SELECTED OREGON EMPLOYMENT LEGISLATION[1]

JULY 2013 – FINAL REPORT

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The 2013 legislative session adjourned on Monday, July 8, 2013. There were a significant number of employment-related bills introduced in this session. During the course of the season, there were more than 70 employment law related pieces of legislation. A number of those bills were signed into law. This is a final report of employment-related bills that passed and of those that did not make the cut.

Next year's legislative session will be an abbreviated 35-day session scheduled to take place in February 2014. We will keep you posted on next year's session as things progress.

BILL	DESCRIPTION	COMMENT
	SENATE BILLS	
SB 1	**Veterans Day off for Veterans**: This bill allows a veteran to take time off on Veterans Day. The employer has discretion to determine whether the time off will be paid or unpaid. The Bill includes a 21 day prior notice requirement and has an exception for employer undue hardship or operational disruption. If leave on veterans day is denied, veterans may pick alternative day off.	*This legislation gives veterans priority to take a day off work on the Veterans Day holiday. The bill acknowledges that multiple veteran employees may request this day off. Veterans Day typically occurs mid-week, which may pose schedule challenges for some employers. This bill also has the potential to reduce employer flexibility in granting employees PTO and paid holidays, by imposing a mandatory holiday for some employees but not all.* ***This Bill has been signed into law by the Governor and is already effective.***

[1] Randall Sutton and Jennifer Paul are attorneys with the SAALFELD GRIGGS law firm in Salem Oregon. (*www.sglaw.com*). This summary was prepared with the firm's assistance. The information contained in this report is current as of July 11, 2013. This summary focuses on significant bills affecting private sector employers and is not intended to cover every employment-related bill. 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, the Oregon State Council, Salem Human Resource Management Association, their boards or members, or any affiliated organization. The purpose of this report is to provide information and analysis and is not intended to lobby one position over another. Follow these updates on Twitter @sgEmploymentLaw.

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BILL	DESCRIPTION	COMMENT
SB 135	**Elimination of Wage & Hour Commission:** This bill eliminates the Wage and Hour Commission, and requires that BOLI absorb those responsibilities.	*The Wage and Hour Commission administered Oregon's child labor laws and was empowered by statute to make rules regulating the employment of minors. Under this bill, the Bureau of Labor & Industries ("BOLI") assumed this authority.* ***This Bill has been signed into law by the Governor and is already effective.***
SB 191	**Increased penalties on Overpayment of Unemployment Insurance Benefits Due to False Statements:** This bill increases the penalty on repayment of unemployment benefits obtained through false statements or misrepresentations, and pushes out the statute of limitations on enforcement actions from one year to five years.	*The current penalty is capped at 15 percent of the overpayment. This bill would allow for a penalty of up to 30 percent. The bill also allows the penalties collected to be paid into the Unemployment Compensation Trust Fund. The Employment Department will now have five years (instead of one) to recover overpayments.* ***This Bill passed the House and Senate and is with the Governor's Office awaiting signature.***
SB 678	**Protection for LLC Owners from Tort Liability for Workplace Injuries**: This bill extends to limited liability companies the workers compensation exclusive remedy protections already enjoyed by corporations.	*Prior to the recent Cortez v. Nacco Materials Handling Group decision, it was believed that limited liability companies were subject to the exclusive remedy protections that prohibit employees from filing tort lawsuits for workplace injuries, instead requiring that they submit to the workers' compensation claims process. The Cortez decision exposed a gap, which rendered limited liability companies subject to lawsuit. This bill closes that gap going forward.* ***The Governor Signed this Bill into law and it is already effective. Note: this is not a retroactive fix.***

HOUSE BILLS		
HB 2111	**Updated Definition of "Disability" under Oregon Law:** This bill eliminates the word "materially" from the existing disability definition of a disability as an impairment that restricts one or more major life activities of the individual. This bill adds additional qualifying language found in the federal ADAAA related to comparisons to the general population, and how "substantially limiting" is defined.	*Oregon's disability law is already more expansive than the federal Americans with Disabilities Amendments Act ("ADAAA"), in that it specifically covers more conditions and applies to businesses with as few as six employees. The federal law applies to businesses with 15 or more employees.* *This bill appears to better sync up Oregon law with the ADAAA, by eliminating the word "materially" from the definition of those disabilities that restrict major life activities. The bill adds ADAAA language to further define what is meant by "substantially limiting," including a comparison to the general population and the further explanation that "[a]n impairment need not prevent or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting." The effect of this bill is to minimize the differences between the Oregon and federal definitions of "disability."* ***The Bill was signed into law by the Governor on May 13th, and will become effective on January 1, 2014.***

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HB 2683	**<u>Payment by Direct Deposit at Employer Discretion:</u>** This bill allows an employer to require payment by direct deposit. This bill also allows an employer and employee to agree that the employer may pay wages through an electronic transfer to a debit or similar card, so long as the employee may withdraw the full amount of the funds at no cost.	***This Bill was signed into law by the Governor on June 13, 2013. The Bill takes effect on January 1, 2014.***
HB 2654	**<u>Employee Social Media Protections:</u>** This bill prohibits employers from requiring or requesting users to give the employers names, passwords or other information that would allow the employer to access password protected or restricted access social media information of the job applicant or employee. The bill defines "social media" to include blogs, photographs, messages, and Internet-based profiles such as Facebook. The bill makes an exception for social media accounts that are established by or intended for the use and benefit of the employer. The bill also allows an employer to review an employee's social media for purposes of investigating misconduct or for other job related purposes, so long as it is able to do so without requiring the employee to reveal user names or passwords. The new law does not prohibit employers from searching for social media and other information that is in the public domain. If the employer inadvertently discovers an employee's password or user name, the employer cannot use that information to access the employee's social media account.	*There has been considerable buzz this year debating whether employers can or should require that their employees and job applicants provide Facebook passwords and access to the employee or applicant's social media accounts. For the most part, these concerns were likely overblown, as most employers would shy away from outright demanding access to personal social media activity as a condition of hire. Nevertheless, legislation protecting privacy in this regard likely has arisen due to the prevalence of social media activity, and the potential goldmine of information available online.* *This bill protects an applicant or employee from being required to provide the employer with password-protected access to social media activity. That being said, the bill carves out narrow exceptions, which allow the employer some ability to request social media content that is otherwise password protected, if the employer received a report about that content, and wishes to verify the report as part of a good faith investigation.* *For example, suppose there is a report of the employee posting to his Facebook account statements or photos that amount to sexual harassment. This bill appears to allow the employer to demand that the employee produce the content to investigate the report.* ***This Bill was signed into law by the Governor on May 22nd. This Bill takes effect on January 1, 2014.***
HB 2669	**<u>Workplace Protections for Unpaid Interns</u>**: This bill expands protections under various Oregon employment laws to unpaid interns.	*This bill expands to unpaid interns a wide gamut of statutory legal protections enjoyed by employees. The bill applies to individuals "performing work for educational purposes." This definition does not strictly follow the recognized definition of unpaid intern under applicable wage and hour laws.* ***This Bill was signed into law by the Governor. This Bill became effective on June 13, 2013.***

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HB 2903	**<u>Leave for Victims of Stalking, Domestic Violence, Harassment & Sexual Assault Posting Requirements</u>** This bill requires posting of an employee's rights under existing laws providing protection to victims of Victims of Stalking, Domestic Violence, Harassment & Sexual Assault. The bill also lowers current eligibility requirements.	*Existing law requires that Oregon employers with six or more employees provide unpaid leave to victims of domestic violence, harassment, sexual assault or stalking to obtain treatment, seek court remedies, and engage in other protected activities. In addition to the new posting requirement, this bill changes the current eligibility requirements, by eliminating the requirement that the employee must work an average of 25 hours per week for the 180 days preceding the leave.* ***The Governor singed this Bill into law on June 6, 2013. This Bill takes effect on January 1, 2014.***
HB 2950	**<u>Use of Family Leave for Bereavement Purposes</u>:** This bill allows the use of up to 2 weeks of OFLA leave for certain bereavement purposes. Under the bill, the employee may take OFLA leave to deal with the death of a family member by attending the funeral or alternative to a funeral of the family member, making arrangements necessitated by the death of the family member, or grieving the death of the family member. Any leave taken pursuant to this Bill must be completed within 60 days of the date on which the eligible employee receives notice of the death of a family member.	*This bill expands the Oregon Family Leave Act to cover additional situations where an employee may need or wish to be absent from work. Because bereavement leave is not part of the federal Family Medical Leave Act (FMLA), for employers with 50 or more employees, leave taken for bereavement purposes won't count against the employee's FMLA entitlement.* ***This Bill was signed into law by the Governor on June 13, 2013. The Bill will take effect on January 1, 2014.***

FAILED BILLS – ***These Bills did not pass during the 2013 Oregon Legislative Session.***		
HB 2448	**<u>Public Employee Mandatory Arbitration</u>:** This bill would require public employers and employee representative groups to engage in binding arbitration of issues subject to collective bargaining (during the term of the collective bargaining agreement), if the parties fail to reach an agreement through negotiation or mediation.	
HB 3390	**<u>Mandatory Paid Sick Leave</u>**: This bill would effectively require employers with six or more employees to implement a paid sick leave plan allowing part and full-time employees to earn up to seven days of paid sick leave per year. The bill contains numerous complexities regarding the reasons for taking leave, the amount of notice the employee must provide, and how the need for leave is to be verified. The bill allows employers with a more generous sick leave plan to use their plan instead.	*Although many Oregon employers already provide paid sick leave, this bills reduce' s an employer's flexibility in structuring an overall employee benefits/ PTO package by mandating paid sick leave. Similar to OFLA, this bill contains many technical requirements with regard to the administration of the sick leave plan.* *Portland has already passed a similar ordinance, imposing paid sick leave obligations on businesses with six or more employees.*

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HB 3352	**Elimination of Daily Overtime Requirement for Manufacturing:** This bill would eliminate the requirement to pay employees working in a factory or manufacturing establishment daily overtime after 10 hours of work.	*For employees working in a factory or manufacturing establishment, the law currently requires the payment of 1.5 times the employee's regular rate of pay on any day where the employee works more than 10 hours. This bill would eliminate the daily overtime obligation, giving manufacturing employers more flexibility in how shifts are structured on a daily and weekly basis.*
HB 3142	**Modification of Definitions:** This bill would modify definitions of "employ," "employee," "employer" and "wages" for purposes of statutes relating to hours, wages, wage claims, employment conditions, employment agencies, farm labor contractors and construction contractors. The bill also creates a presumption of employee status under certain conditions.	*Among other things, this bill creates a presumption that in most cases, an individual performing services that are an integral part of the business of another will be presumed to be an employee and not an independent contractor. This bill, if enacted, would make it more difficult for employers to establish that an individual performing services for a business is an independent contractor.*
HB 3042	**Comparable Worth Protections for Protected Classes:** This bill would extend current comparable worth legal protections enjoyed on the basis of gender, and extends these protections to other protected classes.	*Current law prohibits an employer from discriminating between the sexes in the payment of wages for work of a comparable character, the performance of which requires comparable skills. This bill would expand those protections to discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, disability and age. The bill also prohibits such discrimination on the basis that the employee associates with a member of the protected class.*
HB 3041	**Discrimination/Retaliation for Expressing Concerns about Gender-Based Wage Inequity:** This bill would make it an unlawful employment practice to take adverse actions against an employee who has "expressed concerns" about wage inequity based on sex.	*This bill appears to cover ground that is already protected by existing law. In addition, the "expressed concerns" language is very broad. The bill does not make clear whom the employee must express his or her concerns to, nor does the language make clear whether the voicing of concerns by the employee must rise to the level of a formal or informal complaint.*
HB 3026	**Extension of OFLA Coverage to Siblings** This bill would expand the definition of "family member" under the Oregon Family Leave Act ("OFLA") to cover siblings of the employee.	*Currently, OFLA's definition of "family member" includes parents, parents in law, grandparents, children and others. However, siblings have never been included within the scope of the law. Under current law, an employee cannot take protected family leave to care for a brother or sister with a serious health condition. The FMLA likewise does not include siblings within its coverage. This bill would dramatically expand the coverage of OFLA, potentially adding multiple "new" family members for each employee protected under the law.*
HB 2976	**Regulation of Staffing Agencies:** This bill would regulate an entity that procures employment for others as an employment agency when the entity's services are paid for by anyone other than job applicant. Prohibits employment agencies from charging applicants for certain items or services and from taking certain actions against applicants.	*This bill seeks to increase protections for day laborers and temporary and contract workers hired through staffing firms. This bill's wage mandates, such as requiring staffing firms to pay temporary employees wages equal to those paid to clients' permanent employees, plus a 30% surcharge, and other prohibitions against charging fees for services, will likely increase the overall costs of doing business and may decrease the flexibility of staffing firms to provide services.*

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HB 3138	**Protection of Paid Vacation Leave:** This bill would prohibit an employer from forfeiting any of an employee's accrued vacation time upon termination of employment. The bill does allow an employer to adopt a policy limiting the maximum accrual.	*Under current law, paid vacation leave is a benefit that employers may choose to adopt if they wish. As an employer provided benefit, the employer is free to set the rules for how paid leave is paid and forfeited. This bill would limit an employer's flexibility in the way paid vacation leave is structured as a fringe benefit, by requiring payout of accrued vacation at termination.*
SB 394	**Extends time limit for Discrimination Complaints:** This bill is a companion bill to HB 2606 below.	*See discussion of HB 2606.*
SB 801	**Mandatory Paid Sick Leave:** This bill is a companion bill to HB 3390 below.	*See discussion of HB 3390*
HB 2068	**Protection for LLC Owners from Tort Liability for Workplace Injuries**: This bill would extend to limited liability companies the workers compensation exclusive remedy protections already enjoyed by corporations.	*Prior to the recent Cortez v. Nacco Materials Handling Group decision, it was believed that limited liability companies were subject to the exclusive remedy protections that prohibit employees from filing tort lawsuits for workplace injuries, instead requiring that they submit to the workers' compensation claims process. The Cortez decision exposed a gap, which rendered limited liability companies subject to lawsuit. This bill would close that gap.* *See discussion SB 678*
HB 2112	**Allows BOLI to Impose Civil Penalties on Paycheck Deductions:** This bill would amend the current penalty statute, which only applies to an employer's failure to make promised payments to a third party from authorized wage deductions. This bill would expand the scope of civil penalties to a wide variety of wage deduction situations.	*Employers often have difficulty applying deduction rules. For example, a deduction where the employer is the ultimate recipient of the money must be for the employee's benefit, but it can be difficult to establish whether or not particular deductions meet that standard. Unlike existing law, penalties are imposed only for the employer's failure to pay deducted funds that are promised to a third party. This bill imposes penalties for an employer's failure to strictly comply with any of the deduction rules. Even without this bill, there are already criminal sanctions and a private right of action in place for unlawful employer deductions.*
HB 2416	**Employee Leave for Search and Rescue volunteer:** This bill would make it an unlawful employment practice if an employer fails to provide a leave of absence for an employee serving as a search and rescue volunteer.	*Oregon law provides that upon request of an employee who is an authorized search and rescue volunteer, the employer may but is not required to grant a leave of absence to the employee until release from the search and rescue activities.* *An employee who is allowed to take leave is entitled to reinstatement, and the position is not considered vacant while the search and rescue volunteer is on leave. The employee is entitled to return from leave to a same or similar position without loss of seniority or benefits. This bill would make the failure to meet these obligations an unlawful employment practice.*

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HB 2606 & SB 394	**Extends Time Limit for Discrimination Complaints:** Where a discrimination case alleges discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status or age, this bill would increase the statute of limitations on bringing such a claim from one year to two years.	*The current Oregon law requires that discrimination claims be brought within one year. This extension is likely to make discrimination cases more difficult to defend, as memories fade and job transitions make it difficult to recall older facts and circumstances. Oregon's current one year statute of limitations is longer than the 300 day federal rule for filing an EEOC charge.*
HB 2645	**Paid Disability & Family Leave:** This bill would provide for approximately 55% of an employee's wages to be paid when the employee cannot work due to a "disability" as defined by the bill. The paid time off would be available to any employee who has worked at least 720 hours (18 F/T work weeks), and could run for as long as 52 weeks. Leave would be paid from a fund generated by employer payroll withholdings.	*"Disability" under the bill is broadly defined to include any illness, injury or a physical or mental condition, that renders an employee unable to perform the employee's regular or customary work. This includes pregnancy and childbirth related conditions. The definition of disability is broader than the definition of individuals covered by a "serious health condition" under OFLA. The bill would impose significant and complex statutory obligations.*
HB 2682	**Confidential Investigation Files Not a "Personnel Record":** This bill would exclude witness statements, investigator notes and other underlying documentation gathered in the course of an internal investigation and exclude it from the scope of a "personnel record" subject to a personnel file request.	*Employers are required to provide personnel records in response to an employee request. The "personnel record" includes personnel records of the employee that are used or have been used to determine the employee's qualification for employment, promotion, additional compensation, termination or other disciplinary action. There is ambiguity under the current law as to production of confidential investigative files. This bill would clarify that confidential files need not be produced. The bill further clarifies that disciplinary warnings, termination notices and other documents that have been provided to the employee are subject to the records request.*
HB 2907	**Stepped Up Enforcement by BOLI of Misclassification of Employees as Independent Contractors** This bill would create a new full-time position for an investigator with the primary duty of investigating employer misclassification of independent contractors. The bill also allows BOLI to assess civil penalties for certain cases if intentional or widespread misclassification. BOLI would fund the position through the revenue obtained from these enforcement activities.	*If passed, this bill would increase the stakes for employers who engage independent contractors.*
HB 3308	**Expansion of Employee Wage Retaliation Protections:** This bill creates many new legal protections for employees. An employee is protected if complaining about underpayment of wages or has assisted others in pursuing wage claims. The bill also creates a presumption of retaliation if any adverse action is taken against an employee within 90 days of engaging in any protected activity. The bill imposes a "clear & convincing" evidence standard on the employer's proof to the contrary.	*Employees are already protected if they make a wage claim, or discuss a potential claim with an attorney or governmental agency. This bill expands that protection, to cover any complaint whatsoever about underpayment of wages. Under current law, the employee has to prove a connection between adverse action taken by the employer and the exercise of his or her protected rights. This bill creates a statutory presumption that the employer has retaliated if the employer takes any adverse action (demotion, transfer, termination etc.) within 90 days of the protected activity. To rebut this presumption, the employer faces a high burden of proof in showing that the adverse action was not at all related to the protected activity.*

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