

Labor and Employment Laws in the State of Oregon



FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work®

www.laborlawyers.com

Atlanta • Charlotte • Chicago • Columbia • Dallas • Denver • Fort Lauderdale • Houston • Irvine • Kansas City • Las Vegas
Louisville • New Jersey • New Orleans • Orlando • Philadelphia • Portland ME • Portland OR • San Diego • San Francisco • Tampa

Labor And Employment Laws In The State Of Oregon

I.	INTRODUCTION.....	1
II.	THE EMPLOYMENT RELATIONSHIP	1
A.	Employment At-Will.....	1
1.	Generally.....	1
2.	Implied Employment Contracts And Disclaimers	2
B.	Labor Organizations.....	3
1.	Private Sector Employers, ORS 36.610; ORS 661.010 et seq.	3
2.	Public Sector Employers, ORS 243.662	3
C.	Background Screening	3
1.	Criminal Background Checks And Inquiries, ORS 181.555 And 659A.030.....	3
2.	Credit History.....	3
3.	Drug And Alcohol Testing, ORS 438.435; ORS 659A. 300, et seq; ORS 659. 840	4
4.	Pre-Employment Medical And Psychiatric Exams	4
5.	Genetic Screening Tests, ORS 192.531, et seq.....	5
D.	Health Insurance.....	5
1.	Coverage, ORS 743.760	5
2.	Continuation Of Coverage	5
a.	The Federal COBRA Law.....	6
b.	Continuation Of Coverage Under Group Policy Upon Termination Of Employment Or Membership Or Dissolution Of Marriage Law, ORS 743.610	6
E.	Employment Of Minors, ORS 653.310, et. seq.....	6

1.	Minors 14 And 15 Years Of Age.....	6
a.	Work Conditions For Minors	7
b.	Prohibited Hazardous Occupations	7
c.	Children Under 14 Years Of Age: Prohibited Hazardous Occupations	9
d.	Occupations Not Covered.....	9
e.	Show Business Exceptions, OAR 839-021-0300; OAR 839-021-0335.....	10
f.	Notice Requirement, OAR 839-21-180.....	10
2.	Minors 16 And 17 Years Of Age.....	10
a.	Generally.....	10
b.	Exceptions.....	10
3.	Enforcement And Penalties, ORS 653.370	11
F.	Restraints On Competition	11
1.	Non-Compete Agreements, ORS 653.295	11
2.	Oregon Uniform Trade Secrets Act, ORS 646.461 To ORS 646.475	12
G.	Employee Surveillance In The Workplace	12
1.	Searches	12
2.	Surveillance	13
3.	Telephone Monitoring	13
H.	Open Personnel Records, ORS 652.750	13
I.	References, ORS 30.178.....	14
III.	WAGES AND HOURS.....	14
A.	Wage Payment.....	14
1.	Minimum Wage, ORS 653.025	14

a.	How Much.....	14
b.	Covered Employers.....	15
c.	Tipped Employees, ORS 653.035.....	15
d.	Employee Training, ORS 653.030; ORS 653.070.....	15
e.	Disabled Employees, ORS 653.030.....	15
f.	Interns And Trainees.....	15
g.	Volunteers.....	16
h.	Underpayment, ORS 12.080.....	16
2.	Overtime Pay, OAR 839-020-0030; ORS 653.261.....	17
a.	Exempt And Non-Exempt Employees.....	17
b.	Covered Employers.....	18
c.	Exemption For Skilled Computer Technicians.....	18
d.	Special Case Exemptions.....	18
3.	Paying Employees, ORS 652.110, et seq.	19
a.	Wages	19
b.	Time And Place Of Payment, ORS 652.120	19
c.	Form Of Payment	19
d.	Final Compensation, ORS 652.140.....	19
e.	Payment In Case Of Dispute, ORS 652.160.....	21
f.	Enforcement	21
4.	Wage Deductions , ORS 652.610; ORS 18.385; ORS 110.300 To ORS 110.441, ORS 419B.408, ORS 419C.600; And OAR 839-009-0270(6)(d)	21
a.	Garnishments. (ORS 23.185; ORS 29.401; ORS 29.145; ORS 29.147; ORS 29.235; ORS 29.411)	22
b.	Wage Assignment.....	22

c.	Child And Spousal Support	23
d.	Defaulted Student Loans	23
e.	Tax Levies	24
f.	Order Of Priority For Deductions.....	24
g.	Bankruptcy	24
B.	Work Hours.....	24
1.	Hours Actually Worked	24
2.	“Show Up Pay” Or Adequate Work, OAR 839-021-0087(5)	25
3.	Recordkeeping Requirements.....	26
4.	Meal And Rest Periods	26
5.	Holidays	28
6.	Compensatory Time-off.....	28
IV.	EMPLOYMENT DISCRIMINATION.....	29
A.	Protected Classes, ORS Chapter 659	29
1.	Generally.....	29
2.	Age Discrimination	30
3.	Marital Status Discrimination	30
4.	Physical And Mental Disability Unrelated To Ability, ORS 659A.100 et. seq.....	31
5.	Religious Discrimination	31
6.	Sex Discrimination	32
7.	Sexual Orientation	32
B.	Privacy In The Workplace, ORS 659A.300	33
C.	Protected Employee Activities	33
1.	Jury Duty, ORS 10.090.....	33

2.	Time Off For Military Duty, ORS 399.230.....	34
3.	Crime Victim’s Leave Act, ORS 659A.190 To 659A.198	34
V.	WORKPLACE SAFETY	35
A.	General Provisions, ORS Chapter 654	35
B.	Smoking In The Workplace	35
1.	Oregon Indoor Clean Air Act, ORS 433.835 To 433.875	35
2.	Local Clean Indoor Air Ordinances.....	35
C.	Toxic Substances, Employer’s Liability Act ORS § 654.196	36
VI.	CONCLUSION	36

This booklet is intended to provide an overview of the most important parts of Oregon state employment laws. It is not intended to be legal advice for any specific situation or set of facts. Whenever you are dealing with any employment related situation it is always a good idea to seek the advice of competent legal counsel.

I. INTRODUCTION

The number and scope of laws regulating the employment arena has grown tremendously in the past few decades. While some areas of labor and employment law are governed exclusively by federal law, others see employers covered by supplemental (or overlapping) state laws, while a handful are exclusively of state or even local concern. In general, federal law serves to establish the threshold of what an employer absolutely must do and to what employees are entitled in various situations. State law may still govern if it either establishes a higher, stricter standard for employers than federal law, or applies to a class of employers not covered under federal law. This means that where both state and federal laws apply, to be controlling, state regulations must offer either the same or greater protections to employees than federal law.

This booklet provides a basic overview of the employment laws in effect in Oregon and is divided into four main themes, or sections, as follows: 1) the employment relationship; 2) wages and hours; 3) employment discrimination; and 4) workplace safety. Citations to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are provided for each law discussed.

Bear in mind that this booklet is not meant to be an exhaustive treatment of Oregon employment law in any particular area. Neither does it review applicable federal law in these areas, except to briefly point out areas of difference where the two overlap. Rather, this booklet is intended to provide a basic reference guide to help employers quickly and successfully address common employment issues in accordance with Oregon law.

Always remember that where state, federal, and/or local law differ and an employer is covered by both, the higher, stricter standard must be followed. For additional information about federal employment issues you may want to review the various other booklets, published by Fisher & Phillips LLP, which summarize and explain the federal laws that govern employers. This booklet is no substitute for legal advice. Any questions or concerns relating to these or other employment topics should be directed to qualified legal counsel.

II. THE EMPLOYMENT RELATIONSHIP

A. Employment At-Will

1. Generally

The general rule is that Oregon is an “at-will” employment state, meaning that absent some form of employment contract (explicit or implied based on the employer’s statements) providing to the contrary, employment may be terminated at any time by either the employer or employee for any reason, or for no reason at all, so long as it is not an illegal reason. Most employers choose to reserve this right to employ at-will with specific language in personnel policies.

Example: “We reserve the right to employ at-will. This means that employment can be terminated, with or without cause, and with or without notice, at any time, at the option of the company or at the option of the employee.”

To maintain at-will status, it is wise for employers to state that policies are merely guidelines and are not to be construed as a contract.

Example: “**These policies are not to be construed as a contract of employment.** We expressly reserve the right to change, add to, or delete policies at any time. Changes will be effective on dates determined by the company, and you may not rely on policies that have been superseded. No supervisor or manager other than our Chief Executive Officer has authority to alter the policies, and all such changes must be in writing. Only those benefits in effect at the time an employee separates from the company are in effect for that employee.”

There are, of course, legal limits to this “at-will” status. An employee may not be discharged for performing a public duty or for fulfilling a societal obligation; the existence of a public duty or societal obligation can be shown through a review of all relevant evidence of a particular public policy, whether expressed in constitutional and statutory provisions or in the case law of the jurisdiction in question or of other jurisdictions.

Since organizations that employ individuals at-will may still be called upon to defend various types of employment claims in court or before state or federal agencies, prudent at-will employers will maintain records showing a legitimate business reason for any important personnel action.

2. Implied Employment Contracts And Disclaimers

Even absent any express employment contract there is still the possibility that a court may find provisions of an employee handbook or other employer policy statement to constitute an implied employment contract. Merely inserting a disclaimer into such a policy statement or handbook may not be sufficient to escape a finding by a court that an employment contract exists. The employer’s stated policies and practices must not be inconsistent with an employee’s “at-will” employment status. In other words, you should not promise that a procedure or condition of employment will always be followed unless you intend to follow it in every case.

Disclaimers can, however, be used effectively to weaken the case that an employee reasonably relied on policies in a handbook as an employment contract. Any such disclaimer should be clearly visible (for example, spelled out in large, bold type, conspicuously located in the document) and should clearly state that the handbook is not a contract and that employment may be terminated at any time. Similarly, any list provided to employees as potential grounds for dismissal should include a conspicuous and clear statement that the list is not intended to be all-inclusive and any procedures described should be accompanied by a statement that the company may deviate from any or all such procedures at any time. To retain the right to discharge at-will, employers should avoid ever promising employment for any length of time.

B. Labor Organizations

1. Private Sector Employers, ORS 36.610; ORS 661.010 et seq.

Labor relations in the private sector are primarily regulated under the federal National Labor Relations Act (NLRA). There is no similar comprehensive state law governing private sector employer-labor relations in Oregon, although there are a series of narrower laws governing discrete aspects of employer-labor relations. The Uniform Arbitration Act (ORS 36.610), for example, provides that an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

2. Public Sector Employers, ORS 243.662

In the public sector, the controlling statute (ORS 243.662) essentially grants public sector employees the same rights to join a union and enter into collective bargaining as private sector employees under the National Labor Relations Act.

C. Background Screening

1. Criminal Background Checks And Inquiries, ORS 181.555 And 659A.030

Employers generally may consider prior criminal convictions in making employment decisions. Criminal background checks may be obtained from either the Oregon State Police or private firms. When you request access to the employee's or applicant's criminal record, you must state that the individual has been advised that you are seeking such information and you must describe the manner in which you advised the individual. See also Fisher and Phillips' booklet regarding FCRA (the Fair Credit Reporting Act).

An employer cannot refuse to hire or discharge an individual from employment because of an expunged juvenile record unless it is based upon a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of the employer's business. Further, an employer cannot discriminate against an individual in compensation, terms, conditions, or privileges of employment because of an expunged juvenile record.

2. Credit History

Credit checks of job applicants are generally allowed for pre-employment screening, though the federal Fair Credit Reporting Act and certain regulations of the Equal Employment Opportunity Commission (EEOC) limit the scope and use of such checks. An employer must get the specific written authorization of the applicant before requesting any credit or background check. For federal regulations of background checks also see Fisher and Phillips' FCRA booklet.

Employers should provide applicants with an authorization form for their signature that is printed on a separate page by itself, and not one where a request for authorization is merely included as an item on a more general application. Before taking adverse action based in whole or in part on a credit or background report an employer must provide a copy of the report to the employee along with a summary of consumer's rights provided by the credit reporting agency.

3. Drug And Alcohol Testing, ORS 438.435; ORS 659A. 300, et seq; ORS 659. 840

An employer may not use any positive substance abuse test results to deny or deprive any person of employment or benefit unless 1) the results are confirmed at a state-licensed clinical laboratory or 2) the employer shows that the testing procedures it used outside Oregon met or exceeded Oregon's testing standards. When the substance abuse test is for nonmedical employment or pre-employment purposes, the test result will also be reported to the testee if he or she submits a written request.

State law prohibits employers from requiring any current or prospective employee to take a breathalyzer test as a condition of employment or continued employment absent the testee's consent. However, a blood alcohol content or breathalyzer test may be required as a condition of hire or continued employment if the employer has reasonable grounds to believe that the worker is intoxicated by alcohol. Oregon law prohibits employers from imposing testing costs upon the testee.

Every motor carrier must have an in-house drug and alcohol testing program that meets the federal requirements or be a member of a consortium that provides testing meeting federal requirements.

If an employer wishes, or is required, to establish a drug free workplace under the provisions of the federal Drug Free Workplace Act of 1988, the employer is required to 1) publish a statement announcing the drug free workplace policy; 2) post and distribute the notice/statement to all employees involved in contract or grant work with the state/federal government; 3) establish a drug free awareness program to inform employees of potential penalties, available counseling, and dangers of drug use in the workplace; 4) notify the contracting or granting agency of any criminal drug convictions of employees; 5) impose penalties or require employees to complete a rehabilitation program in response to any such convictions; 6) assist employees if drug counseling, treatment and rehabilitation are required; and 7) make a good faith effort at maintaining a drug free workplace.

4. Pre-Employment Medical And Psychiatric Exams

An employer may use medical and psychiatric examinations to screen employment applicants for those who would be unable to perform the particular job being applied for safely and efficiently. Under no circumstances, however, may such exams be used to discriminate against applicants with disabilities. Concern over the use of such exams to discriminate has led to requirements that medical and psychiatric exams be given only after an applicant has received an offer of employment conditioned on passing the exam. So long as the applicant can perform all the essential functions of the job safely and efficiently with or without reasonable accommodation an employer may not refuse to hire based on the applicant's disability.

Employers wishing to use pre-employment medical or psychiatric examinations must: 1) apply them uniformly to all applicants for the same position regardless of disability; 2) perform them after all other forms of evaluation are concluded (keep in mind the federal Americans with Disabilities Act (ADA) requires that medical exams not be given until after a job offer is made); 3) make the results available to the applicant upon request; and 4) be prepared to make

reasonable accommodations where appropriate. Further, physical examinations may not be used to disqualify applicants based on physical conditions which merely pose a risk of future injury. Employers should communicate to the doctor performing the examination the precise nature and demands of the position so that he or she may examine the applicant in light of the specific job requirements.

5. Genetic Screening Tests, ORS 192.531, et seq.

An employer may not subject any prospective employee to a genetic screening test. Employers are prohibited from obtaining, trying to obtain, or using genetic screening information to discriminate against or restrict a right or benefit of employees or prospective employees.

D. Health Insurance

1. Coverage, ORS 743.760

There is no Oregon or federal law that requires an employer to provide health insurance as an employee benefit. However, once an employer chooses to offer health insurance to employees there are a number of state and federal laws impacting the medical benefits to be offered and how the plan is to be administered.

For example, portability health benefit plans (a plan is “portable” if it allows enrollees coverage regardless of prior conditions) must be offered to eligible individuals by all carriers offering group health benefit plans and must be approved by the Director of the Oregon Department of Consumer and Business Services (hereinafter referred to as the “director”). Eligible individuals are those who have been continuously covered for 180 days or more under any group health benefit plan and who have applied for portability coverage no later than the 63rd day after termination of prior coverage. Individuals eligible to continue the prior coverage under ERISA are ineligible for portability. Also, ineligible for portability coverage are those covered under another health benefit plan or eligible for the federal Medicare program.

Portability plans are renewable at the enrollee’s option, except 1) for nonpayment of premiums; 2) following fraud or misrepresentation by the policyholder; 3) noncompliance with plan provisions; 4) misuse of a provider network; 5) when the carrier ceases to offer any group health benefit plans; or 6) if the director finds that renewal would not be in the enrollee’s best interests or would impair the carrier’s ability to meet its obligations.

2. Continuation Of Coverage

Employers electing to offer group health insurance plans are also regulated by state and federal laws that impose certain obligations on them to provide for the continuation of such health insurance. In Oregon, employers with 20 or more employees are covered by the federal health care continuation law (COBRA). Smaller employers are covered by the state continuation law (ORS 743.610).

a. The Federal COBRA Law

COBRA applies to employers with 20 or more employees and requires “qualified beneficiaries” who would ordinarily lose coverage under the employer’s group health plan due to certain “qualifying events” be given the chance to purchase continued coverage under the employer’s plan for 18 to 36 months at a rate up to 102% of the applicable group rate. However, under the new American Recovery and Reinvestment Act of 2009, the government will subsidize 65% of the cost of COBRA for employees for nine months. COBRA applies to any employer group health care plan that provides medical, dental, vision, or prescription drug benefits, but does not apply to disability or life insurance plans.

b. Continuation Of Coverage Under Group Policy Upon Termination Of Employment Or Membership Or Dissolution Of Marriage Law, ORS 743.610

This law covers all employers with group insurance plans administered in Oregon and subject to the Oregon Insurance Code. Group health insurance policies covering hospital or medical expenses, other than coverage limited to accidents or specific diseases, must provide that individuals whose coverage terminates because of termination of employment or group membership may continue coverage for themselves and eligible dependents. To continue coverage, the individual must have been covered at least 3 months prior to termination of employment. Continuation is not available to individuals eligible for federal Medicare coverage or coverage under another plan. Continued coverage need not include benefits for dental, vision care, prescription drug expense, or any other benefits other than hospital and medical expense benefits.

An employer must provide written notice to employees of their legal coverage continuation rights at the time of termination, after which the employee has 10 days to elect the continuation option. Electing to continue means the employee must pay the total applicable amount of the plan premium, including the employer’s share, but is allowed to pay at the employer’s group rate. Coverage ends 6 months after termination of employment, or when the employee becomes eligible for Medicare, becomes covered under another group plan, fails to make a timely premium payment, or when the group contract is terminated and no replacement plan is offered under another group contract.

E. Employment Of Minors, ORS 653.310, et. seq.

1. Minors 14 And 15 Years Of Age

Under the **Oregon Child Labor Law** (ORS 653.310, et seq.), the employment of minors under 16 years of age is prohibited for many occupations (see Section b: Prohibited Hazardous Occupations).

Generally, minors between 14 and 16 years of age may be employed outside school hours and during school vacations so long as it does not involve dangerous or hazardous factory work or is in any occupation otherwise prohibited by law.

a. Work Conditions For Minors

Minors under 16 years of age may work at all non-hazardous occupations, provided the following conditions are met:

- whenever school is **in session**, minors may work no more than three hours on any day and only 18 hours in any week;
- whenever school is **not in session** minors may work no more than eight hours in any one day and no more than 40 hours in any week;
- minors in agricultural employment may work a maximum of three hours a day on school days, 10 hours a day on non-school days, and a maximum of 25 hours per week during school weeks. During the summer months or other school vacation periods of one week or more, a maximum of 10 hours per day and 60 hours per week may be worked but no more than six days per week;
- minors are only permitted to work between the hours of 7 a.m. and 6 p.m. (Note, however, that minors employed in agriculture, youth camps, as newspaper carriers, or in private homes at domestic work are excepted from this rule); and
- minors working 5 continuous hours or more must be given at least one 30-minute meal period break. Minor employees must also be given a 15-minute rest period without deduction from pay for every 4 hours of work in one shift. This rest period must be in addition to the meal period and the employer must relieve the minor from all duties during the rest period.

Note that minors under the age of 16 may be employed until 7 p.m., with a validated employment certificate; during the summer (June 1 through Labor Day), these minors may work until 9 p.m. The Wage and Hour Commission may waive this provision and authorize minors to work until 9 p.m. throughout the year if the work is not detrimental to the minor's health and the minor is supervised by a parent during the extended hours of employment.

Minors under 16 may be employed during school hours only if:

- the minor is enrolled in a work training program;
- the minor is employed as a student learner; or
- the minor is enrolled in a school-supervised and school-administered work experience and career exploration program meeting the education standards established and approved by the Oregon Department of Education.

b. Prohibited Hazardous Occupations

Occupations identified as hazardous and prohibited for minors 14 and 15 years of age:

- signaler for logging engineer;

- bridge operations;
- briquette operations;
- cleaning the exterior of buildings;
- handling cattle;
- coal plants;
- distilleries;
- electric power plants;
- gravel or sand plants or bunkers;
- engineering works;
- railroads;
- logging;
- cold storage plants;
- milk condenseries;
- peace officers;
- reduction works;
- stockyards;
- tanneries;
- tree surgery;
- the telegraph, telephone, or public messenger service;
- breweries;
- blast furnaces;
- construction, including demolition and repair;
- mines or quarries;
- shipbuilding operations;
- longshoring;

- firefighting; and
- operating heavy power-driven machinery.

c. Children Under 14 Years Of Age: Prohibited Hazardous Occupations

No child under 14 may be employed in any:

- factory;
- workshop;
- mercantile establishment;
- store;
- business office;
- restaurant;
- bakery;
- hotel; or
- apartment house.

The Wage and Hour Commission may issue permits for the employment of children between 12 and 14 years of age in any suitable work during any school vacation extending over a term of 2 weeks.

Minors between 9 and 12 years of age may be employed to pick berries and beans during non-school hours, with written parental permission.

d. Occupations Not Covered

The Oregon Child Labor Law allows work in the following occupations during hours when school is not in session:

- the selling and distributing of magazines and newspapers;
- work in and around the home so long as it is not in connection with a business, trade or profession of the employer; and
- minors working as soccer referees.

In addition, minors 16 years of age and 17 years of age may be employed as assistants on chartered fishing or pleasure boats. Minors 14 years of age and 15 years of age may be employed at dock areas used by chartered fishing or pleasure boats.

Minors under 18 years of age may be employed on commercial fishing vessels without an employment permit when employed and supervised by the minor's grandfather, grandmother, father, mother, brother, sister, uncle or aunt.

Minors 16 years of age and 17 years of age may be employed to operate power-driven machinery in connection with their employment in the processing of agricultural commodities in an agricultural warehouse on a farm by a farmer if each such minor has completed a training program in the safe operation of such machinery as prescribed by rule of the Wage and Hour Commission.

e. Show Business Exceptions, OAR 839-021-0300; OAR 839-021-0335

The Oregon Child Labor Law provides for numerous exceptions related to the entertainment industry. The language of the rules specifically outlines the numbers of hours and days minors may work as well as conditions of employment such as the provision of breaks.

f. Notice Requirement, OAR 839-21-180

Employers are required to post a printed notice in a conspicuous place where minors under 16 years of age are employed or allowed to work. The notice must state the maximum work hours allowed in one week, and on each day of the week, for the minors. Employers must also post every required law and rule pertaining to child labor in a prominent place on the worksite.

2. Minors 16 And 17 Years Of Age

a. Generally

There are no limits on the number of hours 16- and 17-year-olds may work in a day. Sixteen- and 17-year-olds may work up to 44 hours per week. Minors over 16 years of age may not work:

- as engineer or operator of logging engines;
- as elevator operators;
- as messengers before 5 a.m. or after 10 p.m.

b. Exceptions

The Wage and Hour Commission may grant a special permit allowing the employment of a minor in an otherwise prohibited employment if the minor has successfully completed professional training for such employment, and she or he has graduated from high school or is and has been employed when school is not in session for a period of more than 30 days.

Minors may be employed on commercial fishing vessels without an employment permit when employed and supervised by a member of the minor's family.

3. Enforcement And Penalties, ORS 653.370

Employers of minors under the age of 18 must apply to the Wage and Hour Commission for annual employment certificates. The employer's application must be on a form provided by the commission and must include the estimated or average number of minors to be employed during the year, a description of the work to be performed, and a description of the machinery or equipment to be used by the minors.

Minors under the age of 14 may not be employed unless the employer has a validated employment permit authorizing the child to work for that particular employer. Minors under 18 years of age shall be employed only if the employer has on file and accessible an annual employment certificate, and also maintains a complete list of all children employed.

Employers of minors must keep accurate records, for at least 2 years, of daily and weekly hours worked and wages paid to each minor employee.

The Commissioner of the state Bureau of Labor and Industries (BOLI) is charged with the enforcement of Oregon's child labor laws. The laws provide for a maximum penalty of up to \$1,000 for each violation and imprisonment of up to 6 months.

F. Restraints On Competition

1. Non-Compete and No-Solicitation Agreements, ORS 653.295

In Oregon, a non-compete agreement will not be enforced unless all of the following apply:

- the employer tells the employee in a written job offer at least two weeks before the employee starts work that the non-compete is required, or the non-compete is entered into upon a bona fide advancement;
- the employee is exempt from Oregon minimum wage and overtime laws;
- the employer has a "protectable interest" (access to trade secrets or competitively sensitive confidential information); and
- the employee makes more than the median family income for a family of four as calculated by the Census Bureau (currently about \$62,000).

Even if an employee is not exempt and does not meet the salary test, a non-compete will still be enforceable if, during the restricted period, the employer pays the departed employee 50 percent of the employee's salary or 50 percent of the median family income for a family of four, whichever is greater.

Non-compete agreements are enforceable for no longer than two years.

No-solicitation agreements are not subject to the same restrictions as non-compete agreements. Oregon employers can require their existing employees to sign no solicitation agreements, regardless of whether they put the employee on notice of such a requirement before they start their employment.

Employers may protect trade secrets or other proprietary information by injunction or any other lawful means.

Oregon law also permits “bonus restriction agreements” designed to limit or restrain competition by an employee after termination of employment. If an employee violates such an agreement, the employer may require the employee to forfeit profit sharing or other bonus compensation not yet paid. These agreements are permitted when an employee has substantial involvement in management, personal contact with customers, or knowledge of trade secrets. Bonus restriction agreements must be reasonably limited to “a period of time, a geographic area and specified activities.”

2. Oregon Uniform Trade Secrets Act, ORS 646.461 To ORS 646.475

In Oregon, a trade secret is either: 1) a valuable commercial design, 2) a confidential relationship, or 3) the disclosure of the key features of the design shown to be the creative product of the party asserting protection. Oregon common law does not grant trade secret protection to information known to others engaged in a particular business, in the public domain, or created by the employee by using his general knowledge and skills. The trade secrets must be the particular secrets of the employer, as distinguished from the general secrets of the trade.

The most common basis for trade secret protection in Oregon is the breach of a confidential relationship. The state has adopted a higher standard of commercial morality which emphasizes the duty to refrain from using information obtained during a confidential relationship in a manner that might harm the owner. In other words, Oregon law holds that if an employee gained knowledge while employed, this knowledge is protected property of the employer even if the employee could have gained this knowledge elsewhere (e.g. an employee’s scientific discovery with technological use is the property of the employer).

Oregon also extends trade secret protection against third parties who knowingly benefit from the breach of a confidential relationship. If a new employer knowingly participates in, encourages, or accepts the benefits of a breach of confidence by a former employee, the new employer is liable for those acts in Oregon. The obligation to respect information obtained in confidence extends to business information such as confidential customer lists. It makes no difference whether the customer list is taken by memory, or by stealing a copy.

G. Employee Surveillance In The Workplace

1. Searches

Private sector employers are subject to few restrictions on their right to search articles and lockers on the employer’s premises. In fact, the primary motivation for employers to exercise restraint is one of maintaining good employee relations, rather than legally imposed

restrictions. Whatever an employer's practice, it is a good idea to be clear and forthright in communicating any surveillance or search practices at the time of hire and to post appropriate notices outlining the policy not only to discourage undesirable behavior but to maintain good employee relations and to avoid an invasion of privacy claim.

2. Surveillance

As with searches, private-sector employers are limited in their surveillance of employees while on the employer's premises first and foremost by concerns over employee relations. A general guide to what is appropriate is to inform employees at the outset when and how they are being monitored and limit such surveillance only to that which is reasonable. A camera directed at a factory floor is obviously different from a camera in a locker room or a changing area. An employer should never post a camera that is inoperative as it could create a false sense of security for employees.

3. Telephone Monitoring

To monitor calls there are also a number of additional requirements that employers must meet. Specifically, employers must: 1) obtain the consent of at least one party to the call; 2) provide written notice to employees (current and prospective) that their telephone calls may be monitored; 3) limit monitoring to business-related calls; 4) cease monitoring immediately and destroy any recording once the employer realizes a call is not business-related; 5) provide employees with access to telephones which are not monitored for use in personal calls (access to "pay phones" is sufficient); and 6) refrain from using information obtained through monitoring in legal proceedings or providing to law enforcement or other third parties.

Note, however, the law applies only to those instances where an electronic eavesdropping device is used. It does not apply to an employer who is standing nearby and happens to overhear what is said. Further, the federal Electronic Communications Privacy Act (ECPA) also prohibits the monitoring of employees through use of an electronic eavesdropping device, except in certain limited circumstances.

H. Open Personnel Records, ORS 652.750

The general rule for employers is that they must provide an employee with any personnel records or documents upon request for his or her review which are, have been, or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, pay raise, discharge or other disciplinary action. The employee must also be given a certified copy of these records. It is sufficient certification if the keeper of the employer's records provides the copies with a signed cover letter stating, "This brings you a complete and accurate copy of your personnel records as required by ORS 652.750 and I so certify."

A former employee has 60 days from the date of discharge to request a certified copy of records pertaining to the termination. An employer may only charge what is reasonably calculated to recover the actual cost of providing copies of these records. Employees' records must be provided within 45 days of receipt of the request from an employee. Failure to do so can result in a \$1,000 penalty.

I. References, ORS 30.178

The main risk associated with giving references is that the employer may end up defending a defamation claim. For example, statements that adversely reflect on an employee's abilities or character are defamatory. Employers have a "qualified privilege" to communicate defamatory information if the statements:

- are made with a good-faith belief that they are true;
- serve a business interest or purpose;
- are limited to that specific purpose;
- are made on a proper occasion, and
- are communicated to proper parties.

If an employee files a defamation suit, he or she may be entitled to a jury trial to decide if the employer has abused the privilege and is in violation of the foregoing guidelines.

Telephone requests for references should be denied. Since one of the conditions of qualified privilege is to provide information only to proper parties, it is better to require that all requests be in writing on company letterhead. Additionally, written communication provides documentation of the information provided.

Although releases are not required by law, they can provide support to the employer's position that the information was given for a business purpose and on a proper occasion. When answering questions, avoid opinions and limit comments to documented observations. Never repeat rumors, gossip or information received from anonymous sources. Avoid short-hand (eg. "We let him go because money was missing and he was the only employee with a key to the drawer that day" rather than, "We fired him for theft.")

It is a good idea to adopt a consistent policy that all requests for references will be handled by one person or a particular department. Managers and supervisors should be trained to refer all such requests to the appropriate person or department and consistently to refuse to comment when contacted directly.

III. WAGES AND HOURS

A. Wage Payment

1. Minimum Wage, ORS 653.025

a. How Much

The current adult minimum wage in Oregon is \$8.40 per hour as of January 1, 2009. The Commissioner of the Bureau of Labor and Industries (BOLI) calculates an adjustment to the

minimum wage each September to take effect on January 1 of the following calendar year. An employer can check the current state minimum wage by calling BOLI's technical assistance line (503) 731-4200 or checking the website <http://www.boli.state.or.us/BOLI/TA/>.

b. Covered Employers

All employers are covered. In addition, employers may also be covered by the provisions of the Federal Fair Labor Standards Act (FLSA) if the employer 1) is engaged in interstate commerce; or 2) has annual gross revenue of at least \$500,000; or 3) is a hospital, nursing home, or school. Remember that whenever the federal and state laws differ, the employer must pay the higher rate.

c. Tipped Employees, ORS 653.035

Tipped employees must receive at least the minimum wage; no credit against the minimum wage is allowed for tips and gratuities.

d. Employee Training, ORS 653.030; ORS 653.070

Employees undergoing vocational training may be paid below the minimum wage during such training, but not at a rate less than 75% of the minimum. The authorization of the commissioner of the state Bureau of Labor and Industries (BOLI) is necessary for an employer to pay a student-learner this lower wage.

e. Disabled Employees, ORS 653.030

Employees whose productive capacity is impaired by age, physical or mental deficiency, or injury may be paid below the minimum wage to reflect such reduced capacity fairly, provided the employer obtains authorization from the Commissioner of the state Bureau of Labor and Industries (BOLI) to do so. Blanket approval may be given under certain conditions for sub-minimum wages for disabled employees in sheltered workshops or similar work environments.

f. Interns And Trainees

Certain interns and trainees are not considered employees and therefore not subject to minimum wage and overtime requirements 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. WH Publication 1297, issued by the U.S. Department of Labor, provides the following tests:

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

- the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
- the training is for the benefit of the trainees or students;

- the trainees or students do not displace regular employees, but work under their close supervision;
- the employer that provides the training derives no immediate advantage from the activities of the trainees or students; and on occasion his operations may actually be impeded;
- the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
- the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

Students are considered employees and their work covered by the FLSA if:

- they provide essential services to the employer; or
- they are working in a position where someone is normally paid; or
- there is a history of paying someone to do the same or similar work; or
- other people are currently paid for the same or similar work.

g. Volunteers

Persons who donate their time and effort, usually on a part-time basis, for public service, religious, or humanitarian objectives, and who do so without expectation of payment, are not considered employees of the organizations receiving their services. Similarly, members of religious orders who serve their faith through institutions operated by the church or religious organization are not considered employees of these institutions and need not be paid.

In order for an employee to qualify as a volunteer, these four criteria must be met:

- the work must be at the employee's initiative;
- the work must be outside normal or regular work hours;
- the employee must be performing a religious, charitable or other community service without contemplation of payment; and
- the employee must be performing a task outside of the regular job functions performed for the same employer.

h. Underpayment, ORS 12.080

Since there is no special statute of limitations pertaining to wage payment, the general six-year statute of limitations applies.

2. Overtime Pay, OAR 839-020-0030; ORS 653.261

The payment of overtime is required by both federal and state laws. The law requires most employers to pay overtime at the rate of 1½ times the regular rate for all hours over 40 in the workweek. Special overtime rules apply to government agencies, hospitals, canneries and manufacturing establishments. Refer to the Oregon Wage and Hour Laws handbook for more information about special overtime requirements for such entities.

State law does not require overtime to be paid for time worked in the private sector in excess of 8 hours in any single workday. A workweek is defined as a period of seven consecutive days (168 hours) from the time the employer has determined the workweek to begin, which need not be the same as the calendar week unless the employer so chooses. An employer's workweek should not change for one employee or haphazardly—it is permissible to change the workweek for everyone in a department/division, but it is never proper to make a change in the workweek to deprive an individual employee of overtime.

An action for overtime or premium pay or for penalties or liquidated damages for failure to pay overtime or premium pay shall be commenced within two years.

a. Exempt And Non-Exempt Employees

Non-exempt employees must be paid time and one-half their regular pay for all hours actually worked in excess of 40 in a 7-day workweek. Non-exempt employees are those workers, hourly and salaried, not specifically exempt from being paid overtime. Exempt employees are those who fall into certain specific categories.

Employees must be paid a salary to be exempt. Paying an employee a salary, however, does not guarantee that he or she is exempt. Non-exempt employees may be either salaried or hourly. What determines whether employees are classified as exempt or non-exempt is what the employees actually do in their job, not their job title, method of payment, or the amount they are paid. For example, executives, professionals, and administrators are exempt if they are paid a guaranteed weekly salary of no less than 2080 hours times the current minimum wage per week (\$312 per week) and whose primary duties are exempt. Primary duties are defined as the principal, main, major, or most important duties the employee performs.

Examples of non-exempt work include manual or production work, routine data entry, clerical or recordkeeping duties, maintenance and cleaning work. Typical examples of exempt work include physicians, pharmacists, lawyers, engineers, teachers, and those performing non-manual duties related to management policy and/or business operations. Exempt work tends to be more creative or original in character and of the type on which the results depend primarily on the skill and independent judgment of the employee. (For a more in-depth analysis of current federal exemptions, see the Fisher & Phillips booklet "FLSA - Exemptions and Recordkeeping.")

CAUTION: Misclassification of salaried employees as exempt creates liability for unpaid overtime. It is the employer's burden to prove exempt status of employees. *See the WH Publication 1281 from the U.S. Dept. of Labor (503-326-3057) and consult the Oregon Wage and Hour Laws Handbook (503-731-4073) for more information.*

Time not actually worked (e.g., holiday or sick pay) does not count toward the 40 hours worked for purposes of overtime. Also, the law applies only to time worked over 40 hours in a 7-day workweek.

b. Covered Employers

Public sector employers are covered by the federal FLSA, as are private employers engaged in interstate commerce or operating a business with gross annual revenue of \$500,000 or more, as well as hospitals, nursing homes, and schools of all types and sizes. Remember that where the state and federal laws differ, the covered employer must implement the more stringent standard (i.e. the standard that benefits the employee more). As noted at the outset, this booklet does not address public sector employment rules.

c. Exemption For Skilled Computer Technicians

Both federal and state laws provide a separate exemption for skilled computer technicians who are paid an hourly rate of at least \$27.63 per hour. Because the state exemption was adopted using the same conditions as the original FLSA exemption at 13 (a) (17), no degree is required.

d. Special Case Exemptions

1) Computer professionals (computer systems analysts, programmers, software engineers, or other similarly skilled workers) are exempt from overtime.

2) Resident managers of adult foster homes: A resident manager of an adult foster home who lives at the foster home and is directly responsible for the daily care of the home's residents is not subject to the overtime provisions.

3) Agricultural workers in small agricultural businesses are exempt from both state and federal minimum wage and overtime requirements.

4) Interstate truck drivers, helpers, and mechanics are exempt from both state and federal minimum wage and overtime requirements.

5) Small town radio and television personnel are exempt from state and federal overtime requirements.

6) Auto dealers, salespersons and mechanics are exempt from state and federal overtime requirements.

3. Paying Employees, ORS 652.110, et seq.

a. Wages

This term refers to any and all compensation owed an employee by an employer pursuant to an employment contract or other agreement. Nondiscretionary bonuses and all commissions are considered wages. In addition, where an employer is legally committed to contribute to an employee benefit, trust or fund on the basis of a certain amount per period of time, the amount due from the employer to such employee benefit, trust or fund is also treated as wages. There is an exception for different payment arrangements provided by a valid collective bargaining agreement.

b. Time And Place Of Payment, ORS 652.120

Every employer shall establish and maintain a regular payday on which date all employees shall be paid the wages due and owing to them. A payday must occur at least once every 35 days unless otherwise provided in a written agreement with the employees. More frequent intervals of payment are permitted.

Effective January 1, 2008, if an employer is put on notice that an employee is owed wages on the regular payday, and there is no dispute between the employer and employee regarding the amount of the wages:

- 1) If the amount is less than 5% of the employee's gross wages due on the regular payday, the employer must pay the unpaid amount by the next regular payday;
- 2) If the amount is 5% or more of the employee's gross wages due on the regular payday, the employer must pay the employee the unpaid amount within 3 days after the employer has notice of the unpaid amount (excluding Saturdays, Sundays and holidays).

c. Form Of Payment

All wages and final compensation must be paid either by cash, check, or the direct deposit of funds in an account at a bank or other financial institution designated by the employee. An employer may not pay an employee by direct deposit unless the employee designates the particular financial institution to receive the payment or deposit. If the employee has not so designated a particular financial institution, the employer must make payment in the form of cash or check. BOLI has interpreted the payment statute to prohibit an employer's payment of wages in a form that will require the employee to incur a surcharge to gain access to wages.

d. Final Compensation, ORS 652.140

Payments to "separated employees" are termed "final compensation" and include all wages, salaries, earned commissions, earned bonuses, the monetary equivalent of earned vacation and holidays, and any other compensation that may be owed to an employee up to the time of separation.

There is no law requiring that separation or severance pay be included as part of final compensation to a terminated employee. Such separation pay is either left to the discretion of the employer or may be subject to a collective bargaining agreement.

The law does require that when the employment context provides for paid vacations and an employee resigns or is terminated without having taken all the pro rata vacation time earned, the monetary equivalent of such earned vacation must be paid at the employee's normal rate of pay as part his or her final compensation, unless a collective bargaining agreement or express written policy of which the employee was aware provides otherwise.

Final compensation should be paid in full at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee. Depending on whether the separation is voluntary or involuntary and the award of lead time provided, the requirement varies (see below). Similarly, employees on strike or layoff must be paid no later than the next regular payday for all wages earned up to the time of such strike or layoff. Final pay should not be mailed unless the employee has so requested in writing. Unclaimed final pay may never be returned to an employer's general fund. It should be held independently at the employer's place of business for pick-up, be put in escrow due the employee, or be tendered to the state to hold for the employee.

Specifically,

- If an employee quits:
 - with less than 48 hours notice, excluding weekends and holidays, the paycheck is due within five days, excluding weekends and holidays, or on the next regular payday, whichever comes first.
 - with notice of at least 48 hours, the final check is due on the final day worked, unless the last day falls on a weekend or holiday. In that case, the check is due on the next business day.
- If an employee is discharged, the final paycheck is due not later than the end of the next business day.
- When an employer and employee mutually agree to terminate the relationship, the check is due by the end of the following business day, as in the case of discharge.
- When employment is related to state and county fairs, and employment terminates on weekends or holidays, the check is due by the end of the second business day after the termination.
- When employment of seasonal farm workers terminates, wages are due immediately, ORS 652.145. However, if a seasonal farm worker quits without giving at least 48 hours notice, wages are due within 48 hours or at the next scheduled payday, whichever is earlier.

e. Payment In Case Of Dispute, ORS 652.160

If a dispute arises over the amount of wages due an employee, the employer must pay all money the employer agrees is due, without setting any conditions upon payment. The employee retains the right to claim any wages and remedies the employee feels are due through union grievance (if applicable), or by filing an action with the court, or by filing a claim with the Bureau of Labor and Industries (BOLI).

f. Enforcement

The law gives the Oregon Commissioner of Labor and Industries authority to inquire into violations as well as impose penalties on employers and enforce the law generally with respect to wage payment and collection.

4. Wage Deductions , ORS 652.610; ORS 18.385; ORS 110.300 To ORS 110.441, ORS 419B.408, ORS 419C.600; And OAR 839-009-0270(6)(d)

As a general rule, deductions from wages or final compensation are prohibited unless 1) required by law, 2) to the benefit of and approved by the employee, 3) in response to a valid wage assignment or wage deduction order; or 4) made with the express written consent of the employee given freely at the time the deduction is made.

Under Oregon law, employers may legally deduct the following from employee wages:

- Deductions required by law such as taxes or garnishments.
- Deductions that are for the employee's benefit such as health insurance premiums. The employee must sign a written authorization and the deductions must be recorded in the employer's books and records.
- Other deductions authorized by the employee in writing, such as charitable contributions, as long as the employer is not the ultimate recipient of the money.
- Deductions authorized by a collective bargaining agreement to which the employer is a party.
- A deduction of \$1.00 per week may be made for processing a garnishment under ORS 18.736 as long as the fee is collected after the last payment is made under the writ and provided the fee does not reduce the employee's net disposable income below minimum wage. The fee cannot be collected if garnishment is more than 25% of disposable earnings. Disposable earnings are generally net earnings after tax deductions and family support withholdings.
- A deduction from a final paycheck for a cash loan to an employee, if the employee has voluntarily signed a loan agreement, and the loan was for the employee's sole benefit. A deduction from the final paycheck for repayment of a loan may not exceed 25 percent of the employee's disposable earnings OR the amount of disposable earnings in excess of \$170 per week whichever is less. Disposable earnings are generally net earnings after tax deductions and family support withholdings.

- If the employer pays any share of the employee's share of health or insurance premium while the employee is on OFLA leave, the employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

a. Garnishments. (ORS 23.185; ORS 29.401; ORS 29.145; ORS 29.147; ORS 29.235; ORS 29.411)

Garnishments involve a court proceeding regarding the non-payment of a debt in which a court instructs the employer to withhold the proper amount from the employee's pay and send it directly to the creditor. Employers should notify an employee of any withholding. If the employee disputes the creditor's right to garnish his or her wages the only recourse for the employee is with the court. The employer has no choice but to obey a court's garnishment instruction and failure to follow all of the court's requirements or instructions could result in liability for the debt.

Once an employer receives a Wage Deduction Order from a court, the employer should withhold the lesser of: 1) 25% of employee's disposable earnings for the week; or 2) the amount by which the employee's disposable earnings for the week exceed \$170; or 3) the amount described in 1) or 2) minus any amount required to be withheld from the earnings pursuant to an order issued under a court-ordered wage assignment for child or spousal support. Wages that are subject to garnishment include salaries, commissions, and bonuses, but not ordinary disbursements from a retirement or pension plan.

If an employer receives an order from a court of another state in which the company operates (has a legal presence) it should obey the court order regardless of where the employee resides. If, however, the employer does not operate in the other state it should only follow the court order if it involves child or spousal support. Otherwise, the instruction should be returned to the issuing court with an explanation of why the company will not honor the wage garnishment or deduction order.

Effective January 1, 2008, an employee's wages are protected from garnishment if the employee's wages are paid by direct deposit, the employer has already instructed the payroll administrator to pay the employee's wages before the writ of garnishment is delivered, and the writ is delivered within two business days before the employee's normal payday (or more than two business days if, using reasonable efforts, the employer is unable to cancel the instructions to the payroll administrator to pay the employee's wages).

b. Wage Assignment

This is a written agreement between an employee and a creditor in which the employee gives the creditor authority to deduct part of his or her wages in the event the employee fails to make payment. Unlike garnishments, wage assignments do not involve a court proceeding or order.

c. Child And Spousal Support

When an Oregon Circuit Court issues an order for child or spousal support, a separate order for withholding from the employee's income takes effect immediately. Every employer, public and private, must thereafter withhold from every pay check the prescribed amount until either the employer receives a written formal release or the employee is no longer being paid by the employer. The only exception is when both parties enter into a written agreement that provides for an alternative arrangement that is approved by the court and insures payment of support.

As with any wage deduction, an employer should notify the employee of the deduction prior to the first withholding and provide the employee with a copy of the order. The amount withheld must then be forwarded to whomever the court designates within 10 calendar days of the employee's payday.

An employer may deduct a processing fee of \$1 per week, up to a maximum of \$5 per month, but this fee must come from the employee's pay and not the support withholdings. If the employee ceases to work for the employer, a copy of the withholding order should be returned to the issuing court along with any information known to the employer that would assist the future enforcement of the support order, such as the employee's new work location or home address.

In Oregon, total withholding for child support, distinguished from other garnishments, may not exceed 50% of the employee's net disposable income. However, the employee's remaining monthly disposable income cannot be reduced below 160 times the federal minimum wage per hour (\$824). ORS 25.414.

Remember, too, that employers in Oregon are required to honor child and spousal support withholding orders from other states regardless of whether the employer operates or has any legal presence in the other state.

d. Defaulted Student Loans

Superseding Oregon law governing wage garnishment is a federal law granting the U.S. Department of Education and its designated organizations, including private collection agencies, authority to issue a withholding order called an administrative wage garnishment. The law is enforced by the Oregon Student Assistance Commission (OSAC), which administers the federal student loan program in Oregon. Upon receiving such an order an employer should give a copy to the employee to provide notice before the first deduction is withheld and return the "Employer Acknowledgment of Wage Withholding" form within ten business days.

For defaulted student loans the amount to be deducted is calculated at 10% of the employee's disposable earnings (gross income less all federal, state and local taxes). The withholdings should continue until a formal release is received from OSAC. Note that no service fees are permitted for processing this withholding. Questions may be directed to OSAC at (541) 687-7400 or (800) 452-8807.

e. Tax Levies

In the case of a federal tax levy, all earnings above an exempt amount determined by tax filing status and number of exemptions, less any amount being withheld for child support payments, are forwarded to the IRS until the debt is paid. The employer may not deduct a processing or service fee from the amount withheld. A state tax levy, on the other hand, is treated similarly to wage deduction orders for garnishment.

f. Order Of Priority For Deductions

Withholding orders should be honored in the following order: 1) child support; 2) federal tax levy; 3) defaulted student loans; 4) spousal support; 5) state tax levy; 6) garnishments and wage assignments. If confusion arises as to whether to honor a wage assignment or garnishment, follow the court's direction.

g. Bankruptcy

Upon official notice from a court that an employee has filed for personal bankruptcy, child support and federal tax levies may possibly continue, but all other wage deductions must cease. In addition, any garnishment or wage assignment withholdings not yet sent should be held until further instruction is provided from the bankruptcy order. Once the bankruptcy order is received, an employer should send a copy to the court that previously ordered the withholding as well as to the creditor's attorney. If child support payments or tax levies are involved, consult with the court or government agency that ordered the withholding.

B. Work Hours

1. Hours Actually Worked

The law has defined "employed" to be anytime an employee is "suffered or permitted to work." Work time is all time an employee is either a) required to be on the employer's premises, b) on duty anywhere, or c) at a prescribed work place. It includes all time spent performing a principal job activity or performing an activity preparing the employee for work. This includes, for example, time spent attending mandatory offsite and/or after-hours job training classes. In addition, if the employer permits the employee to arrive early or stay late, the employer runs the risk of a later accusation that the employee actually "worked" which could obligate the employer to pay for those hours.

You may establish certain policies to limit the time an employee is allowed to work by prohibiting employees from starting or continuing to work before or after a certain time, or by prohibiting overtime work without prior approval of a supervisor. Violations of such a policy should be dealt with as a disciplinary matter, however, and not by refusing to pay for time actually worked.

The law in Oregon does not impose a general limit on the number of hours an employee may be required to work either in a day or a workweek. Oregon law, however, does impose a limit on certain occupations:

- Mills, Factories, And Manufacturing: Employees shall not work more than a 10-hour day or 48-hour week.
- Mining: Employees in underground metal mines may not work more than 8 consecutive hours in any 24-hour period, excluding breaks for meals. This restriction does not apply during an emergency or for those working in the first stage of mine development.
- Nurses: A hospital may not require a registered nurse to work more than two hours beyond a regularly scheduled shift and not more than 16 hours in any 24-hour period. This provision does not apply when in a national or state emergency, implementation of a facility disaster plan, or if a hospital has made reasonable efforts to contact all of the qualified, on-call nursing staff and nursing services on the written staffing plan and is unable to obtain replacement staff in a timely manner.

Time an employee spends “waiting” and “on call” is generally not considered work time although it may be so considered. When overly restrictive limitations are placed on employees “on call” it may necessitate counting this time as hours worked. Examples of such limitations include requiring a reporting time of less than twenty minutes or restricting an employee to one location (even the employee’s home).

Time spent attending training programs is generally considered time worked. In order for it not to be counted as time worked all four of the following conditions must be met: 1) attendance is voluntary; 2) training occurs outside normal working hours; 3) the training is not directly related to the employee’s current job; and 4) the employee does not do any productive work during this time.

Any time spent working while traveling is also included in hours worked. Further, time spent traveling between places of work is considered time worked, though normal commuting time between work and home is not. In instances where an employee is asked to travel either to another city or to another location in the same city and return home the same day, all travel time, less the employee’s normal commute, is considered hours worked. Where an overnight stay in another city is involved, travel during normal working hours, no matter the day of the week, is counted as hours worked; travel occurring after normal working hours is not.

2. “Show Up Pay” Or Adequate Work, OAR 839-021-0087(5)

There is an “adequate work” rule in effect for minors (employees younger than 18). A minor who is required to report to work must be provided sufficient work to earn at least one-half of the amount earned during the minor’s regularly scheduled shift or be paid reasonable compensation if the work is not provided. Reasonable compensation means the greater of: (a) the amount the minor receives for one hour of work at his/her regular rate of pay; or (b) the amount determined by multiplying the minor’s regular rate of pay by one-half of the hours the minor was scheduled to work.

This rule does not cover adult employees.

3. Recordkeeping Requirements

Employers are required to keep records to demonstrate compliance with the law in paying all non-exempt employees for time worked. The following information must be kept for all employees (exempt and non-exempt): name and identification number, home address including zip code, date of birth (if under 19), sex and occupation, time and day when the employee's workweek begins, total amount paid each pay period, and the date of payment and period covered.

In addition, the following information must be kept for non-exempt employees only: the regular rate of pay and an explanation of any payments not included, number of hours worked each workday and workweek, total regular pay, total overtime pay, and an itemized list of additions and deductions for each pay period.

While the format of such records is generally left up to the employer, all records must be kept for a period of 2 years, either at the place of employment or at a centralized record storing facility. The records should be easily accessible to employees or state officials and if stored centrally offsite should be available to the place of employment within 72 hours upon notification. Because some wage claims in Oregon fall under the six year statute of repose, an employer should keep wage records for at least six years.

Note that because the state places the burden on the employer to maintain accurate records properly demonstrating compliance, if the employer's records show inconsistencies with regard to time worked and wages paid, the Oregon Bureau of Labor and Industries (BOLI) may either question their accuracy or presume the employer not to have paid the proper amounts. Further, if the employer fails to provide proper records, the records (or even the best recollection) of the employee will be considered accurate.

4. Meal And Rest Periods

Oregon law requires that employees who work 6 continuous hours or longer be permitted to take at least one continuous 30 minute break as a meal period, but it does not require that this be paid time. Oregon law also requires employers to provide a paid rest period of no less than 10 minutes for every four hours worked. This rest period may not be added to the meal period or deducted from the beginning or end of the work period. Note that meal period provisions for minors are different than for adults (see section on Child Labor).

An exception to the meal period requirement exists if an employer can show:

- 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;
- 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; or
- 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 does not provide the full 30-minute meal period, employees must still be provided with adequate time to consume a meal, to rest, and to use the restroom and must be paid for this time (in addition to all rest periods required for the number of hours worked in any given shift).

Undue hardship is defined as "significant difficulty or expense when considered in the relation to the size, financial resources, nature or structure of the employer's business." Factors considered are:

- the employer's cost of complying with the meal period requirement;
- the overall financial resources of the employer;
- the number of persons employed at the particular worksite and their qualifications to relieve the employee; the total number of persons employed; and the number, type and geographic separateness of the employer's worksites; and
- the effect providing the meal period would have on: the start-up or shutdown of machinery in continuous operation industrial processes; intermittent and unpredictable workflow not in the control of the employer or employee; the perishable nature of the materials used; and the safety and health of the employees, patients, clients, and general public.

There is no general provision governing eating facilities at work, though employees eating at their work station are generally not considered to have had a meal period. Even so, an employer is not required to give employees the right to leave the premises during a meal period.

A general exception exists for employees covered under a collective bargaining agreement which specifically addresses employee meal periods. Another exception exists for employees whose job requires monitoring individuals with developmental disabilities or mental illnesses who are allowed to eat a meal while continuing to monitor the individuals in their care.

An employee cannot legally waive his or her rights to receive required meal periods or rest breaks. To be in compliance, an employer must require employees to take all mandated breaks. Employees who fail or refuse to take requested breaks should be disciplined. Each violation of the law requiring employee meal or rest periods carries with it a potential penalty of \$1,000 for each employee. In addition, BOLI is now authorized to assess a penalty of up to \$2,000 against an employer who is found to have coerced an employee into waiving a meal period.

As of January 1, 2008, employers of 25 or more employees will be required to provide unpaid rest periods to employees to express milk unless it would result in undue hardship. Unless the employer and employee agree otherwise, the employer must provide a 30-minute rest period to express milk during each four-hour work period (to be taken by the employee

approximately in the middle of the work period). The employee must, if feasible, take these breaks at the same time as rest periods or meal periods that are otherwise taken as provided by law.

The employer must treat the rest periods as paid breaks, up to the amount of time the employer is by law required to provide paid rest periods. The law also provides that the employer must make “reasonable efforts” (e.g. efforts that do not impose an undue hardship) to provide a private area (other than a public restroom or toilet stall) where employees can express milk.

5. Holidays

Private employers are not required by statute to give employees holidays. However, many employers give their employees the same paid holidays currently given to state employees. There are nine legally recognized bank and school holidays in Oregon.

When a holiday falls on a Sunday it is officially observed the following Monday, though no policy is provided for those falling on Saturday. The legally recognized holidays for public sector employees are as follows:

New Year’s Day*	January 1
Martin Luther King’s Birthday*	3rd Monday in January
Washington’s Birthday/Presidents Day*	3rd Monday in February
Memorial Day*	Final Monday in May
Independence Day*	July 4
Labor Day*	1st Monday in September
Veterans’ Day*	November 11
Thanksgiving Day*	4th Thursday in November
Christmas Day*	December 25

*Federal holidays.

Nothing in state or federal law requires private sector employers to recognize holidays, either as paid or unpaid time off from work. Further, employers may determine the class of employees (e.g., full or part-time or temporary) eligible for a paid holiday policy and those who are not.

6. Compensatory Time-off

Contrary to common belief, the law does not allow a private sector employer to give an employee time-off work in the future without additional pay in lieu of paying for overtime worked in the current pay period, even if the employee requests it. Such an agreement or arrangement between an employer and employee is illegal. The use of compensatory time, more commonly referred to as “comp time,” is only available to government employers. Employers in the private sector or non-profit agencies that are not part of a federal, state or local government agency are not permitted to use compensatory time in place of the payment of overtime.

However, an employer may alter an employee’s work schedule to provide time-off with pay to offset overtime worked in a prior week as long as it is all done within the same pay

period; this time-off with pay must be the equivalent of 1½ hours times the number of hours worked that week exceeding 40 hours. For example, an employee paid every two weeks who works 4 hours of overtime in the first week of the pay period may be given time-off with pay the following week as an offset as long as it is done before the start of the next pay period. Alternatively, for an employee operating on a weekly pay period the hour-for-hour compensatory time-off would have to be taken during the same workweek.

As for time-off in the second week, note that such offsetting compensatory time-off must be granted at the appropriate time and one-half overtime rate. So offsetting 4 hours of overtime worked the first week with compensatory time-off taken the second week would require giving the employee 6 hours off work during the second week in the employee's current pay period.

IV. EMPLOYMENT DISCRIMINATION

A. Protected Classes, ORS Chapter 659

1. Generally

Employers may be held accountable for practices that discriminate against a legally protected class, whether purposely discriminatory or merely having an unintended discriminatory effect. In general, employers should be prepared to explain their reasoning whenever a member of a protected class is terminated, not hired, does not receive or is not considered for a promotion, is recalled from a layoff or strike in any order other than by seniority, or is compensated differently than other employees of substantially equal skill, responsibility or experience. Because protected classes include gender and anyone 18 or older (protected both from disparate treatment for being too old or too young), race, and other categories that apply to every person, everyone in the workforce is in more than one protected category.

The **State of Oregon Revised Statutes, Chapter 659A**, covers the employment practices of all employers, public and private, with at least one employee. The provisions covering disability apply to every employer with at least six employees. The **Oregon Family Leave Act** applies to companies with 25 or more employees.

Specifically, the law prohibits discrimination based on any of the following protected classes of persons.

- age (18 and older);
- marital status;
- military status or discharge from military service;
- national origin/ancestry/citizenship status;
- physical or mental handicap unrelated to ability;
- race or color;

- religion;
- sexual harassment in employment;
- sexual orientation; and
- sex/pregnancy.

Even within these protected classes there are some circumstances in which discrimination is permitted due to the specific requirements or qualifications of a particular job. Such exceptions to the general non-discriminatory rule are called bona fide occupational qualifications (BFOQs). Examples of BFOQs include a job requiring a driver's license or where a female attendant is needed for a women's locker room. Note, however, that height and weight restrictions normally do not qualify as a BFOQ and race never does. Because BFOQs represent instances where the law permits otherwise impermissible discrimination, the law construes BFOQs narrowly and requires proof that such restrictions are in fact job-related and necessary.

In order to bring a charge of illegal discrimination under Oregon law, an individual must file a charge of discrimination with either the Oregon Civil Rights Division of the Bureau of Labor and Industries or in court within 365 days of either the alleged act of discrimination or the time when the individual should reasonably have known of the alleged discrimination.

An individual also has 300 days from the time of the alleged violation to file a federal charge of discrimination with the EEOC. Accordingly, employers should make it a practice to retain job applications and other relevant records of rejected applicants for at least a year after the decision not to hire. Likewise, while an Oregon statute will permit discarding a personnel file 60 days after an employee separates from employment, an employer should retain records for at least a year after terminating an employee. Because the state statute for contract claims is 6 years, employers should consider keeping employee files and wage documents for at least 6 years.

2. Age Discrimination

Under Oregon law, employers with one or more employees may not discriminate against employees age 18 or older, including through the institution of a mandatory retirement age. An employer may be susceptible to an age discrimination claim as long as a covered employee can show a link between age and the action taken against him or her, even if the complaining employee was replaced by another worker over the age of 18. The provisions of the Fair Employment Practices statute apply to an apprentice under ORS 660, but the selection of an apprentice on the basis of ability to complete the required apprenticeship training before attaining the age of 70 is not an unlawful employment practice.

3. Marital Status Discrimination

Employment decisions based on an individual's status as single, married, divorced, separated or widowed is prohibited. Pre-employment inquiries into this area are inappropriate and may be viewed as discriminatory.

4. Physical And Mental Disability Unrelated To Ability, ORS 659A.100 et. seq.

Oregon law defines “disabled person” as a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. The law covers individuals who either 1) have such a disability, 2) have a history of such disability, or 3) are thought to have such a disability and experience discrimination as a result of this perception. Oregon law is essentially identical to the federal Americans with Disabilities Act (ADA).

The general rule is that employers should not consider an individual’s disability in making employment decisions when the disability itself would not prevent the person from performing the essential functions of the job. Further, an employer may have a duty to provide a reasonable accommodation if that would allow the individual to perform all the essential functions of the job satisfactorily.

In order for the law to apply even to covered disabled persons, however, the disability in question must be unrelated to the individual’s ability to perform the essential functions of the job satisfactorily, allowing for reasonable accommodations by an employer.

Note that alcoholism, drug addiction and obesity may qualify as a covered disability if medically documented as being the result of a functional disorder or disease. Use of medical marijuana is legal in Oregon, and it is recommended that an employer’s policies take this into account. This is an area of law in flux at the time of this publication; check with current state law on this point. But the law specifically excludes illegal drug use as a covered disability. Finally, note the ADA covers individuals diagnosed with AIDS or those who have contracted the HIV virus, meaning that if an employee provides pertinent HIV test information, an employer must make reasonable accommodation for someone with AIDS/HIV the same as they would for any other person with a covered disability.

5. Religious Discrimination

Oregon law provides that an employer may grant an employee time-off with or without pay to observe that individual’s religious holidays and that such practice is not discriminatory.

An employer is required to make reasonable accommodations for the sincerely held religious beliefs of an employee, whether or not those beliefs conform to a mainstream religion. An employer has the right to some verification when an employee makes a special request based on religion. Oregon civil rights laws and Title VII of the Civil Rights Act of 1964 prohibit discrimination based on an employee’s religion and require an employer to “reasonably accommodate” religious beliefs and practices unless the employer can show that doing so will result in “undue hardship.”

The U.S. Supreme Court has held that employers must attempt to accommodate an employee’s belief that is religious in nature and sincerely held – even if the religion is non-traditional or one about which an employer has not heard before. When an employee makes a religious request, an employer should engage in an interactive process to discuss the employee’s religious needs and consider the potential options for accommodation. Atheists and agnostics are

protected from discrimination (i.e. absence of a religious belief and doubt about the divine are protected).

Courts generally have not required employers to go as far in accommodating religious requests as they must when accommodating disabled employees under the ADA. Still, an employer should evaluate an employee's religious restrictions seriously and make a good faith effort to accommodate. If the employer decides to deny a requested accommodation, be prepared to show with documentation why it would have been an undue hardship for your company.

6. Sex Discrimination

The general rule is that the law requires that employers treat male and female employees equally. Providing for any differences in working conditions or hours for employees based on sex is prohibited. In addition, special accommodations are neither required nor permitted for a pregnant employee that would not be made for a non-pregnant employee. A pregnancy-related disability should be treated as any other covered temporary disability would be and employers should avoid basing decisions not to hire an employee due to pregnancy. Policies including such things as mandatory maternity leave should also be avoided.

Sexual harassment in the workplace is one form of sex discrimination involving an employer who either bases employment decisions on an employee's submission to or rejection of unwelcome sexual advances, or engages in sexually related conduct that either unreasonably interferes with an employee's work performance or creates an unreasonably offensive working environment. Note that an employer is legally responsible for sexually harassing conduct by an agent (e.g., a manager, supervisor, or foreman) as well as that committed by a non-supervisory employee or even a non-employee (e.g., a customer, patient, vendor, or client) if the employer knew or should have known about such conduct and failed to take reasonable corrective action. Having an appropriate harassment policy is part of an employer's defense.

7. Sexual Orientation

Sexual orientation was made a protected class under state statute in 2007. Sexual orientation is defined as actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

Prior to this change, Oregon's Bureau of Labor & Industries' Civil Rights Division accepted complaints of sexual orientation discrimination throughout Oregon based on the December 9, 1998, Oregon Court of Appeals decision in *Tanner vs. Oregon Health Sciences University, et. al.* Certain localities also already had specific ordinances in place protecting employees and applicants based on sexual orientation and gender identity. Those ordinances include:

- Portland Civil Rights Ordinance;
- Ashland ordinance for city employees;
- Corvallis ordinance applies only to public safety (eg. prevents hate crimes);

- Eugene Anti-discrimination Ordinance

8. Retaliation for Wage Claims

As of January 1, 2008, discrimination or retaliation against employees for claiming they were not properly paid all wages due, it will be considered “an unlawful employment practice” under the discrimination chapter of the Oregon Revised Statutes. Employees will also be able to file a complaint with the Bureau of Labor & Industries and be entitled to recover compensatory damages. This bill essentially creates an additional protected class for purposes of Oregon’s discrimination laws, and greatly expands the scope of remedies available to an employee who complains about unpaid wages.

Previously, employees could bring a wage claim in court (but not before BOLI) if that employee believed he or she had been discharged or discriminated against for making a wage claim, but could only recover actual damages or \$200, whichever was greater. In addition, the claim was only considered a wage claim, rather than an employment discrimination claim, prior to the amendments. The amendments to the law therefore grant greater protection and potential remedies for this type of claim.

B. Privacy In The Workplace, ORS 659A.300

It is an unlawful employment practice for any employer to subject, directly or indirectly, any employee or prospective employee to any breathalyzer test, polygraph examination, psychological stress test, genetic test or brain-wave test unless the employee consents to it.

C. Protected Employee Activities

1. Jury Duty, ORS 10.090

An employer cannot discharge, threaten to discharge, intimidate, or coerce any employee because the employee is serving as a juror or has been scheduled to serve. However, the statute imposing this requirement does not alter or affect an employer’s policy regarding payment of wages during the time that the employee is serving as a juror. The time-off does not have to be compensated. If an employer violates this statute, a court can take any necessary action to protect the employee’s rights, including ordering reinstatement with backpay of a discharged employee. The employer is subject to a civil penalty of not more than \$500.

In instances where the employee’s absence from the job would result in undue hardship or extreme inconvenience to the employer, the employee can apply for an excuse from jury duty. However, the employer cannot coerce the employee to apply for an excuse or discharge the employee if the employee wishes to serve on the jury. The request for an excuse from or deferral of the jury duty can be made either by telephone or mail. Reasons supporting the claim of undue hardship or extreme inconvenience need to be clearly specified. In considering a request, the court weighs the public need for representative jurors against the individual circumstances offered as justification for the request.

2. Time Off For Military Duty, ORS 399.230

Oregon law mirrors the federal law in prohibiting employment discrimination due to an individual's military service. Employers must grant all employees time off work for military duty and, upon discharge, the employer must return the employee to his or her prior position or one of "like seniority, status and pay."

Once the veteran is reemployed, the employer cannot discharge the veteran except for cause, for one year or six months in the case of a reservist.

3. Crime Victim's Leave Act, ORS 659A.190 To 659A.198

The Act grants certain crime victims and immediate family members the right to protected leave from work to attend criminal proceedings. It applies to any organization that employs six or more persons in Oregon for 20 or more weeks in the calendar year in which the employee takes leave or in the immediately preceding year. In order for an employee to be eligible for leave under this law, the employee must have worked an average of more than 25 hours per week for at least 180 days immediately before the leave begins.

The law says the employee must also be a "crime victim," meaning that he or she "has suffered financial, social, psychological or physical harm as a result of a personal felony." The law treats immediate family members of the person as crime victims as well and defines "immediate family" to include a spouse, domestic partner, father, mother, sibling, child, stepchild or grandparent.

An employer may limit the leave if it creates an undue hardship to the business, meaning "a significant difficulty and expense," taking into consideration the size of the business and any critical need for the employee. If an employer limits the employee's leave due to undue hardship, the law provides that the employee may notify the prosecuting attorney, who is then required to notify the court. The court must then take the employee's work schedule into consideration when scheduling the criminal proceedings.

The law only provides for unpaid leave, unless paid leave is promised under a union contract or other employment agreement. However, eligible employees who take this type of leave are permitted to use any paid accrued vacation – or other paid leave offered by the employer in lieu of vacation – during the period of leave. If the employee has different types of paid leave available, the employer's policy may dictate the order in which the employee must use paid leave.

The law requires that the employee provide "reasonable notice" of the intention to take leave and copies of any notices of scheduled criminal proceedings that the employee receives from a law enforcement agency. Employers must treat any such documentation as confidential records.

The statute makes it an unlawful employment practice for an employer to deny leave to an eligible employee, or to discharge, threaten to discharge, intimidate or coerce the employee because the employee takes leave to attend a criminal proceeding. Employees who believe the employer has violated the law are authorized to file civil actions, and a court may order

injunctive relief and other equitable relief, including reinstatement, back pay and reasonable attorney's fees.

V. WORKPLACE SAFETY

A. General Provisions, ORS Chapter 654

Oregon has a state version of the federal Occupational Safety and Health Act (OSHA), the Oregon Safe Employer Act (OSEA) which governs private-sector and public-sector employers. The Oregon Department of Business and Consumer Services, Workers' Compensation Division administers and enforces the federal regulations.

Any facility that has 11 or more employees is required by OSEA to have a safety committee.

B. Smoking In The Workplace

1. Oregon Indoor Clean Air Act, ORS 433.835 To 433.875

Oregon law prohibits smoking in public places, including places of work and other commercial facilities, except in designated areas. Employers are obligated to create a work environment where non-smokers can perform all of their normal work functions without having to inhale secondhand smoke. As a result, an employer should eliminate smoking in all common work areas, including hallways and restrooms.

In creating designated smoking areas employers are obligated to use existing ventilation and architectural barriers to determine where smoking can occur without intruding into a non-smoking area. However, the law provides specific exemptions for a) retail businesses primarily engaged in the sale of tobacco or tobacco products; b) restaurants posted as off-limits to minors or areas of restaurants posted as off-limits to minors; c) bars or taverns posted as off-limits to minors; d) rooms or halls being used by a charitable, fraternal or religious organization to conduct bingo games under an issued license; e) bowling centers; f) rooms designated by the owner or person in charge of a hotel or motel as rooms in which smoking is permitted; g) employee lounges designated by an employer for smoking.

Nevertheless, smokers are a protected class in Oregon. The prohibition of smoking at work is allowed but not of smoking in and of itself.

2. Local Clean Indoor Air Ordinances

An employer should check local ordinances to determine whether there is such a regulation in their area.

C. Toxic Substances, Employer's Liability Act ORS § 654.196

Public and private-sector employers with five or more full-time, or 20 total, employees are covered by the federal OSHA Hazard Communication Standard. Those with fewer employees are still covered by OSHA, but not by the Hazard Communication Standard.

VI. CONCLUSION

Employers in Oregon are subject to numerous state and federal laws regulating nearly every area of labor and employee relations. This booklet provides a basic summary of Oregon employment law under which employers must operate their business or workplace. Our hope is that by providing this summary we will give employers a useful reference to help them quickly answer some of the common, everyday employment questions that can and do arise.

We have tried to write this booklet from the perspective of the employer so that the law is presented in way that makes it easy for employers to understand what Oregon law requires of them as well as what it allows them to do in various situations. First and foremost, this booklet should be used to help guide the actions of employers by helping them better understand Oregon employment law so they may develop policies and procedures which allow them to successfully avoid a lawsuit. Second, this booklet is also intended to help employers make more legally informed decisions so that when lawsuits do arise they will be in a stronger legal position from which to defend.

Finally, the scope of this booklet deals only with Oregon employment law and, while aspects of federal law were briefly discussed where different or overlapping with Oregon law, remember to consider any employment issue in light of both applicable state and federal law.

Employers with questions or problems related to any of the material covered in this booklet are urged to contact the Portland office of Fisher & Phillips LLP, at 503.242.4262 or visit our website at www.laborlawyers.com.