

SELECTED OREGON EMPLOYMENT LEGISLATION¹

APRIL 2009 REPORT

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Most employment-related bills are still in committee. As a general rule, bills that fail to make it out of their originating committee by April 28 are dead. Although this month's list of active bills is long, it will be interesting to see which bills survive as the session continues.

If you don't like the way some employment laws work, now is your chance to take action! To avoid bad legislation, you can help inform the legislature by contacting your representative or testifying at a hearing. If you would like to participate in the process, see the website for the Oregon legislature (www.leg.state.or.us). If you have questions or would like to be placed on a notification list regarding action on bills of interest, please email rsutton@sglaw.com.

BILL	DESCRIPTION	COMMENT
SB 57	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. <i>Referred to Judiciary Committee. Public hearing held.</i>	<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>
SB 60	This bill would allow the BOLI commissioner to charge attorney fees against the respondent employer when collecting a judgment on a wage claim. <i>Has passed in the Senate and has been referred to the Business & Labor Committee on the House side.</i>	<i>The current statute allows BOLI to charge these fees against the claimant's recovery only.</i>
SB 358	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. <i>Referred to Judiciary Committee.</i>	<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>

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 April 2, 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
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>
SB 519	<p>This “captive audience” legislation would make 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><i>Referred to Commerce and Workforce Development Committee. Public hearing held.</i></p>	<p><i>The National Labor Relations Act (NLRA) preempts certain state laws relating to unfair labor practices. If passed, it is possible that this bill would face legal challenge.</i></p> <p><i>The SHRM Oregon State Council has taken a position in opposition to this bill.</i></p>
SB 568	<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><i>Referred to Judiciary Committee.</i></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>
SB 638	<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><i>Referred to Commerce and Workforce Development Committee.</i></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>

BILL	DESCRIPTION	COMMENT
SB 707	<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><i>Referred to Commerce and Workforce Development Committee.</i></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>
SB 727	<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><i>Referred to Judiciary Committee.</i></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>
SB 786	<p>This bill imposes additional duties to accommodate religious observances and practices. Employer would need to show undue hardship, which the bill defines as “significant difficulty or expense.”</p> <p><i>Referred to Judiciary Committee. Hearing and possible work session scheduled for April 9.</i></p>	<p><i>Employers already need to make some effort to accommodate religious beliefs and practices under existing civil rights law. This bill would increase the employer’s burden to show that accommodating the practice causes an undue hardship.</i></p>
SB 805	<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><i>Referred to Commerce and Workforce Development Committee.</i></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>
SB 812	<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><i>Referred to Human Services & Rural Health Policy Committee.</i></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><i>Referred to Commerce and Workforce Development Committee.</i></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>

BILL	DESCRIPTION	COMMENT
SB 874	<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><i>Referred to Judiciary Committee. A public hearing and possible work session will be held on April 15.</i></p>	<p><i>Effective January 1, 2009 Congress amended the ADA to prohibit employers from considering mitigating measures when determining whether an individual has a disability and loosened the definition of "impairment." This bill would incorporate those changes into Oregon law and make state and federal law more consistent.</i></p> <p><i>See also HB 2319.</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><i>Referred to Commerce and Workforce Development Committee.</i></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 928	<p>This bill would make it an unlawful employment practice for an employer to discriminate against a victim of domestic violence, sexual assault or stalking, and would require that the employer make reasonable safety accommodations unless there is an undue hardship. These accommodations can include reassignment, modified schedule, leave, changed work station, installation of locks, and other remedies.</p> <p><i>Referred to Judiciary Committee. A public hearing and possible work session is scheduled for April 10.</i></p>	<p><i>This bill increases the potential liability for failure to provide accommodations requested by the employee, and will put additional burden on employers to explain why a particular accommodation was not provided.</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><i>Referred to Ways & Means Committee.</i></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><i>Referred to Transportation Committee. Public hearing held.</i></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>

BILL	DESCRIPTION	COMMENT
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><i>Referred to Judiciary Committee.</i></p>	<p><i>See also SB 874.</i></p>
HB 2377	<p>This bill would require that every person driving a vehicle use a hands-free cell phone feature. Would allow drivers under 18 to use a cell phone while driving so long as it was hands free.</p> <p><i>Referred to Transportation Committee. Public hearing held.</i></p>	<p><i>See comments re: HB 2038.</i></p>
HB 2497	<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 Business & Labor Committee. Public hearing held.</i></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>
HB 2503	<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><i>Referred to Business & Labor Committee. Public hearing held.</i></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>
HB 2633	<p>This bill, which applies to public sector employers, would modify the definition of "supervisory employee" with regard to certain nursing positions for purposes of public employee collective bargaining.</p> <p><i>Referred to Business & Labor Committee. Public hearing held.</i></p>	<p><i>This bill would not affect private sector employers.</i></p>
HB 2692	<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><i>Referred to Business & Labor Committee. Public hearing held.</i></p>	<p><i>This bill would give employers more flexibility in managing family leave absences.</i></p>

BILL	DESCRIPTION	COMMENT
HB 2744	<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><i>Referred to Veterans and Emergency Services Committee. Public hearing held.</i></p>	<p><i>Similar bill to SB 805.</i></p>
HB 2748	<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><i>Referred to Business & Labor Committee.</i></p>	<p><i>This bill would not affect private sector employers.</i></p>
HB 2821	<p>This bill would prohibit an employer from requiring eligible employees to use accrued vacation leave when taking family leave.</p> <p><i>Referred to Business and Labor Committee. Public hearing held and work session held.</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>
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 7:00pm. The bill would change that to 9:00pm.</p> <p><i>Referred to Business and Labor Committee. Public hearing held and the bill has passed out of committee.</i></p>	<p><i>This bill has passed out of committee on the House side.</i></p>
HB 2831	<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>Referred to Business & Labor Committee. Public hearing held.</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>

BILL	DESCRIPTION	COMMENT
HB 2881	<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><i>Referred to Business & Labor Committee. Public hearing held.</i></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>
HB 2890	<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><i>Referred to the Business and Labor Committee. Public hearing held.</i></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 <u>criminal</u> penalties for misclassification!</i></p>
HB 2903	<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>Referred to the Business and Labor Committee. Public hearing held. Work session scheduled for April 8.</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>
HB 3045	<p>This bill would increase the unemployment benefit by \$25 for each dependent child living in the employee’s household.</p> <p><i>Referred to the Business and Labor Committee.</i></p>	<p><i>This bill places a significant increased burden on the unemployment insurance trust fund.</i></p>
HB 3052	<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 the Business and Labor Committee. Public hearing held.</i></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>

BILL	DESCRIPTION	COMMENT
HB 3053	<p>This bill would suspend the annual adjustment of the minimum wage rate following years of high unemployment.</p> <p><i>Referred to the Business and Labor Committee.</i></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>
HB 3135	<p>This bill would allow employees on strike, who have not been replaced by permanent replacements, to obtain unemployment benefits.</p> <p><i>Referred to the Business and Labor Committee.</i></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>
HB 3140	<p>This bill would temporarily eliminate the one week waiting period on unemployment benefits eligibility.</p> <p><i>Referred to the Business and Labor Committee.</i></p>	<p><i>This is one of a number of bills this session relating to unemployment benefits.</i></p>
HB 3160	<p>This bill would provide for paid family leave for certain employees. See SB 966 for more details.</p> <p><i>First reading. Referred to Rules Committee.</i></p>	<p><i>See also SB 966.</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 a violation of a state or federal law, rule or regulation.</p> <p><i>First reading. Referred to the Business & Labor Committee.</i></p>	<p><i>Whistleblowers already enjoy a number of protections. This bill would expand 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>
HB 3171	<p>This bill would prohibit an employer from requiring use of vacation leave or sick leave while on jury duty.</p> <p><i>Referred to the Judiciary Committee. One hearing has been held and a hearing and work session is scheduled for April 14.</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>
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>Referred to the Business & Labor Committee. Hearing held by the Workforce Development Subcommittee. Sent back to full committee.</i></p>	<p><i>The bill would provide protections at initial employment, reemployment, retention, promotion, and for other terms and conditions of employment. There is an exception for bona fide occupational requirements arising from normal business needs.</i></p>
HB 3403	<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><i>Referred to the Business and Labor Committee.</i></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>

