

SELECTED OREGON EMPLOYMENT LEGISLATION¹

JULY 2009 – FINAL REPORT

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The session is over! Here are the bills that passed, along with a long list of bills that did not survive. . . .

BILL	DESCRIPTION	COMMENT
SB 60	<p>This bill would allow the BOLI commissioner to charge attorney fees against the respondent employer when collecting a judgment on a wage claim.</p> <p><i>Signed by the Governor. Effective January 1, 2010</i></p>	<p><i>This new law allows BOLI to use the Department of Revenue to collect a judgment and recover collection fees.</i></p>
SB 519	<p>This “captive audience” legislation makes it unlawful to discharge, discipline or otherwise penalize an employee who declines to attend an employer-sponsored meeting, if the primary purpose of the meeting is to communicate the employer’s opinion about religious or political matters. The bill defines “political matters” to include discussions about supporting or joining labor unions.</p> <p>The bill also prohibits retaliation against an employee who complains that the employer has violated this law, unless the employee makes a knowingly false report.</p> <p>There is a 90 day statute of limitations on bringing a lawsuit for violation of the captive audience law. Remedies include reinstatement, back pay, treble damages, and an award of attorney fees and costs. The bill also requires that the employer post a notice of the employee’s rights.</p> <p>The law makes an exception for executive and administrative personnel, who may be required to attend mandatory meetings where these issues are discussed.</p> <p><i>This bill passed in both chambers and is expected to be signed into law. If signed, it will be effective January 1, 2010</i></p>	<p><i>This bill will make it more difficult for employers to ensure that their position regarding unionization is heard.</i></p> <p><i>It is possible that the law will face legal challenge on the basis that it violates Article I, Section 8 of the Oregon Constitution. The argument in this regard is that the law violates an employer’s freedom of speech because the restrictions are triggered based solely on the content of the message that the employer intends to deliver.</i></p>

¹ Randy Sutton is a shareholder with the SAALFELD GRIGGS law firm (www.sglaw.com). This summary was prepared with the firm’s assistance. The information contained herein is current as of July 8, 2009. This summary is not intended to cover every employment-related bill. The status of particular bills will change rapidly during legislative session. This information is considered accurate but is not guaranteed. Additional information is available at www.leg.state.or.us. The above comments are not legal advice and do not necessarily reflect the views of SHRM or the Oregon State Council, its board or members, or any affiliated organization. The purpose of this report is to provide information and is not intended to lobby one position over another.

BILL	DESCRIPTION	COMMENT
<p>SB 786</p>	<p>Entitled the Oregon Workplace Religious Freedom Act, this new law imposes additional duties on employers to accommodate religious observances and practices. Exceptions are allowed only where the employer can show undue hardship, which the bill defines as “significant difficulty or expense.”</p> <p>Under the new law, employers must allow employees to use vacation or other available leave for religious practices, and to allow employees to wear religious clothing, take time off for a holy day, or to take time off for other religious practices or observances.</p> <p>Several factors are considered in evaluating “undue hardship.” These include the nature and cost of the accommodations, the overall financial resources of the facility where the employee is working, the financial resources of the employer, the nature of the employer’s business operations, and any safety or health requirements.</p> <p><i>This has passed in both chambers and is expected to be signed into law. If signed, it will be effective January 1, 2010.</i></p>	<p><i>Employers already need to make some effort to accommodate religious beliefs and practices under existing civil rights law. This bill expands an employer’s duties and imposes specific obligations.</i></p> <p><i>Keep in mind that “religion” will likely be defined quite broadly, to include a variety of moral and ethical beliefs as to what is right and wrong, so long as the beliefs are sincerely held with the strength of traditional religious views. The employee need not be a member of an established religious organization to enjoy protections.</i></p> <p><i>For example, the EEOC has considered cases involving a variety of non-traditional religions, including the Church of Body Modification, veganism, and the ancient Egyptian Kemetic religion.</i></p> <p><i>The new law directly speaks to dress codes. To the extent that a religious practice involves the placement of tattoos or wearing religious clothing or symbols, the employer must be prepared to defend or make exceptions to its appearance and dress policies.</i></p>
<p>SB 874</p>	<p>According to the Staff Measure Summary for this bill, this bill updates the Oregon statutes regarding discrimination against and accommodation of disabled employees to conform to the ADA Amendments Act. However, the bill appears to expand upon the ADAAA.</p> <p>For example, the bill includes a number of “major life activities” that are not included in the ADAAA. “Employment” is added to the ADAAA’s designation of “working” as a major life activity. The list also includes “transportation,” which presumably means that driving is a major life activity under Oregon law. The ability to acquire, rent or maintain property is likewise identified as a major life activity.</p> <p>With regard to “record of” disabilities, the new law also includes individuals who have been misclassified as having a physical or mental impairment that substantially limits a major life activity.</p> <p><i>Signed by the Governor. Effective January 1, 2010.</i></p>	<p><i>The federal Americans with Disability Act Amendment Act (ADAAA), that took effect January 1, 2009, amended the ADA as a response to United States Supreme Court cases and Equal Employment Opportunity Commission interpretations that narrowed the scope of the ADA.</i></p> <p><i>This bill extends the increased protections of the ADAAA to Oregon employers with six or more employees.</i></p> <p><i>The new law also likely expands the protections for Oregon employees with disabilities regardless of employer size. For example, driving has been determined in a number of ADA cases not to be a major life activity. Also, it is unclear what the distinction is between “working” and “employment,” and how that distinction will be interpreted by the courts.</i></p>

BILL	DESCRIPTION	COMMENT
SB 928	<p>This new law imposes on employers the duty to provide reasonable safety accommodations to employees who are the victims of domestic violence, sexual assault, or stalking.</p> <p>The bill contains many examples of “reasonable safety accommodations,” including transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installing or changing locks etc.</p> <p>Signed by the Governor. Effective January 1, 2010.</p>	<p><i>In the prior session, victims of domestic violence, sexual assault and stalking were given the right to take leave for a variety of related purposes.</i></p> <p><i>This new law prohibits discrimination against such employees and imposes the duty to provide reasonable safety accommodations in addition to any leave requested by the employee.</i></p>
HB 2377	<p>This bill requires that every person driving a vehicle use a hands-free cell phone feature when talking on the phone and otherwise prohibits texting, emailing or other use of cell phones while driving.</p> <p>However, the bill was ultimately amended, making an exception for “a person operating a motor vehicle in the scope of the person’s employment, if the operation of the motor vehicle is necessary for the person’s job.</p> <p><i>This bill has passed both chambers and is expected to be signed into law. If signed, it will be effective January 1, 2010.</i></p>	<p><i>The bill states that employees who must use their car in the scope of their employment are exempt from the statute.</i></p>
HB 2744	<p>This bill would require that an employer provide 14 days of unpaid leave to military spouses after notice of an impending call to active duty and when the spouse is on leave from deployment. Applies to all employers with 25 or more employees. Employees must provide at least 5 days prior notice to the employer.</p> <p>Employees may elect to use accrued paid leave during the absence. Employees are entitled to the same rights of restoration to a former position and to continuation of benefits as employees who have taken OFLA leave. Leave taken counts against an employee’s OFLA leave entitlement.</p> <p>Applies to employees who work at least 20 hours per week on average. The bill did not adopt the OFLA eligibility requirement of working 20 hours per week for the 180 days prior to the leave. In addition, unlike OFLA, the bill protects recently hired employees.</p> <p><i>The Governor has signed this bill into law. It is already effective.</i></p>	<p><i>Federal law already imposes upon employers of a sufficient size the duty to provide certain military leave. This bill imposes new leave obligations on Oregon employers that have 25 or more employees.</i></p> <p><i>The original bill would have imposed these obligations on any employer, but lobbying efforts helped narrow the scope of the bill. The bill applies to any employee working an average of 20 hours per week, regardless of how long the employee has worked for the employer.</i></p> <p><i>Although the new law provides employees with many of the OFLA protections, the coverage of the law is broader, as new employees are also protected under the law.</i></p> <p><i>The law presumably applies to leased workers, as the bill states that it covers “all individuals employed at any site owned or operated by the employer”, so long as the individual is not an independent contractor.</i></p>

BILL	DESCRIPTION	COMMENT
HB 2826	<p>This bill would increase the hours of the day that children under 16 years of age can work during the summer. The current law prohibits work past 6:00pm. The bill changes that to 7:00pm all year, and 9:00pm in the summer.</p> <p><i>The Governor has signed this bill into law. It is effective January 1, 2010.</i></p>	
HB 3140	<p>This bill extends the period during which an eligible individual may receive unemployment insurance benefits from 26 to 52 weeks.</p> <p><i>The Governor has signed this bill into law. It was effective June 18, 2009.</i></p>	
HB 3162	<p>This bill would make it an unlawful employment practice for an employer to discharge or otherwise penalize an employee for reporting in good faith information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.</p> <p><i>The Governor has signed this bill into law. It is effective January 1, 2010.</i></p>	<p><i>Whistleblowers already enjoy a number of protections. This new law expands these protections to cover whistleblowing relating to the violation of <u>any</u> law or regulation, regardless of its severity or societal importance.</i></p> <p><i>Significantly, the new law does not define what it means to "report" information. Does this include internal complaints and grievances, or must the employee "report" the information outside the company? Does this law apply to gossip among co-workers, or must the employee make the report to a person with authority?</i></p>
HB 3256	<p>This bill would make it an unlawful employment practice to discriminate against a person because of his or her obligation to the military service.</p> <p><i>The Governor has signed this bill into law. It is effective January 1, 2010.</i></p>	<p><i>The new law provides protections at initial employment, reemployment, promotion, and with regard to the terms and conditions of employment. There is an exception for bona fide occupational requirements arising from normal business needs.</i></p> <p><i>Through lobbying, the bill was amended to remove language allowing the attorney general to take action against employers to enforce the law.</i></p>

DEAD BILLS FROM THIS SESSION

None of the following bills made it out of the legislative process this session.

SB 57	<p>This bill eliminates the word “solely” from the Oregon statute that prohibits an employer from discriminating against a person “solely” because another member of the person’s family works or has worked for the employer.</p> <p><i>Referred to Judiciary Committee. Public hearing held.</i></p>	<p><i>Current law requires proof that the employer’s sole reason for the allegedly discriminatory action was the employee’s status as a family member. The change would make it easier to prove a claim. This bill may have the effect of chilling diversity in the workplace, as employers will feel some pressure to employ family members of existing employees.</i></p>
SB 358	<p>This bill relates to an employer’s liability for punitive damages. The employer would not be liable for the wrongdoing of an employee unless the employer knew that the employee intended to commit the wrong, and the employer failed to take action to prevent it from happening.</p> <p><i>Referred to Judiciary Committee.</i></p>	<p><i>Although the bill would limit liability of employers, the employer would be required to act on any knowledge that an employee intended harm.</i></p>
SB 426	<p>The bill allows an employer to refuse to accommodate medical use of marijuana, regardless of where the use occurs. Allow establishment of drug-free workforce policies.</p> <p><i>Referred to Commerce and Workforce Development Committee.</i></p>	<p><i>One of a number of pro-employer medical marijuana bills. This bill has not received a hearing yet and is unlikely to get one.</i></p> <p><i>See also SB 427, HB 2497 & HB 3052</i></p>
SB 427	<p>The bill allows an employer to refuse to accommodate medical use of marijuana, regardless of where the use occurs. The bill would also allow employers to establish drug-free workforce policies.</p> <p><i>Referred to Commerce and Workforce Development Committee.</i></p>	<p><i>See also HB 2497 & HB 3052</i></p>
SB 463	<p>The bill would authorize payment of unemployment insurance benefits to part-time workers even if they are only willing to accept part-time work.</p> <p><i>Referred to Commerce and Workforce Development Committee. Public hearing held.</i></p>	<p><i>Current law requires workers to search for, and accept, full time work, regardless of the number of hours previously worked. The proposed legislation would modify that restriction for those individuals with a history of part-time work. The Employment Department estimates that this bill would cause approximately 7,000 additional workers per year to receive UI benefits.</i></p>

<p>SB 568</p>	<p>This bill would prohibit public employers from adopting conditions of employment that restrict the sale, storage or transportation of firearms. It would have no effect on private employers.</p> <p>Referred to Judiciary Committee.</p>	<p><i>In an effort to curb workplace violence, some employers have imposed policies restricting the possession of firearms or the storage of firearms on company property. This bill would prohibit such regulation of public sector employees.</i></p>
<p>SB 638</p>	<p>This bill would require that OFLA-subject employers allow use of OFLA leave for to attend and participate in K-12 school activities. The bill limits use of this leave to five hours per calendar month and 35 hours per year. The bill requires seven days notice before leave is taken.</p> <p>Referred to Commerce and Workforce Development Committee.</p>	<p><i>This bill would further expand Oregon’s family medical leave law, which is significantly broader than federal law. A similar bill is pending before the U.S. Congress.</i></p>
<p>SB 707</p>	<p>This bill would increase employer protections in providing employment references. Employers would be entitled to a presumption of good faith with greater burden on former employees to show that the reference was given in bad faith.</p> <p>Referred to Commerce and Workforce Development Committee.</p>	<p><i>Employers must be cautious when providing employment references. This bill would give employers additional peace of mind when providing truthful references about former employees.</i></p>
<p>SB 727</p>	<p>This bill would make it an unlawful employment practice to subject employees to “an abusive work environment.” Abuse is defined to include acts and omissions that a reasonable person would find hostile, based on the severity, nature, and frequency of the conduct.</p> <p>Referred to Judiciary Committee.</p>	<p><i>This bill, if passed into law, would likely result in an explosion of employment litigation. The definition of abuse is very broad.</i></p>
<p>SB 805</p>	<p>This bill would require that an employer provide 15 days of unpaid leave to military spouses after notice of an impending call to active duty and when the spouse is on leave from deployment. Applies to all employers regardless of size.</p> <p>Referred to Commerce and Workforce Development Committee.</p>	<p><i>Federal law already imposes upon employers of a sufficient size a duty to provide certain military leave. This bill would impose new leave obligations on Oregon employers of any size.</i></p> <p><i>See also HB 2744.</i></p>
<p>SB 812</p>	<p>This bill requires registration of certain medical marijuana dispensaries and imposes a variety of other regulations related to the availability of medical marijuana. Does not contain specific language relating to employers.</p> <p>Referred to Human Services & Rural Health Policy Committee.</p>	<p><i>This bill does not specifically relate to employers and has not made it out of Committee.</i></p>

SB 830	<p>This bill would require BOLI to set minimum wage rates for each year by locality rather than statewide, based upon median income of those localities.</p> <p>Referred to Commerce and Workforce Development Committee.</p>	<p><i>The minimum wage rate is currently adjusted statewide each year according to increases in the Consumer Price Index. See also HB 3053.</i></p>
SB 893	<p>This bill would restrict employers from making employment decisions based upon medical marijuana use, except where the employer could show that the use occurred on the employer's property or during work hours. Exception for "safety sensitive" positions.</p> <p>Referred to Commerce and Workforce Development Committee.</p>	<p><i>This pro-medical marijuana bill would broadly expand the rights of medical marijuana users and limit an employer's ability to enforce its zero-tolerance drug policies.</i></p> <p><i>See also HB 2503.</i></p>
SB 966	<p>Creates a family leave benefits insurance program. Would require employers who are subject to OFLA to withhold a 2¢ per hour premium from employees and deposit that money into a fund. Paid family leave benefits would be available for parental leave purposes or to care for family members with a serious health condition. The bill does not provide for paid family leave for the employee's own serious health condition or for sick child leave. Eligible employees would be paid up to \$300 per week, with no right to payment for absences of less than a full week.</p> <p>Referred to Ways & Means Committee.</p>	<p><i>The concept of paid family leave has been introduced in prior legislative sessions. This bill limits payment to employees taking parental leave or leave to care for family members with serious health conditions. The bill has not yet made it out of committee and has not been scheduled for hearing.</i></p>
HB 2038	<p>This bill requires that every person driving a vehicle use a hands-free cell phone feature. Also requires that any person under the age of 18 not talk or text message while driving.</p> <p>Referred to Transportation Committee. Public hearing held.</p>	<p><i>The bill would require employers to install hand-free phones in company vehicles or make sure that employees are using hands-free devices while driving.</i></p>
HB 2319	<p>This bill generally incorporates changes that were recently made to the Americans with Disabilities Act into Oregon's state law version of the ADA.</p> <p>Referred to Judiciary Committee.</p>	<p><i>See also SB 874.</i></p>

<p>HB 2497</p>	<p>The bill allows an employer to refuse to accommodate medical use of marijuana, regardless of where the use occurs. The bill would also allow employers to establish drug-free workforce policies.</p> <p>Referred to Business & Labor Committee. Public hearing held.</p>	<p><i>Because of the time marijuana stays in a person's system, it is difficult to determine whether a medical marijuana user is presently under the influence. Recent court cases have made it difficult for employers to impose zero-tolerance policies in the workplace. This bill would give employers more flexibility to enforce their drug policies.</i></p> <p><i>The SHRM Oregon State Council has taken a position in support of this bill.</i></p>
<p>HB 2503</p>	<p>This bill would restrict employers from making employment decisions based upon medical marijuana use, except where the employer could show that the use occurred on the employer's property or during work hours. Exception for "safety sensitive" positions.</p> <p>Referred to Business & Labor Committee. Public hearing held.</p>	<p><i>This pro-medical marijuana bill would broadly expand the rights of medical marijuana users and limit an employer's ability to enforce its zero-tolerance drug policies.</i></p> <p><i>See also SB 893.</i></p>
<p>HB 2692</p>	<p>This bill would allow an employer to place an employee returning from family leave in an available equivalent position instead of being restored to same position of employment held before taking leave.</p> <p>Referred to Business & Labor Committee. Public hearing held.</p>	<p><i>This bill would give employers more flexibility in managing family leave absences.</i></p>
<p>HB 2748</p>	<p>This bill would make it an unlawful employment practice for a public employer to layoff or terminate the employment of an employee because the employee does not speak Spanish.</p> <p>Referred to Business & Labor Committee.</p>	<p><i>This bill would not affect private sector employers.</i></p>
<p>HB 2821</p>	<p>This bill would prohibit an employer from requiring eligible employees to use accrued vacation leave when taking family leave.</p> <p><i>This bill has passed out of the House, but failed to pass in the Senate.</i></p>	<p><i>This bill would reduce the ability of employers to manage their paid leave programs and would allow employees who have taken family leave to still block time off for paid vacation leave.</i></p>
<p>HB 2831</p>	<p>This bill narrows the definition of a supervisory employee for purposes of public sector collective bargaining. The bill also prevents a governmental entity from hiring permanent replacements for striking workers.</p> <p><i>This bill has passed out of the House, but failed to pass in the Senate.</i></p>	<p><i>This bill may make it more difficult for a public employer to settle a strike in a timely fashion and continue services in case of a strike, by prohibiting the hiring of permanent replacements. This bill would not affect private sector employers.</i></p>

<p>HB 2881</p>	<p>The bill would require that an employer hire a medical review officer (“MRO”) to review marijuana drug test results. The MRO would review the test results and if the test is negative, let the employer know the employee tested negative. However, if the test is positive, the MRO would determine whether the employee has a valid medical marijuana card. If the employee is a cardholder, the MRO would be required to decide whether the employee possess a safety risk to the employee or others. If the MRO decides that the employee is unfit, the MRO would report a positive test. If the MRO decides the employee is fit, the MRO would report a negative test.</p> <p>Referred to Business & Labor Committee. Public hearing held.</p>	<p><i>This bill raises concerns for employers who wish to administer their drug and alcohol policies. Companies will face the expense of hiring a doctor to review employee drug tests. In addition, the employer won’t know that the employee has a medical marijuana card. The employer also won’t know that the test was positive if the MRO decides the employee is fit to work.</i></p> <p><i>This bill would place MROs in the awkward position of deciding fitness to work. Moreover, the bill requires that the analysis of fitness to work only focus on safety issues and not on other concerns related to medical marijuana use.</i></p>
<p>HB 2890</p>	<p>This bill would significantly restrict those individuals who may be classified as independent contractors. Individuals performing personal services would be classified as employees unless BOLI determined that the individual meets specific independent contractor requirements.</p> <p>Referred to the Business and Labor Committee. Public hearing held.</p>	<p><i>This bill would reduce the flexibility of business to hire contractors and would add confusion when a business is hiring any kind of contract labor for personal services (plumber, website developer etc.) The bill even imposes criminal penalties for misclassification!</i></p>
<p>HB 2903</p>	<p>This bill allows an employer to execute a valid noncompete or agreement to arbitrate with only 72 hours prior notice, rather than the two weeks that is currently required.</p> <p><i>This bill passed out of the House, but failed to pass in the Senate.</i></p>	<p><i>Currently, an employee must be informed of the requirement to sign an agreement containing a geographical noncompete or agreement to arbitrate in an offer letter received by the employee two weeks prior to start of work. This bill would lower the notice period to 72 hours.</i></p>
<p>HB 3045</p>	<p>This bill would increase the unemployment benefit by \$25 for each dependent child living in the employee’s household.</p>	<p><i>This bill places a significant increased burden on the unemployment insurance trust fund.</i></p>
<p>HB 3052</p>	<p>The bill allows an employer to refuse to accommodate medical use of marijuana, regardless of where the use occurs. The bill would also allow employers to establish drug-free workforce policies.</p> <p>Referred to the Business and Labor Committee. Public hearing held.</p>	<p><i>See also SB 427 & HB 2497. This bill did not make it out of committee when it was heard earlier this month.</i></p>
<p>HB 3053</p>	<p>This bill would suspend the annual adjustment of the minimum wage rate following years of high unemployment.</p> <p>Referred to the Business and Labor Committee.</p>	<p><i>The minimum wage rate in Oregon adjusts each year according to any increase in the Consumer Price Index. This bill would temporarily suspend such increases if Oregon’s unemployment rate exceeds the national rate.</i></p>

<p>HB 3135</p>	<p>This bill would allow employees on strike, who have not been replaced by permanent replacements, to obtain unemployment benefits.</p> <p>Referred to the Business and Labor Committee.</p>	<p><i>This bill shifts the balance of power towards the union in a strike, by allowing striking employees to obtain wage replacement, and lessening the need for the unions to use their own funds to help striking workers.</i></p>
<p>HB 3160</p>	<p>This bill would provide for paid family leave for certain employees. See SB 966 for more details.</p> <p>First reading. Referred to Rules Committee.</p>	<p><i>See also SB 966.</i></p>
<p>HB 3171</p>	<p>This bill would prohibit an employer from requiring use of vacation leave or sick leave while on jury duty.</p> <p><i>This bill passed the House, but failed to go anywhere after it reached the Senate.</i></p>	<p><i>Although employers should not discipline or retaliate against an employee who serves on a jury, this bill provides additional unpaid leave, as it allows an employee to serve on a jury and still retain accrued paid leave.</i></p>
<p>HB 3403</p>	<p>When an employer discharges an employee or the employment is terminated by mutual agreement, this bill would allow the final paycheck to be paid on the 5th business day after termination.</p> <p>Referred to the Business and Labor Committee.</p>	<p><i>The law currently requires the final paycheck in the event of involuntary discharge or mutual agreement to be paid on the next business day.</i></p>