

Highlights of Legislative Changes Taking Effect January 1, 2008

Legal Alert
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Garvey Schubert Barer Legal Update, July 26, 2007.

The 2007 legislative session is over. New and amended laws have significantly altered the legal landscape for Oregon employers. Now Oregon employers face the challenge of learning and administering a multitude of new workplace laws as a result of Oregon's busy 2007 legislative session.

Dramatic new requirements for employee non-competition agreements and arbitration agreements:

In order for either a non-competition agreement or an arbitration agreement to be enforceable:

The employee must be notified *in writing* no later than *two weeks* prior to the start of employment and informed that the non-competition or arbitration agreement is a condition of employment; or

The non-competition or arbitration agreement must be presented to employee upon a bona fide subsequent advancement (same as the existing law for a non-competition agreement).

Additionally, non-competition covenants are only enforceable:

For employees who are working in an exempt capacity (that is, employees working in an administrative, executive or professional capacity who are paid on a salary basis) and who are earning at least \$62,000 per year at the time of termination;

When the employer has a protectable interest (e.g., trade secrets or other competitive sensitive business information); and

If the restrictive covenant does not exceed two years.

State-wide ban on sexual orientation discrimination:

An employer may not discriminate in the terms and conditions of employment based on a person's sexual orientation. Sexual orientation is defined broadly under the new law to mean a person's real or perceived heterosexuality, homosexuality, bisexuality or gender identity. For employers located in Portland or other cities in Oregon with a similar local ordinance, the ban on sexual orientation discrimination is not new. Now, it is state-wide.

The ban on sexual orientation discrimination also means that the employee can not be harassed or subjected to a hostile work environment based on the individual's sexual orientation. Employers should be sure to list "sexual orientation" as a protected class in their EEO, anti-discrimination and harassment policies. Employers should also update their employees regarding this expansion of the law. In the refresher course on your policy, be sure to explain how to make a report of harassment or discrimination. In addition, because the new law bans discrimination in the "compensation, terms, conditions, or privileges of employment," the best practice for employers would be to ensure that their voluntary benefits plans, including insurance and leave plans, cover domestic partners in the same way as spouses.

Oregon provides for same-sex domestic partnerships:

Individuals in a same-sex relationship may now enter into a registered domestic partnership. This recognition allows a same sex couple to enjoy the same legal rights and responsibilities under state law as those granted to spouses in a marriage. Employers may be affected in the area of benefits, depending on the health insurance plan. Employers may also be affected in the administration of such benefits. For example, if an employer is going to require a same-sex couple to provide documentation of their participation in the domestic partnership registry in order to participate in the benefits programs, then the employer should also require heterosexual couples to provide copies of their marriage licenses for the same purposes. (And at that rate why bother?)

OFLA revision allows use of sick leave for all OFLA absences:

Oregon law still does not require that any leave taken under the Oregon Family Leave Act (OFLA) be paid. However, the existing law provides that employees are allowed to use accrued, paid sick leave only for parental leave or where the employer's policy would otherwise permit use of sick leave. The 2007 Legislature revised OFLA to broaden the employee's right to use sick leave for all other OFLA-qualifying purposes, including for caring for a sick child or for a family member with a serious health condition, whether or not the absence would be covered by any provision in the employer's sick leave plan.

New law for breast-feeding mothers at work:

A new law requires employers with 25 or more employees to give mothers a private place and unpaid time to express milk. The new law provides for 30-minute unpaid rest breaks for each four-hour work segment (or major portion thereof) for female employees to express milk during the workday. The law also requires that the employer make reasonable efforts to provide a private location - other than a public restroom or toilet stall - near the employee's work area for this purpose.