good cause for later submission. The rules detail the specific categories of information that must be provided for each type of leave requested.[512]

Payroll Withholding, Contributions, and Benefit Amounts

Funding of the paid leave program is through payroll contributions. Both employers and employees must pay contributions as a percentage of a total rate determined by the Director of the Employment Department. The total rate may not exceed 1% of employee wages, up to a maximum amount in wages. Employer contributions must be paid in an amount equal to 40% of the total rate. Employers must deduct employee contributions from the wages of each employee in an amount equal to 60% of the total rate. Employers that employ fewer than 25 employees are not required to pay the employer contributions.

The amount of paid leave benefits an employee may receive per week is calculated as follows:

- if the eligible employee's average weekly wage is equal to or less than 65% of the average weekly wage, the employee's weekly benefit amount is 100% of the employee's average weekly wage.
- if the eligible employee's average weekly wage is greater than 65% of the average weekly wage, the employee's weekly benefit amount is the sum of: 65% of the average weekly wage;

[510] OR. REV. STAT. § 657B.040; OR. ADMIN. R. 471-070-1310.

[511] OR. REV. STAT. § 657B.060.

[512] OR. ADMIN. R. 471-070-1100 *et seq.*

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and 50% of the employee's average weekly wage that is greater than 65% of the average weekly wage.

The maximum weekly benefit is 120% of the average weekly wage, and the minimum weekly benefit amount is 5% of the average weekly wage.[513]

Employer Obligations

Notice to Employees. Employers must provide written notice to each employee of their rights and duties under the law, in the language that the employer typically uses to communicate with each employee. Notice must also be posted at each worksite and provided electronically or by mail to remote workers. The notice should be sent in the language that the employer uses to communicate with employees. The notice must advise the employee of:

- the right of an eligible employee to claim and receive family and medical leave insurance benefits under the law;
- the procedure for filing a claim for benefits under the law;
- the requirement to provide notice to an employer before the employee commences leave, as required under the law, and a description of the penalties for failure to comply with the notice requirements;
- the right of an eligible employee to job protection and benefits continuation under the law;
- the right to appeal a decision or determination made by the Director under the law;
- the prohibition against discrimination and retaliatory personnel actions against an employee for inquiring about the family and medical leave insurance program, leave under the program, taking leave under the program, or claiming family and medical leave insurance benefits;
- the right to bring a civil action or to file a complaint for violation of the law; and
- the right to confidentiality of any health information an employee provides to an employer related to family leave, medical leave, or safe leave, which may not be released without the employee's permission unless state or federal law or a court order permits or requires disclosure.[514]

Record Retention. Employers must maintain the following records for the current calendar year and the three prior calendar years:

- payroll records, including account records that document employee contributions and expenses; and
- employment records that reflect the total hours worked by all employees and the leave taken by employees.[515]

[513] OR. REV. STAT. §§ 657B.050, 657B.150.

[514] OR. REV. STAT. § 657B.440. The Oregon Employment Department website states that posting is required by January 1, 2023. A model notice is available at https://paidleave.oregon.gov/Pages/resources.aspx.

[515] OR. REV. STAT. § 657B.390.

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Prohibitions and Enforcement

The law makes it an unlawful employment practice for an employer to:

- discriminate against an eligible employee who has invoked any provision of the law;
- violate the employment protections and benefits portions of the law;
- deny leave or interfere with any other right to which an employee is entitled under the law; or
- retaliate or discriminate against an employee regarding hire or tenure or any other term or condition of employment because the employee has inquired about the rights or responsibilities under the law.

An employee who alleges a violation of the law may bring a civil action or file a complaint with the Commissioner of the Bureau of Labor and Industries. The law contains both civil and criminal penalties for employers that fail to comply with certain provisions.[516]

Interaction with Other Laws

Any family leave or medical leave taken under the law must be taken concurrently with any leave taken under the federal Family and Medical Leave Act for the same purposes. Leave under the OFLA is not taken concurrently.[517] The benefits provided under the law are in addition to any paid sick time benefits under Oregon's paid sick leave law, vacation leave, or other paid leave the employee has earned. However, in any week in which an employee is eligible to receive workers' compensation or unemployment benefits, the employee is disqualified from receiving family and medical leave insurance benefits.

An employee may use any accrued paid sick leave, accrued paid vacation leave, or any other paid leave in addition to receiving benefits under the law while on leave to the extent that the total combined amount of accrued paid leave and benefits does not exceed the employee's full wage replacement while on leave (however, an employer may permit the amount to exceed the employee's full wage replacement while on leave. The employer may determine the order in which accrued leave is to be used when more than one type of accrued leave is available.[518]

The law supersedes and preempts any rule, regulation, code or ordinance of any unit of a local government relating to paid family and medical leave.[519]

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[520] The paid sick leave

[516] OR. REV. STAT. § 657B.180.

[517] S.B. 1515 (Or. 2024).

[518] S.B. 1515 (Or. 2024).

[519] OR. REV. STAT. §§ 657B.030, 657B.470.

[520] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

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requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Oregon's paid sick leave law went into effect on January 1, 2016.

Coverage & Eligibility

Covered Employers. All private employers are required to provide sick time. *Paid* sick time must be provided by employers that either: (1) employ at least 10 employees anywhere in Oregon; or (2) are located in an Oregon city with a population exceeding 500,000 (*i.e.*, Portland) and employ at least six employees anywhere in Oregon. All other employers must provide unpaid sick time. Legal protections apply equally to paid and unpaid sick time.[521]

In general, the threshold number of employees is based on the average number of employees employed per day during each of at least 20 workweeks in the calendar or fiscal year immediately preceding the year in which sick time is taken. Different rules apply for new businesses.[522] All employees who perform work in Oregon, including full-time, part-time, temporary, and seasonal employees, must be counted.[523]

Covered Employees. A covered employee is an individual who renders personal services at a fixed rate to an employer if the employer either pays or agrees to pay for personal services or permits the individual to perform personal services.[524]

The following types of workers are *not* covered employees:

- an employee who receives paid sick time under federal law;
- an independent contractor;
- a participant in a work training program administered under a state or federal assistance program;
- a participant in a work-study program that provides students in secondary or postsecondary educational institutions with employment opportunities for financial or vocational training;
- a railroad worker exempted under the federal Railroad Unemployment Insurance Act; and
- an individual employed by that individual's parent, spouse, or child.[525]

The existence of a collective bargaining agreement alone is insufficient to qualify for an exemption. However, as of January 1, 2023, the law does not apply to an employee:

- who is employed as a longshore worker;

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521 OR. REV. STAT. § 653.606.

522 OR. REV. STAT. § 653.606.

523 OR. ADMIN. R. 839-007-0015.

524 OR. REV. STAT. §§ 653.601, 410.600.

525 OR. REV. STAT. §§ 653.601, 410.600.

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- who is employed through a hiring hall or similar referral system operated by the labor organization or a third party;
- whose terms and conditions of employment are covered by a collective bargaining agreement; and
- whose employment-related benefits are provided by a joint multiemployer-employee trust or benefit plan.[526]

Covered Family Members. Employees can use leave for personal reasons or to care for or assist a family member, which includes a child, grandchild, grandparent, parent, and spouse or domestic partner. Effective September 3, 2023, covered family members expanded to include the spouses or domestic partners of children, grandchildren and grandparents, siblings or step-siblings and their spouses or domestic partners, along with any individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

Existing Policies. An employer's sick leave, paid vacation, paid personal time off, or other paid time off program that is "substantially equivalent" to or more generous than the law's minimum requirements can be used to comply with the law.[527] A policy is *substantially equivalent* when it provides for at least the same number of sick time hours an employee would earn under the law and complies with all the law's other minimum requirements, which include but are not limited to: provisions related to when employees can use sick time; the accrual rate; rate of pay for leave use; qualifying absences; employee notice and documentation requirements; and employment protections.[528] If an employee has exhausted all leave available under such a policy, an employer is not obligated to provide additional sick time.[529]

Additionally, effective January 1, 2023, an employer signatory to a collective bargaining agreement to which the employer has agreed to contribute to a multiemployer-employee trust or benefit plan that is maintained for the benefit of the employees subject to the agreement meets the law's requirements if:

- the terms of the agreement provide a sick leave policy or other paid time off program that is substantially equivalent to or more generous than the law's minimum requirements for the benefit of employees:
  - who are employed through a hiring hall or similar referral system operated by the labor organization or a third party;
  - whose terms and conditions of employment are covered by the multiemployer collective bargaining agreement; and
  - whose employment-related benefits are provided by the joint multiemployer-employee trust or benefit plan.
- the trustees of the trust or benefit plan have agreed to the level of benefits provided under the sick leave policy or other paid time off program; and

526 OR. REV. STAT. § 653.646(2).

527 OR. REV. STAT. § 653.611.

528 OR. ADMIN. R. 839-007-0055.

529 OR. REV. STAT. § 653.611.

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- the contributions to the trust or benefit plan are made solely by the employer signatories to the agreement.[530]

Permitted Uses For Leave. Sick time may be used for the following purposes:

- mental or physical illness, injury, or health condition of an employee or family member;
- medical diagnosis or care or treatment of a mental or physical illness, injury, or health condition of an employee or family member;
- preventive medical care for an employee or family member;[531] or
- for any purposes specified in Oregon Revised Statutes section 659A.159 of the Oregon Family Leave Act (see 3.9(a)(ii)).[532]

Also, sick time can be used for the following purposes if an employee or the employee's minor child or dependent is a victim of domestic violence, harassment, sexual assault, or stalking:

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530 OR. REV. STAT. § 653.646(1).

531 OR. REV. STAT. § 653.616.

532 OR. REV. STAT. § 659A.159. For purposes of this summary, we limit covered uses to those that the statute expressly identifies or incorporates by reference, and rules clarifying those requirements. Or. Rev. Stat. § 653.616 establishes the reasons an employee can use leave under the law, which in two instances cross-reference reasons an employee can use leave under other laws.

Both the statute and rules incorporate the reasons for leave under Or. Rev. Stat. § 659A.272 (protections because of domestic violence, harassment, sexual assault or stalking). Or. Rev. Stat. § 653.616(4); Or. Admin. R. 839-007-0020(4).

The statute incorporates the reasons for leave under Or. Rev. Stat. § 659A.159, which is part of the Oregon Family Leave Act (OLFA) and identifies some, not all, reasons an employee may use leave under the OFLA. Or. Rev. Stat. § 653.616(3). However, the rules identify these reasons plus reasons for leave that are found outside of Or. Rev. Stat. § 659A.159. More specifically, the rules cite pregnancy disability leave in Or. Rev. Stat. § 659A.162 (leave taken by an employee for their own disability related to pregnancy, including pregnancy termination or childbirth, whether the disability occurs before, during or after the birth of the child, or for prenatal care, including fertility or infertility treatment, per Or. Admin. R. 839-009-0230(2)). Or. Admin. R. 839-007-0020(3)(a). Additionally, the rules cite child placement leave (to effectuate the legal process required for placement of a foster child or the adoption of a child, per Or. Admin. R. 839-009-0230(1)) that – before July 1, 2024 – was part of Or. Rev. Stat. § 659A.159 but as a result of SB 1515 (2024) remains part of the OFLA through December 31, 2024 though it is not codified in Or. Rev. Stat. § 659A.159. Or. Admin. R. 839-007-0020(3)(a).

Additionally, the rules (but not the statute) provide that employees can use leave for reasons under Or. Rev. Stat. ch. 657B, Oregon's paid family and medical leave law (PFML Law). Or. Admin. R. 839-007-0020(7).

Granted, there might be overlap between covered uses under the law and covered uses under other laws like OFLA and the PFML Law. For example, the law allows employees to use leave due to their or a family member'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, which could overlap with reasons an employee would take pregnancy disability leave under the OFLA. Additionally, there could be overlap between with reasons an employee would take leave under the PFML Law, including but not limited to medical leave (individual's own serious health condition) and family leave (care for a family member with a serious health condition). Additionally, under the PFML Law employees can take safe leave, which, like the law, cross references Or. Rev. Stat. § 659A.272.

Employers with questions concerning leaves administration should consider discussing the matter with knowledgeable counsel.

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- legal or law enforcement assistance or remedies to ensure the individual's health and safety, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings;
- medical treatment for or to recover from injuries;
- counseling from a licensed mental health professional;
- services from a victim services provider; or
- relocation or taking steps to secure an existing home to ensure health and safety.[533]

An employee may donate accrued sick time to another employee if the other employee uses the donated sick time for a covered use and the employer has a policy that allows an employee to donate sick time to a coworker for a covered use.[534]

Finally, sick time can be used in the event of a public health emergency, which includes but is not limited to:

- closure of the employee's place of business by order of a public official due to a public health emergency;
- closure of the school or place of care of the employee's child by order of a public official due to a public health emergency;
- a determination by a lawful public health authority or by a health care provider that the presence of the employee or employee's family member in the community would jeopardize others' health, such that the employee must provide self-care or care for the family member;
- 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; or
- due to temporary rules in effect from July 22, 2021 through January 17, 2022, and a permanent rule in effect as of April 1, 2022:
  - an emergency evacuation order of level 2 (SET) or level 3 (GO) issued by a public official with the authority to do so, if the affected area subject to the order includes either the location of the employer's place of business or the employee's home address; or
  - a determination by a public official with the authority to do so that the air quality index or heat index are at a level where continued exposure to such levels would jeopardize the health of the employee.[535]
    - Exception: The above applies unless the employee is employed as a first responder.

When Leave Can Be Used. An employee is eligible to use sick time beginning on the 91st calendar day of employment, although an employer may elect to allow earlier use.[536] Additionally, as of January 1, 2023, an employee is eligible to use sick time accrued under a sick time policy or other program made available by an employer beginning on the 91st calendar day of employment with an employer who is a signatory

[533] OR. REV. STAT. § 653.616.

[534] OR. REV. STAT. § 653.616.

[535] OR. ADMIN. R. 839-007-0020(6)(d).

[536] OR. REV. STAT. § 653.606.

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to the multiemployer collective bargaining agreement, and such an employee may combine employment service attributable to each employer signatory for whom the employee worked to meet the eligibility requirements.[537]

How Much Leave Can Be Used. Employers must allow employees to use up to 40 sick time hours per year. Regardless of how much sick time is carried over from one year to the next, an employer can limit sick time use to 40 hours per year.[538]

Increments in Which Leave Can Be Used. Sick time must be taken in hourly increments unless an employer permits use in increments of less than one hour or claims the undue hardship exemption under which it can require sick time be used in increments of more than one hour, but not more than four hours (additional requirements, including record-keeping requirements, apply).[539]

Shift Trading / Makeup Hours. An employer cannot require an employee to search for or find a replacement worker as a condition of using accrued sick time, or work an alternate shift to make up for the use of sick time. However, upon mutual consent by the employee and the employer, an employee may work additional hours or shifts to compensate for hours or shifts during which the employee was absent from work without using accrued sick time for the hours or shifts missed. However, an employer cannot require the employee to work additional hours or shifts. If the employee works additional hours or shifts, an employer must comply with any applicable federal, state, or local laws regarding overtime pay.[540]

Required Notice. Upon the request of an employee with accrued sick time available, an employer must allow the employee to use sick time.

Where the need for leave is foreseeable, the employer can require reasonable advance notice, not to exceed 10 calendar days before the date the sick time is to begin or as soon as otherwise practicable. An employee must make a reasonable attempt to schedule the use of sick time in a manner that does not unduly disrupt the employer's operations.[541] An employer can require the employee to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting time off if those requirements do not interfere with the ability of the employee to use sick time. For example, the employer may require its employees to provide notice by a reasonable time and by reasonable means, including calling a designated telephone number, applying a uniform call-in procedure, or by using another means of communication accessible to the employee.[542]

When the need for leave is unforeseeable, the employee must provide notice to the employer before the start of the employee's shift or, when circumstances prevent the employee from providing notice before the start of the shift, as soon as practicable. The employee must comply generally with the employer's

[537] OR. REV. STAT. § 653.646(4)(a)-(b).

[538] OR. REV. STAT. § 653.606.

[539] OR. REV. STAT. § 653.621; OR. ADMIN. R. 839-007-0025.

[540] OR. REV. STAT. § 653.606.

[541] OR. REV. STAT. § 653.621; OR. ADMIN. R. 839-007-0040.

[542] OR. REV. STAT. § 653.621; OR. ADMIN. R. 839-007-0040.

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notice or procedural requirements for requesting or reporting other time off if those requirements do not interfere with the ability of the employee to use sick time.[543]

Documentation. If an employee takes more than three consecutive scheduled workdays of leave, an employer may require the employee to provide verification from a health care provider of the need for the sick time or provide certification of the need for leave for safe time, which can be satisfied in various ways, *e.g.*, a police report, a court document, or documentation from an attorney, a law enforcement officer, a health care professional or counselor, clergy member, or victim services provider.[544] If the need for leave is foreseeable and is projected to last more than three scheduled workdays and an employee is required to provide notice, the employer may require that the verification or certification be provided before leave commences or as soon as otherwise practicable.[545] If an employer chooses to require written documentation or verification, such a requirement, as well as the employer's policy regarding any consequences resulting from an employee's failure or delay in providing such documentation or verification, must be included in the employer's written sick time policy.[546] An employer that has not provided an employee a copy of its written policy cannot deny sick time to the employee based on noncompliance with the policy.[547]

For sick time, an employer may require the employee to provide verification within 15 calendar days from a health care provider of the need for the sick time.[548] If the employee commences sick time without providing prior notice required by the employer, medical verification must be provided to the employer within 15 calendar days after the employer requests the verification, or certification must be provided to the employer within a reasonable time after the employee receives the request for certification.[549] For safe time, the employer may require the employee to provide certification of the need for leave within a reasonable time after receiving the covered employer's request for the certification. An employer cannot require that the verification or certification required explain the nature of the illness or details related to the domestic violence, sexual assault, harassment, or stalking that necessitates the use of sick time.[550]

If an employer reasonably suspects an employee is abusing sick time, including engaging in a pattern of abuse (*e.g.*, repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation days, or payday), it can require verification from a health care provider of the employee's need to use sick time, regardless of whether the employee has used sick time for more than three consecutive days.[551]

Accrual, Caps, Carry-Over & Cash Value

Accrual. An employee begins to earn and accrue sick time on the first day of employment with an employer.[552] Sick time accrues at the rate of at least one hour of sick time for every 30 hours the employee works, or 1-1/3 hours for every 40 hours the employee works. Hours worked includes overtime hours

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[543] OR. REV. STAT. § 653.621; OR. ADMIN. R. 839-007-0040.

[544] OR. REV. STAT. § 653.626.

[545] OR. REV. STAT. § 653.626.

[546] OR. ADMIN. R. 839-007-0030.

[547] OR. ADMIN. R. 839-007-0030.

[548] OR. REV. STAT. § 659A.280; OR. ADMIN. R. 839-007-0045.

[549] OR. REV. STAT. § 653.626.

[550] OR. REV. STAT. § 653.626.

[551] OR. REV. STAT. § 653.626.

[552] OR. REV. STAT. § 653.606.

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worked.[553] Employers that front-load at least 40 hours of sick time or time off at the beginning of each year are not required to comply with the law's accrual provisions.[554]

Caps on Accrual & Carry-Over. Employers must implement a sick time policy that allows an employee to earn up to 40 hours of paid sick time per year.[555] An employee may carry over up to 40 hours of unused sick time from one year to a subsequent year.[556] Regardless of the amount of leave carried over, an employer may adopt a policy that limits an employee to accruing no more than 80 hours of sick time.[557] Carry-over of accrued but unused sick time is not required if an employer front loads 40 sick time hours each year, or if the employer and employee mutually agree that the employer will cash-out the employee's accrued but unused sick time at the end of a year and frontload 40 sick time hours at the beginning of the subsequent year.[558]

Cash Value. Paid sick time must be paid at the employee's regular rate of pay and without reductions in benefits (such as health care benefits) as earned at the time the employee uses paid sick time.[559] Sick time must be paid no later than the payday for the next regular pay period after the sick time was used by the employee. However, if an employer has requested written documentation or verification of sick time use, it is not required to pay sick time until the employee has provided such information.[560]

Cash-Out. An employer is not required to compensate an employee for accrued unused sick time upon the employee's termination, resignation, retirement, or other separation from employment.[561]

Posting & Record Keeping

An employer must provide written notice of the paid sick leave law's requirements to each employee no later than the end of the first pay period after employment begins.[562] The notice, which must be written in the language the employer typically uses to communicate with the employee, may be distributed to each employee personally, included in the employee handbook, posted in the workplace, sent by regular mail or email, or included with a paycheck.[563] A model notice is available from the Commissioner of the Bureau of Labor and Industries (BOLI).[564] Employers may create their own written notice if it includes all of the substantive information provided in the model notice.[565]

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553 OR. ADMIN. R. 839-007-0000.

554 OR. REV. STAT. § 653.606; Oregon Bureau of Lab. & Indus., *Technical Assistance for Employers: Oregon Sick Time*, *available at* http://www.oregon.gov/boli/TA/Pages/T_FAQ_OregonSickTime.aspx.

555 OR. REV. STAT. § 653.606.

556 OR. REV. STAT. § 653.606.

557 OR. REV. STAT. § 653.606.

558 OR. REV. STAT. § 653.606; Oregon Bureau of Labor & Industries, *Technical Assistance for Employers: Oregon Sick Time*, *available at* http://www.oregon.gov/boli/TA/Pages/T_FAQ_OregonSickTime.aspx.

559 OR. REV. STAT. §§ 653.601, 653.606.

560 OR. ADMIN. R. 839-007-0030.

561 OR. REV. STAT. § 653.606.

562 OR. REV. STAT. § 653.631; OR. ADMIN. R. 839-007-0050.

563 OR. ADMIN. R. 839-007-0050.

564 *See* http://www.oregon.gov/boli/ta/pages/req_post.aspx.

565 OR. ADMIN. R. 839-007-0050.

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An employer must provide written notification at least quarterly to each employee of the amount of accrued and unused sick time available for use by the employee. Inclusion of the amount of accrued and used sick time on a required wage statement meets the requirements.[566]

See 3.1(a)(ii) for additional information on the posting and notice requirements.

Additional Provisions

Antiretaliation Provisions. It is an unlawful practice for an employer or any other person to retaliate or in any way discriminate against an employee with respect to any term or condition of employment because the employee has inquired about the law's provisions, submitted a request for sick time, taken sick time, participated in any manner in an investigation, proceeding or hearing related to the law, or invoked any provision of the law.[567]

State Enforcement, Remedies & Penalties. An employee aggrieved by alleged violations of the Oregon paid sick leave law may file a civil action in circuit court. A court can award a prevailing plaintiff injunctive or equitable relief (including reinstatement), back pay, costs, and attorneys' fees.[568]

The Oregon paid sick leave law is enforced by BOLI, which also may bring a civil action against an employer. BOLI is further authorized to conduct investigations, issue violations, award relief, and assess penalties.

Relationship to Other Laws. Leave taken under the OFLA or state domestic violence leave statute may run concurrently with Oregon's paid sick leave.[569]

Moreover, the paid sick leave law expressly preempts all charter and statutory authority of local governments to set any sick leave requirements. Thus, cities within Oregon cannot enact local paid sick leave laws.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Disability Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and

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566 OR. REV. STAT. § 653.631.

567 OR. REV. STAT. § 653.641. *See also, e.g.*, *Carter v. Fred Meyer Jewelers, Inc.*, 2018 WL 4091842 (D. Or. July 3, 2018), 2018 WL 7253607 (D. Or. Dec. 17, 2018) & 2019 WL 2744190 (D. Or. Apr. 10, 2019) (Granting summary judgment to defendant, plaintiff had 0 hours of accrued leave, so could not discriminate, interfere with, or retaliate against for using leave; even if plaintiff engaged in protected activity, temporal proximity alone was insufficient, so no causation shown), *Reyes v. Portland Specialty Baking*, 2017 Ore. Cir. LEXIS 1 (Multnomah County, Fourth Judicial District Mar. 9, 2017) (Granting summary judgment to defendant, plaintiffs' speculation that employees would be issued a point under attendance policy for taking leave did not create a factual dispute as there was no evidence that protected absences were included in attendance points policy or that defendant took adverse action against employees for taking leave.), & *Schultz v. NW Permanente P.C.*, 2022 WL 2072602 (D. Or. June 9, 2022) (defendant prevails after bench trial, with court holding paid sick leave was not a negative factor in defendant's decision to take adverse employment actions).

568 OR. REV. STAT. § 659A.885(2).

569 OR. ADMIN. R. 839-007-0020.

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Medical Leave Act; and the Americans with Disabilities Act. For additional information, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

Pregnancy Disability Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[570] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for their own serious health condition, such as severe morning sickness.[571] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[572] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant women, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

Oregon's fair employment practices statute requires that individuals affected by pregnancy, childbirth, and related medical conditions must be treated the same as other persons similar in their ability or

[570] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[571] 29 C.F.R. § 825.202.

[572] EEOC, Notice 915.003, EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues (June 25, 2015), available at https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; see also EEOC, Facts About Pregnancy Discrimination (Sept. 8, 2008), available at https://www.eeoc.gov//facts/fs-preg.html.

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inability to work due to physical conditions.[573] This would include the provision of an employer's leave of absence policies.

In addition, the OFLA provides up to 12 weeks of leave in a one-year period for a disabling illness, injury, or condition related to pregnancy or childbirth.[574] See 3.9(a)(ii) for details.

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

The OFLA permits an eligible employee may take up to 12 weeks of leave in a one-year period to care for a newly-adopted child.[575] See 3.9(a)(ii) for details.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Oregon has no express requirement, but state law encourages employers to extend appropriate leave to parents or guardians to allow greater participation in the education process during school hours.[576]

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

In Oregon, it is an unlawful employment practice for an employer to:

- deny a leave of absence to an employee who donates bone marrow;
- deny the use of accrued paid leave during such leave of absence; or
- retaliate against an employee for requesting or taking a leave to donate bone marrow.[577]

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[573] OR. REV. STAT. § 659A.029.

[574] OR. REV. STAT. §§ 659A.150 *et seq.*; OR. ADMIN. R. 839-009-0210 *et seq.*

[575] OR. REV. STAT. § 659A.159.

[576] OR. REV. STAT. § 329.125(3).

[577] OR. REV. STAT. § 659A.312.

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These provisions apply to employees who work an average of 20 or more hours per week. The length of the leave is to be determined by the employee, but may not exceed the amount of paid leave already accrued or 40 work hours, whichever is less, unless agreed to by the employer.[578]

The employer may require verification from a physician or naturopathic physician of the purpose and length of each leave. If there is a medical determination that the employee does not qualify as a bone marrow donor, the paid leave used prior to the determination is not affected.[579]

In addition, an eligible employee may take time off for the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery, as part of his or her leave entitlement under the Oregon Family Leave Act.[580]

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

Oregon law does not address time off to vote for private-sector employees.

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Legislative Leave. Oregon law provides a protected leave of absence for employees who serve in the state legislature. An employer may not discharge or otherwise discriminate against an employee who takes a leave of absence to serve in the Oregon Legislative Assembly.[581] Employers of 10 or more employees must allow such an employee to take leave for any regular or special session or for time needed to perform official duties of a member or prospective member of the legislature.

Employees must provide at least 30 days' notice before a regular session, and as soon as is possible for a special or emergency session. Following the leave, employees must be reinstated in the same or similar position with all the same seniority and benefits as before the leave.

Leave does not need to be provided if any of the following apply:

- the employee has been employed for less than 90 days;
- the circumstances of the employer have so changed during the leave that it would be impossible or unreasonable to reinstate the employee;

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[578] OR. REV. STAT. § 659A.312.

[579] OR. REV. STAT. § 659A.312.

[580] OR. REV. STAT. § 659A.150(6).

[581] OR. REV. STAT. § 171.120.

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- the employee fails to return to work within 15 days following adjournment or five days after any other assignment is completed;
- a conflict of interest has developed; or
- the employee was employed on a temporary basis.[582]

State Board or Commission Leave. Oregon also provides a protected leave of absence for employees who serve as an appointed member of a state board or commission. An employer may not discharge, threaten to discharge, intimidate or coerce any employee based on the employee's service on a state board or commission. Further, an employer may not require an employee to use vacation leave, sick leave or annual leave for time an employee spends in service on such board or commission. An employer must allow an employee to take leave without pay for time spent by an employee in service on a state board or commission.[583]

In order for these protections to apply, employees must provide at least 21 days' advance notice of any time the employee needs to spend in service as an appointed member of a state board or commission.[584]

Notably, the law explicitly provides that it may not be construed so as to alter or affect an employer's policies or agreements with employees concerning employees' wages during times when an employee service or is scheduled to serve as an appointed member of a state board or commission.[585]

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[586] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[587] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

[582] OR. REV. STAT. § 171.122.

[583] HB 3028 (not yet codified).

[584] HB 3028 (not yet codified).

[585] HB 3028 (not yet codified).

[586] 28 U.S.C. § 1875.

[587] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

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3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. An employer may not discharge, threaten to discharge, intimidate, or coerce an employee because the employee served or is scheduled to serve on a jury.

An employer is not required to compensate an employee during jury duty service unless the employer has promised to do so as a fringe benefit. However, employers may not require an employee to use vacation leave, sick leave, or annual leave for time spent for jury duty.

Employers must also allow employees to take leave without pay for time spent in jury duty. If an employer provides employee health, disability, life, or other insurance benefits, such coverage must continue during jury duty service.[588]

According to BOLI, if an employer's policy is to pay an employee's full wages during jury duty, the employer may require the employee to forfeit any jury service fees to the company.[589]

Leave to Appear in Court with a Child. An employer may not discharge, or otherwise discriminate against an employee because of the employee's compelled attendance at juvenile court proceedings involving a child for whom the employee is a parent or legal guardian.[590]

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Leave to Attend Criminal Proceedings

An eligible employee may take time off from work to attend a criminal proceeding, juvenile proceeding, or any other proceeding at which a crime victim has a right to be present.[591] An employee is eligible to take time off if:

- the employee works for an employer that has six or more employees in Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave or in the immediately preceding year; and
- the employee worked an average of more than 25 hours per week for a covered employer for at least 180 days immediately before the date the employee takes leave.[592]

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[588] OR. REV. STAT. § 10.090.

[589] Oregon Bureau of Labor and Indus., *Technical Assistance for Employers: Benefits*, *available at* http://www.oregon.gov/boli/TA/Pages/TA_FAQ_Benefits.aspx.

[590] OR. REV. STAT. § 419C.306.

[591] OR. REV. STAT. §§ 659A.190, 659A.192.

[592] OR. REV. STAT. § 659A.190.

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A *crime victim* is an individual who has suffered financial, social, psychological, or physical harm as a result of a personal felony. The immediate family members of the person may also be the crime victims. *Immediate family* is defined to include a spouse, domestic partner, father, mother, sibling, child, stepchild, and grandparent.[593]

The employee must give the employer reasonable notice of the need to take leave to attend a criminal proceeding, and must provide the employer copies of any notices of scheduled criminal proceedings that the employee receives from a law enforcement agency as certification.[594] An employer may limit the amount of leave available if granting leave would impose an undue hardship on the employer's business operations.[595]

Leave is unpaid. However, an employee may use any available paid accrued vacation leave or other paid leave.[596] Employers should also be aware that Oregon's paid sick leave law covers time off to seek legal or law enforcement assistance, including preparing for and participating in court proceedings related to domestic violence, harassment, sexual assault, or stalking. See **3.9(b)(ii)** for more information.

Leave for Victims of Harassment, Domestic Violence, Sexual Assault, or Stalking

Oregon employees who are victims of harassment, domestic violence, sexual assault, stalking, or **effective January 1, 2024**, a bias crime victim, may also take a reasonable leave of absence for any of the following reasons:

- to seek legal or law enforcement assistance or remedies;
- to seek medical treatment for or to recover from injuries caused by harassment, domestic violence, sexual assault, (effective January 1, 2024, bias), or stalking;
- to obtain or assist a minor child or dependent in obtaining counseling related to an experience of harassment, domestic violence, sexual assault, (effective January 1, 2024, bias), or stalking;
- to obtain services from a victim services provider; or
- to relocate or take steps to secure an existing home.[597]

A covered employer may limit the amount of leave an eligible employee may take if the leave would impose an undue hardship on the employer's business operations.[598] Leave may be taken in multiple blocks of time and/or on an altered or reduced work schedule basis, or an employer may transfer an employee on intermittent leave or a reduced work schedule to an alternate position that better accommodates the leave.[599]

Covered Employers & Eligible Employees. A covered employer is an employer that employs six or more individuals in Oregon for each working day during each of 20 or more calendar workweeks in the year in

593 OR. REV. STAT. § 659A.190.

594 OR. REV. STAT. § 659A.196.

595 OR. REV. STAT. § 659A.192.

596 OR. REV. STAT. § 659A.198.

597 OR. REV. STAT. § 659A.272, as amended by H.B. 3443 (Or. 2023).

598 OR. REV. STAT. § 659A.275.

599 OR. ADMIN. R. 839-009-0360.

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which an eligible employee takes leave or in the immediately preceding year.[600] An eligible employee is an employee who is a victim of domestic violence, harassment, sexual assault, or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault, or stalking.[601] **Effective January 1, 2024** an eligible employee may take leave if they are a victim of a bias crime.[602]

Notice & Certification. An employee must provide the employer with reasonable advance notice of the employee's intent to take leave unless giving advance notice is not feasible. In addition, an employer may require certification that the employee or a minor child is a victim, and that leave is being taken for a permissible purpose. Such certification may take the form of a police report, protective order, or documentation from a health care professional, clergy, attorney, or law enforcement officer. **Effective January 1, 2024**, documentation from an employee of the Department of Justice division that provides victim and survivor services is also acceptable certification.[603] Requests for leave and any documentation provided by the employee must be kept confidential and may not be released to any party without the employee's express authorization or as otherwise required by law.[604]

Compensation During Leave. Under this statute, in the absence of a contract to the contrary, an employer is not required to pay an employee on leave under this section. An employee may use accrued vacation time, sick leave, personal leave, or other paid time off during the leave, but the employer may determine the order in which paid leave is to be used.[605]However, Oregon's paid sick leave may require compensation (see 3.9(b)(ii) for additional information).

Prohibited Actions. An employer may not deny leave to an eligible employee or discharge, threaten to discharge, demote, or in any way discriminate or retaliate against an employee because the employee takes leave under this section.[606] It is an unlawful employment practice for a covered employer to count such a leave against an employee in determining the employee's compliance with attendance policies or to count a leave against an employee when determining eligibility for bonuses based on attendance.[607]

Further, it is an unlawful employment practice for an employer to refuse to make a reasonable safety accommodation requested by an employee who is a victim of domestic violence, harassment, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations.[608] *Reasonable safety accommodations* may include, but are not limited to, a transfer, reassignment, modified schedule, use of available paid or unpaid leave, changed work telephone number, changed work station, installed lock, implemented safety procedure, or any

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[600] OR. REV. STAT. § 659A.270(1).

[601] OR. REV. STAT. § 659A.270(2).

[602] OR. REV. STAT. § 659A.270(2).

[603] OR. REV. STAT. § 659A.270(2).

[604] OR. REV. STAT. § 659A.280.

[605] OR. REV. STAT. § 659A.285.

[606] OR. REV. STAT. § 659A.290(2).

[607] OR. ADMIN. R. 839-009-0365.

[608] OR. REV. STAT. § 659A.290(2)(c).

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other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, harassment, sexual assault, or stalking.[609]

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see **LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES**.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[610]

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.611 An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.612 Notably, leave is only available for covered relatives of military

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[609] OR. REV. STAT. § 659A.290(1)(a).

[610] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[611] 29 C.F.R. § 825.126(a).

[612] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

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members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.

2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Oregon state law offers protected leave for employees engaged in military service, as well as for employees whose family members are military service members, in connection with deployments, training, and other periods of military service.

Military Service Leave. An employee who is a member of an organized militia of the state of Oregon or of another state must be granted an unpaid leave of absence to perform active state service if the militia is called into active service. The employer must grant leave until the employee is released from state service.[613]

An employer is not required to pay wages or other monetary compensation during the leave period. Employees must not lose seniority, vacation credits, sick leave credits, service credits under a pension plan, or any other employee benefit or right that had been earned at the time of the leave of absence. At the conclusion of the leave, an employee must be restored to their prior position or to an equivalent position within seven calendar days. An employer cannot discharge an employee as a consequence of taking leave due to military service.[614]

Effective January 1, 2024, Oregon amends its military leave law to provide new definitions to key terms. *Active service* includes active service of the state; service performed on full-time duty status in the federal uniformed services or the United States National Guard. *Active services of the state* means service performed while on full-time duty status for training, operational duty or other service of the organized militia under the authority of the Governor, whether paid from state or federal funds. *State active duty* means full-time duty status for training, operational duty or other service, other than inactive duty, of the organized militia performed under the authority of the Governor and paid from state funds. *Active service of the state* is expanded to include carrying out state or federal drug interdiction and counter-drug law enforcement activities under a drug interdiction and counter-drug activities plan approved by the Governor. Finally, *service member* is expanded to explicitly include a member of the Oregon National Guard who is called into active service in the United States National Guard. [615]

Family Military Leave. Under the Oregon Military Family Leave Act, during a period of military conflict, employers must provide 14 days of unpaid leave per deployment to employees who are spouses or domestic partners of a member of the U.S. armed forces, National Guard, or U.S. military reserves that has been notified of an impending call to active duty.[616] The leave may be taken before and during deployment, as well as when the military spouse or domestic partner is on leave from deployment. If multiple deployments occur in an employee's leave year, the employee is entitled to use 14 days of family

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[613] OR. REV. STAT. § 659A.086.

[614] OR. REV. STAT. § 659A.086.

[615] OR. REV. STAT. § 659A.086.

[616] OR. REV. STAT. § 659A.093.

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military leave for each deployment.[617] Employees must provide notice of intended leave within five days of the family member's receipt of an official notification of the call to duty.[618]

Covered employers are those that employ 25 or more employees in the state on each working day during each of 20 or more calendar workweeks in the year in which leave is taken, or during the year preceding leave.[619] A qualifying employee is one that works at least 20 hours per week.[620] An employee does not have to be eligible for leave under the OFLA to take protected leave under the Oregon Military Family Leave Act.[621]

An employee may elect to substitute any accrued leave to which the employee is entitled for any part of the leave, and continuation of benefits during family military leave is the same as that provided under the OFLA.[622]

Other Military-Related Protections: Discrimination. An employer may not discriminate against a person because of the person's service in the U.S. armed forces, the Army National Guard, or the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, or the commissioned corps of the U.S. Public Health Service. An employer may not deny initial employment, refuse to re-employ an individual following a leave due to military service, fire or demote an employee, or deny any other condition or privilege of employment due to the military service of the employee.[623]

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

Volunteer Firefighters. An employee who serves as a volunteer firefighter and has been called to an emergency must be granted a leave of absence. The leave may be unpaid; however, the employee must be reinstated to the same or equivalent position with all the same seniority and benefits following the leave.[624]

Veterans. Employers must provide qualified veterans paid or unpaid time off on Veterans Day if the employee:

- would otherwise be required to work that day;
- provides at least 21 calendar days' notice of intent to take time off on Veterans Day; and

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617 OR. ADMIN. R. 839-009-0390.

618 OR. REV. STAT. § 659A.093.

619 OR. REV. STAT. § 659A.090(2).

620 OR. REV. STAT. § 659A.090.

621 OR. ADMIN. R. 839-009-0410.

622 OR. REV. STAT. § 659A.093.

623 OR. REV. STAT. § 659A.082.

624 OR. REV. STAT. § 476.574.

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- provides documentation showing the employee is a qualified veteran.[625]

However, time off does not need to be provided if doing so would cause economic or operational disruption or undue hardship. Employers must notify employees at least 14 calendar days before Veterans Day whether time of will be granted, and whether it will be paid or unpaid.[626]

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[627] Employers are also required to comply with all applicable occupational safety and health standards.[628] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see **LITTLER ON WORKPLACE SAFETY**.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[629] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Oregon, under agreement with Fed-OSHA, operates its own state occupational safety and health program in accordance with section 18 of the Fed-OSH Act.[630] Thus, Oregon is a so-called "state plan" jurisdiction, with its own detailed rules for occupational safety and health that parallel, but are separate from, Fed-OSHA standards. The Oregon Occupational Safety and Health Division (OR-OSHA) is the state government agency that regulates workplace safety and health in Oregon. OR-OSHA's jurisdiction covers most public and private-sector workplaces in the state.[631]

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[625] OR. REV. STAT. § 408.495.

[626] OR. REV. STAT. § 408.495.

[627] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[628] 29 U.S.C. § 654(a)(2).

[629] 29 U.S.C. § 667(c)(2).

[630] 29 U.S.C. § 667.

[631] OR. ADMIN. R. 437-001-001 to 437-001-050.

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3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

Oregon prohibits texts and phone calls while driving. These prohibitions apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, these requirements. Specifically, a driver may not operate a motor vehicle while using a *mobile communication device*, which is defined as a text messaging device or a wireless, two-way communication device designed to receive and transmit voice or text communication.[632] Beginning October 1, 2017, it is also an offense for a driver to hold a mobile electronic device while driving.

Drivers 18 years of age or older may use a mobile communication device while driving so long as they are also using a hands-free accessory. *Hands-free accessory* means an attachment or built-in feature for or an addition to a mobile communication device, whether or not permanently installed in a motor vehicle, that when used allows a person to maintain both hands on the steering wheel.[633]

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Oregon does not have a statute specifically addressing the possession or storage of firearms in the workplace or in company parking lots. As such, private employers in Oregon are free to develop their own policies with respect to the presence of firearms on their premises.

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

The Oregon Clean Indoor Air Act requires employers to provide for employees a place of employment that is free of all smoke, aerosols, and vapors containing inhalants, and may not allow employees to smoke, aerosolize, or vaporize inhalants in the workplace.[634] Smoking is also prohibited in company vehicles used by more than one employee.[635] Smoking is prohibited 10 feet from any window that opens, ventilation intake, or entrance or exit to a workplace, with the exception of areas designated as smoking areas.[636]

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[632] OR. REV. STAT. § 811.507.

[633] OR. REV. STAT. § 811.507.

[634] OR. REV. STAT. §§ 433.845, 433.850.

[635] OR. REV. STAT. § 433.835.

[636] OR. REV. STAT. § 433.845.

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Indoor smoking areas are not allowed, and ashtrays must be removed from all nonsmoking areas.[637] However, an outdoor smoking area may be established more than 10 feet from any window, ventilation intake, or entrance or exit to a workplace.[638]

Posting Requirements. "No Smoking" signs must be posted at entrances to workplaces, and the signs must include the warning "No smoking within 10 feet."[639]

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Oregon employers must provide convenient, comfortable, and safe seats to each employee where the nature of the employees' work is such that they may sit while working.[640]

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

Oregon law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[641] (2) the Americans with Disabilities Act (ADA);[642] (3) the Age Discrimination in Employment Act (ADEA);[643] (4) the Equal Pay Act;[644] (5) the Genetic Information

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[637] OR. ADMIN. R. 333-015-0045.

[638] OR. REV. STAT. § 433.845.

[639] OR. REV. STAT. § 433.850; OR. ADMIN. R. 333-015-0040.

[640] OR. ADMIN. R. 839-020-0065.

[641] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[642] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[643] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[644] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

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Nondiscrimination Act of 2009 (GINA);[645] (6) the Civil Rights Acts of 1866 and 1871;[646] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[647]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[648] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[649]

3.11(a)(ii) *State FEP Protections*

Most of Oregon's fair employment laws are codified at Oregon Revised Statutes chapter 659A. They prohibit employment discrimination based on an individual's membership in a wide range of protected classes:

- race the definition of race is expanded to include physical characteristics historically associated with race, including natural hair, hair texture, hair type, and protective hairstyles);[650]
- color;
- religion;
- disability;

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[645] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[646] 42 U.S.C. §§ 1981, 1983.

[647] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[648] The EEOC's website is available at http://www.eeoc.gov/.

[649] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[650] OR. REV. STAT. § 659A.001.

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- sex (including pregnancy, childbirth, and related medical conditions);
- sexual orientation;
- gender identity (an individual's gender related identity, appearance, or behavior, regardless of whether the identity, appearance, expression, or behavior differs from that associated with the gender assigned at birth);
- national origin (including ancestry);
- marital status;
- veteran status; or
- age, if the individual is age 18 or older.[651]

State law also prohibits discrimination on the basis of an individual's association with a person in one of these protected classes. In addition to the primary protected classifications listed above, Oregon law also prohibits discrimination on the basis of an individual's:

- military status;[652]
- genetic information;[653]
- familial status;[654]
- status as a victim of domestic violence, harassment, sexual assault, (effective January 1, 2024, bias), or stalking;[655]
- unemployment status;[656]
- credit history;[657]
- breathalyzer, polygraph, psychological stress, brain wave, or genetic testing;[658] or
- wage disclosure.

Although many aspects of the Oregon employment discrimination law mirror federal law on the subject, there are important substantive and procedural differences. For example, Oregon law protects workers aged 18 and over from discrimination based on age, while the federal Age Discrimination in Employment Act (ADEA) protects employees aged 40 and over. Oregon also protects many additional groups from employment discrimination that are not covered by federal law, for example, the state prohibits discrimination on the basis of sexual orientation and gender identity.

In addition, while Title VII applies only to employers with 15 or more employees, most provisions in Oregon's law applies to employers with one or more employees in Oregon, as well as to unions and

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[651] OR. REV. STAT. § 659A.030.

[652] OR. REV. STAT. § 659A.082. See 3.9(k)(ii) for additional information.

[653] OR. REV. STAT. § 659A.303.

[654] OR. REV. STAT. § 659A.309.

[655] OR. REV. STAT. § 659A.290, as amended by H.B. 3443 (Or. 2023).

[656] OR. REV. STAT. § 659A.550.

[657] OR. REV. STAT. § 659A.320.

[658] OR. REV. STAT. § 659A.320.

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employment agencies.[659] The coverage threshold differs with respect to disability discrimination protections; that particular statute is applicable to employers of six or more employees.[660] Some types of employers are exempt. Churches and sectarian religious institutions, including a school, hospital, or church camp, may exercise a preference concerning an employee of the same religion if employment is closely connected with or related to the primary purposes of the church or institution.[661]

Employee coverage is nearly universal. The only exception is that the fair employment laws do not apply to an employment relationship in which an individual is employed by the individual's parents, spouse or child, or is in the domestic service of any person.[662]

In addition, Oregon is one of a handful of states that extends fair employment protections to interns.[663]

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

An individual who wishes to assert a violation of the state fair employment practices laws may file a claim with the Oregon Bureau of Labor and Industries (BOLI) within one or five years, depending on the nature of the claim.[664] This is longer than the 300-day period for filing a federal charge of employment discrimination with the federal EEOC. In Oregon, unlike some other states, a claimant is not required to file an administrative charge as a condition of bringing a lawsuit in court alleging an unlawful employment practice.[665]

The individual alleging a claim of an unlawful employment practice under Oregon Revised Statutes section 659A.030 has the burden of proof.[666] When investigating a charge, BOLI will conclude there is substantial evidence of disparate treatment if it finds evidence that "a reasonable person would accept as sufficient to support [a conclusion] that protected class membership was *a motivating factor* in the respondent's alleged unlawful action."[667] BOLI will conclude there is discrimination if the respondent does not rebut the contrary evidence with evidence of "a legitimate, non-discriminatory reason" for the action.[668] Even if a respondent comes forward with evidence of a nondiscriminatory reason, BOLI will find

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[659] OR. REV. STAT. §§ 659A.001, 659A.030.

[660] OR. REV. STAT. § 659A.106.

[661] OR. REV. STAT. §§ 659A.001, 659A.006.

[662] OR. REV. STAT. § 659A.001.

[663] OR. REV. STAT. § 659A.350.

[664] OR. REV. STAT. §§ 659A.820, 659A.875.

[665] OR. REV. STAT. § 659A.870.

[666] *See* OR. ADMIN. R. 839-005-0010(1)(B)(iii). However, as a procedural matter, the Oregon courts do not use the *McDonnell Douglas* burden-shifting formula when reviewing a motion for summary judgment under an Oregon state law claim of employment discrimination. *Landsford v. Georgetown Manor, Inc.*, 84 P.3d 1105 (Or. Ct. App. 2004), *modified on reconsideration*, 88 P.3d 305 (Or. Ct. App. 2004). In the Oregon courts, summary judgment is not available for a claim of unlawful discrimination, and the claim must be decided by a jury (or other trier of fact) if the plaintiff can show there is sufficient evidence in the record to allow a finder of fact reasonably to "infer that the defendant discriminated against the plaintiff. . . because of the plaintiff's. . . protected characteristic." *Landsford*, 84 P.3d at 1115 (citing *Durham v. City of Portland*, 45 P.3d 998 (2002)).

[667] OR. ADMIN. R. 839-005-0010(1)(B)(i) (emphasis added).

[668] OR. ADMIN. R. 839-005-0010(1)(B)(i).

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unlawful discrimination if it concludes that there is "substantial evidence that the respondent's reason is a pretext for discrimination."[669]

Both equitable relief and tort-type damages are available in a lawsuit claiming an unlawful employment practice. An Oregon plaintiff bringing such a claim may seek an injunction and other equitable relief, including reinstatement or an order to hire an employee. The court can award the prevailing party its costs and attorneys' fees.[670] Back pay awards are limited to the two-year period before a complaint was filed in court or before a BOLI charge (if any) was filed. In addition to this equitable relief, a plaintiff can be awarded compensatory damages (or nominal damages of $200, if that is greater than the actual damages) and punitive damages.[671]

3.11(a)(iv) *Additional Discrimination Protections*

Tobacco Products. In Oregon, it is unlawful for an employer to require, as a condition of employment, that any employee or applicant refrain from using lawful tobacco products during nonworking hours, except when the restriction relates to a *bona fide* occupational requirement.[672] However, this prohibition does not apply if an applicable collective bargaining agreement prohibits the off-duty use of tobacco products.

Valid Driver's License., employers are prohibited from requiring employees and prospective employees to possess or present a valid driver's license as a condition of or continuation of employment, unless the ability to legally drive is an essential function of the job or related to a legitimate business purpose. Employers cannot refuse to accept an alternative to a driver's license such as any other identification documents deemed to be acceptable by the United States Citizenship and Immigration Services for verifying identity and employment authorization.[673]

Captive Audience. Employers are prohibited from discriminating against an employee because the employee declines to attend or participate in an employer sponsored meeting or communication with the employer if the primary purpose of such a meeting is to communicate the opinion of the employer about religious or political matters or as a means of requiring an employee to attend a meeting or participate in a religious or political meeting, or because the employee makes a good faith report, either orally or in writing of violation or suspected violation of this law.[674]

On-the-Job Training Programs. Effective January 1, 2024, Oregon has extended workplace civil rights, discrimination and harassment protections to individuals participating in certain on-the-job training programs.[675]

[669] OR. ADMIN. R. 839-005-0010(1)(d).

[670] OR. REV. STAT. § 659A.885(1).

[671] OR. REV. STAT. § 659A.885.

[672] OR. REV. STAT. § 659A.315.

[673] OR. REV. STAT. § 659A.347.

[674] OR. REV. STAT. §§ 659.780-659.785.

[675] OR. REV. STAT. §§660.002 - 660.210.

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3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Bend, Eugene, Hillsboro, Multnomah County, Portland, and Salem are subject to local fair employment practices ordinances.

- **Bend.** Any person who, directly or through an agent, engages or uses the personal service of one or more employees, within the City of Bend, reserving the right to control the means by which such service is or will be performed, must extend antidiscrimination protections on the basis of: race; religion; color; sex; national origin; marital status; age (18 years of age or older); physical or mental impairment; sexual orientation; and gender identity.[676] Any person claiming to be aggrieved by an unlawful discriminatory act may file a complaint with the Commissioner of the Oregon Bureau of Labor and Industries within one year after the alleged unlawful practice. An aggrieved individual has a cause of action in any court of competent authority. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action is handled as provided for in Oregon Revised Statutes, sections 659A.870 through 659A.880.[677]
- **Eugene.** Persons with one or more employees within Eugene, or who solicit individuals within Eugene to apply for employment within the city or elsewhere, are subject to the following antidiscrimination protections: race; religion; color; sex (includes pregnancy, childbirth, and related medical conditions); national origin; ethnicity; marital status; familial status; age (18 or older); sexual orientation (includes gender identity); source of income; disability; and a juvenile record that has been expunged.[678] Any person claiming to be aggrieved by an unlawful discriminatory act under the city ordinance may file a complaint with the Commissioner of the Oregon Bureau of Labor and Industries within one year from the date of the occurrence of the alleged unlawful practice.[679]
- **Hillsboro.** Protected classifications include: race; religion; color; sex; national origin; marital status; age; disability; sexual orientation; gender identity; source of income; familial status; and domestic partnership.[680] The ordinance does not provide a definition of "employer." Any person claiming to be aggrieved by an unlawful discriminatory act may file a complaint with the Commissioner of the Oregon Bureau of Labor and Industries within one year after the alleged unlawful practice. An aggrieved individual has a cause of action in any court of competent authority. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action is handled as provided for in Oregon Revised Statutes sections 659A.870 through 659A.890.[681]
- **Multnomah County.** Employers that employ one or more employees are subject to the following antidiscrimination protections: race; religion; color; sex; sexual orientation, which

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[676] CITY OF BEND, OR., CODE §§ 5.25.005, 5.25.010, and 5.25.025 (exceptions, including religious organizations; employers may enforce an otherwise valid dress code).

[677] CITY OF BEND, OR., CODE § 5.25.030 (cross-referencing state complaint procedures).

[678] EUGENE, OR., CITY CODE §§ 4.615, 4.620 (exceptions, including *bona fide* occupational qualifications and certain religious and educational institutions), and 4.655 (other exemptions).

[679] EUGENE, OR., CITY CODE §§ 4.645, 4.650.

[680] HILLSBORO, OR., MUN. CODE §§ 7.28.020, 7.28.050 (exceptions, including for valid employer dress codes or policies, so long as the employer provides, on a case-by-case basis, for reasonable accommodation based on the health and safety needs of persons protected on the basis of gender identity).

[681] HILLSBORO, OR., MUN. CODE § 7.28.060 (cross-referencing state complaint procedures).

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includes gender identity; national origin; marital status; age (18 years or older); familial status; disability; and source of income.[682] Any person claiming to be aggrieved by an unlawful discriminatory act has a cause of action in any court of competent jurisdiction for relief as provided in Oregon Revised Statutes sections 659A.885 and 659A.890. In addition to the right to commence a civil action, any person claiming to be aggrieved by an unlawful discriminatory act may file a complaint with the Commissioner of the Oregon Bureau of Labor and Industries within one year after the alleged unlawful practice.[683]

- **Portland.** Protected classifications include: race; religion (includes non-religion, such as atheism, agnosticism, and non-belief in a god or gods as has been recognized by courts); color; sex; national origin; marital status; age if the individual is 18 years of age or older; disability; sexual orientation; gender identity; source of income; and familial status.[684] Generally, these provisions apply to employers with one or more employees. Any person claiming to be aggrieved by an unlawful discriminatory act may file a complaint with the Commissioner of the Oregon Bureau of Labor and Industries within one year after the alleged unlawful practice. An aggrieved party has a cause of action in any court of competent authority. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action is handled as provided for under Oregon state law.[685]
- **Salem.** Employers that employ one or more employees within the city of Salem, or that solicit individuals within the city of Salem to apply for employment, whether privately or by general advertisement must extend antidiscrimination protections on the basis of: race; religion; color; sex; national origin; marital status; age (18 years or older); disability; sexual orientation; gender identity; source of income; domestic partnership; and familial status.[686] An individual alleging a violation of the ordinance may file a complaint with the Salem Human Rights and Relations Advisory Commission within one year of the alleged violation.[687] Moreover, any person who claims to be aggrieved by an unlawful employment practice based on sexual orientation, gender identity, source of income, familial status, or domestic partnership will have a cause of action in any court of competent jurisdiction.[688]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[689] The prohibition does not

[682] MULTNOMAH CNTY., OR., CODE §§ 15.342, 15.343.

[683] MULTNOMAH CNTY., OR., CODE § 15.346 (cross-referencing state complaint procedures).

[684] PORTLAND, OR., CITY CODE §§ 23.01.030, 23.01.040 (exceptions), and 23.01.050.

[685] PORTLAND, OR., CITY CODE § 23.01.080 (cross-referencing state complaint procedures).

[686] SALEM, OR., CITY CODE §§ 97.010, 97.020(a), and 97.085 (exceptions).

[687] SALEM, OR., CITY CODE §§ 97.860, 97.880.

[688] SALEM, OR., CITY CODE § 97.900(d)(1).

[689] 29 U.S.C. § 206(d)(1).

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apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[690]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

Currently, in Oregon, an employer is prohibited from paying wages to any employee at a rate less than that at which the employer pays wages to employees of the opposite sex, or in any manner discriminating in the payment of wages between employees of the opposite sex, for work of comparable character, the performance of which requires comparable skills.[691] The prohibition does not apply where payment is made pursuant to a seniority or merit system that does not discriminate on the basis of sex, or a wage differential between employees is based in good faith on factors other than sex.

An employee alleging a violation of the equal pay statute may file a civil action within six years of the alleged violation.[692]

Equal Pay Law. It is an unlawful employment practice under the state antidiscrimination statute for an employer to:

- in any manner discriminate between employees on the basis of a protected class in the payment of wages or other compensation for work of comparable character; or
- pay wages or other compensation to any employee at a rate greater than that at which the employer pays wages or other compensation to employees of a protected class for work of comparable character.[693]

Compensation under this new law includes wages, salary, bonuses, benefits, fringe benefits, and equity-based compensation. *Work of comparable character* means work that requires substantially similar knowledge, skill, effort, responsibility, and working conditions in the performance of work, regardless of job description or job title.

An employer may pay employees for work of comparable character at different compensation levels if all of the difference in compensation levels is based on a *bona fide* factor that is related to the position in question and is based on: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production, including piece-rate work; (4) workplace locations; (5) travel, if travel is necessary and regular for the employee; (6) education; (7) training; (8) experience; or (9) any combination of the factors above, if the combination of factors accounts for the entire compensation

[690] 42 U.S.C. § 2000e-5.

[691] OR. REV. STAT. § 652.220.

[692] OR. REV. STAT. §§ 12.080, 652.230.

[693] OR. REV. STAT. § 652.220.

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differential. An employer may not reduce the compensation level of an employee to comply with the provisions of the statute. Amounts owed to an employee because of an employer's failure to comply with the requirements of the equal pay statute are considered unpaid wages.

An employer may elect to conduct an equal pay analysis as a safe harbor against liability for damages. In an action for violation of the equal pay statute, such an employer may file a motion to disallow an award of compensatory and punitive damages in which the employer must demonstrate, by a preponderance of the evidence, that the employer:

- completed, within three years before the date that the employee filed the action, an equal pay analysis of the employer's pay practices in good faith that was:
  - reasonable in detail and in scope in light of the size of the employer; and
  - related to the protected class asserted by the plaintiff in the action; and
- eliminated the wage differentials for the plaintiff and has made reasonable and substantial progress toward eliminating wage differentials for the protected class asserted by the plaintiff.

If the court grants the motion, the court may award back pay only for the two-year period immediately preceding the filing of the action and may allow the prevailing plaintiff costs and reasonable attorney fees, but may not award compensatory or punitive damages.

An employee alleging a violation of the equal pay statute may file an administrative complaint with the Oregon Bureau of Labor and Industries, a civil action under the equal pay statute, or a civil action under the state antidiscrimination statute, within one year of the alleged violation. A violation occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice. Note that Alleged violations are only enforceable by filing an administrative complaint with BOLI through 2023. Effective January 1, 2024, an individual may also elect to bring a civil suit alleging equal pay violations.[694]

Information that an employer has not completed an equal-pay analysis may not be used as evidence of a violation of section 652.220.

As discussed in **3.7(b)(v)**, Oregon law prohibits employers from barring employees from disclosing their wages or inquiring about other employees' wages.

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

[694] OR. REV. STAT. §§ 652.220, 652.230, 659A.875, and 659A.885); Oregon Bureau of Labor & Industries, *Technical Assistance for Employers: Oregon Equal Pay Law* (September 2017), *available at* https://www.oregon.gov/boli/TA/Pages/FactSheetsFAQs/PayEquity.aspx.

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Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[695]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[696]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[697] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[698] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot

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[695] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[696] 29 C.F.R. § 1636.3.

[697] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[698] 29 C.F.R. § 1636.3.

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perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[699]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[700]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[701]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in 3.9(c)(ii). For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

[699] 29 C.F.R. § 1636.4.

[700] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[701] 29 C.F.R. § 1636.3.

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3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Oregon requires employers to provide reasonable accommodations for an employee's or applicant's known limitations related to pregnancy, childbirth or a related medical condition, including but not limited to lactation.[702] An employer is not required to provide reasonable accommodation if the employer can demonstrate that the accommodation would impose an undue hardship on the employer's business operations. A reasonable accommodation imposes an undue hardship on the operation of the business of an employer if the reasonable accommodation requires significant difficulty or expense.[703] Reasonable accommodation may include, but is not limited to:

- acquisition or modification of equipment or devices;
- more frequent or longer break periods or periodic rest;
- assistance with manual labor; or
- modification of work schedules or job assignments.[704]

The statute prohibits additional employer conduct in relation to the needs of a pregnant employee or applicant. An employer is prohibited from:

- denying employment opportunities to an applicant or employee if the denial is based on the employer's need to make reasonable accommodations;
- taking an adverse employment action or in any manner discriminating or retaliating against an applicant or an employee, with respect to hiring or tenure, or any other term or condition of employment, because the applicant or employee has inquired about, requested or used a reasonable accommodation;
- requiring an applicant or an employee to accept a reasonable accommodation that is unnecessary for the applicant or the employee to perform the essential duties of the job or to accept a reasonable accommodation if the applicant or employee does not have a known limitation related to pregnancy, childbirth, and related medical conditions; and
- requiring an employee to take family leave under the Oregon Family Leave Act, or any other leave, if the employer can make other reasonable accommodations.[705]

The employer must post a notice of rights and obligations under the statute in the worksite in a conspicuous and accessible location in or about the premises where employees work, and must also provide a written copy of the notice to:

- a new employee at the time of hire;
- existing employees within 180 days after the effective date of the law; and
- an employee who informs the employer of the employee's pregnancy, within 10 days after the employer receives the information.[706]

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[702] OR. REV. STAT. § 659A.147.

[703] OR. REV. STAT. § 659A.147.

[704] OR. REV. STAT. § 659A.146.

[705] OR. REV. STAT. § 659A.147.

[706] OR. REV. STAT. § 659A.147.

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3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[707] Multiple decisions of the U.S. Supreme Court[708] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[709] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in Oregon. BOLI recommends, but does not require, that all employers:

> develop appropriate sanctions, inform employees of the right to raise complaints and how to raise them, and develop methods to sensitize all concerned. The employer should emphasize the importance of its sexual harassment policy through communication and training. Training for staff is essential. Employers should have departmental or unit meetings to explain policies and grievance procedures, so that all employees understand what is prohibited conduct and how to complain about it.[710]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected

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[707] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[708] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742(1998); *Faragher v. City of Boca Raton*, 524 U.S. 775(1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526(1999).

[709] EEOC, Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999), available at http://www.eeoc.gov/policy/docs/harassment.html; see also EEOC, Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic (June 2016), available at https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

[710] Oregon Bureau of Labor and Indus., *Sexual Harassment: Questions and Answers*, *available at* http://www.oregon.gov/BOLI/TA/pages/t_faq_tafaq.aspx.

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activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

Oregon's whistleblower law applicable to private employers makes it an unlawful employment practice for an employer to discharge, demote, suspend, or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions, or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule, or regulation.[711] The remedies provided by this statute are in addition to any common-law remedy or other remedy such as common-law wrongful discharge.[712]

Oregon Safe Employment Act. Under the law, an employee has the right to notify the employer and the Director of the Department of Consumer and Business Services of any violation of law, regulation or standard pertaining to safety and health in the place of employment. Moreover, the Act prohibits employers from discharging or otherwise discriminating against employees or prospective employees for exercising their rights under the Act.[713]

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[714] and the Railway Labor Act (RLA)[715] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

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[711] OR. REV. STAT. § 659A.199.

[712] OR. REV. STAT. § 659A.199(2).

[713] OR. REV. STAT. §§ 654.001 *et seq.*

[714] 29 U.S.C. §§ 151 to 169.

[715] 45 U.S.C. §§ 151 *et seq*.

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3.12(b)(ii) *Notable State Labor Laws*

Oregon is not a right-to-work state. The state's policy is to allow private sector labor organizations and employers to enter into union security agreements to the full extent allowed by federal law.[716] Oregon law provides that unfair labor practices for employers include:

- interfering with collective bargaining rights;
- interfering with the formation or administration of any labor organization;
- retaliating against an employee for filing charges or giving testimony regarding labor practices;
- refusing to bargain with the employees' exclusive representative; and
- encouraging or discouraging membership in a labor organization.[717]

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[718] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[719] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

Oregon's mini-WARN law complements the federal WARN Act. Covered employers are those covered by the federal WARN act and the Oregon law designates that the Oregon Office of Community Colleges and Workforce Development is the state agency that must be notified when an employer is required to provide notice under the federal law.[720]

4.1(c) *State Mass Layoff Notification Requirements*

Oregon does not require that an employer notify the state unemployment insurance or other department in the event of a mass layoff.

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716 OR. REV. STAT. § 661.045.

717 OR. REV. STAT. §§ 663.120, 663.120.

718 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

719 20 C.F.R. §§ 639.4, 639.6.

720 OR. REV. STAT. §§ 285A.510(2), 285A.516.

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4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under federal law.

Table 11. Federal Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[721] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[722]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 12 lists the documents that must be provided when employment ends under state law.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	Oregon's mini-COBRA statute requires employers of fewer than 20 employees to provide post-termination continued coverage for up to nine months, but the law does not require such employers to provide notification of continued coverage to an employee upon termination.[723]

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[721] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[722] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

[723] OR. REV. STAT. § 743B.347.

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Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Unemployment Notice	**Generally.** Oregon law has no general provision requiring that employers provide notice about unemployment benefits when employment ends. **Multistate Workers.** Oregon does have such a requirement, however, in the case of multistate workers. Whenever an individual covered by an election is separated from employment, an employer must notify the employee as to the jurisdiction under whose unemployment compensation law services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, an employer must notify the employee as to the procedure for filing interstate benefit claims.[724]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

Blacklisting is the intentional prevention of the future employment of an employee by the former employer. Blacklisting usually occurs when the former employer makes representations to prospective employers that an individual should not be hired. It should be distinguished from a reference, which is essentially a request for information about job performance. Blacklisting is an unlawful employment practice in Oregon.[725] Otherwise, the state does not have provisions requiring an employer to provide service letters or other references for former employees.

[724] OR. ADMIN. R. 471-031-0065.

[725] OR. REV. STAT. § 659.805.

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