

SELECTED OREGON EMPLOYMENT LEGISLATION¹

FEBRUARY 2013 – FIRST DAYS OF SESSION REPORT

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Although the session started on January 14, legislators kicked into gear last week. Last November’s election ensured that the Oregon House, Senate and Governor’s office are all in control by the Democratic Party. While both parties talk of working together, the swing of control to the Democrats in the House is likely to result in more employment bills passing this session. So, stayed tuned as we keep you updated on pending employment legislation and alert you to new laws that are passed this session.

Bills will continue to be introduced from now until February 18th. Expect more employment law bills as the session continues.

BILL	DESCRIPTION	COMMENT
SENATE BILLS		
SB 1	Veterans Day off for veterans: Would allow a veteran to take paid or unpaid time off on Veterans Day. Includes prior notice requirements and has an exception for employer undue hardship or operational disruption. Veterans may pick alternative backup day off if denied Veterans Day.	<i>This legislation gives veterans the priority to take off work on the Veterans Day holiday. The bill acknowledges that multiple veteran employees may request this day off, with the possibility that the employer pick and choose among eligible employees when approving or denying the day off on the basis of hardship. 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. As written, the bill has no carve-out for employers subject to a collective bargaining agreement.</i>
SB 135	Elimination of Wage & Hour Commission: This bill would eliminate the Wage and Hour Commission, and require that BOLI absorb those responsibilities.	<i>The Wage and Hour Commission administers Oregon’s child labor laws and is empowered by statute to make rules regulating the employment of minors. Under this bill, the Bureau of Labor & Industries (“BOLI”) would assume this authority.</i>

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 February 9, 2013. This summary focuses on significant bills affecting private sector employers and is not intended to cover every employment-related bill. The status of particular bills will change rapidly during the 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, 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.

SB 191	<p>Increased penalties on overpayment of unemployment insurance benefits due to false statements: This bill would increase 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.</p>	<p><i>The current penalty is capped at 15% 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 would now have five years (instead of one) to recover overpayments.</i></p>
SB 252	<p>Increases minimum penalty on late payroll tax reports: This bill would impose a \$100 minimum penalty on late filing of payroll tax reports. The current minimum penalty is 0.0025 of the taxable wage base for the year.</p>	
SB 344 (& HB 2654)	<p>Employee rights to Social Media: This bill would prohibit employers from seeking to obtain or obtaining user name, passwords or other information related to an employee or applicant's social networking activity. The bill creates an exception for publically available information.</p>	<p><i>There has been considerable discussion this year about employers requiring that their employees and job applicants provide Facebook passwords and access to the employee or applicant's social media accounts. These concerns appear to be overblown, and most employers know better than to ask for this sort of information.</i></p> <p><i>This bill specifically allows an employer to "Google" information about an employee or applicant. Whether an employer <u>should</u> perform Google searches, and how those results are used, is another question.</i></p> <p><i>The bill has no carve-out for good faith employer investigations of misconduct. In some cases, posting on an employee's Facebook page may be relevant in a sexual harassment or other workplace investigation. As written, this bill would tie the hands of employers to effectively investigate these allegations.</i></p> <p><i>This bill prohibits an employer from obtaining social media passwords and user names. However, if the employee voluntarily provides that information, there is no liability carve out under this bill.</i></p>
HOUSE BILLS		
HB 2068	<p>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.</p>	<p><i>Prior to the recent <u>Cortez v. Nacco Materials Handling Group</u> decision, it was understood 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 <u>Cortez</u> decision exposed a gap, which rendered limited liability companies subject to lawsuit. This bill would close that gap.</i></p>
HB 2111	<p>Lower threshold for defining a "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.</p>	<p><i>Oregon's disability law is already more expansive than the federal Americans with Disabilities Amendments Act ("ADAAA") federal law, in that it covers more conditions and applies to businesses with as few as six employees. The federal law applies to businesses with 15 or more employees. Elimination of the word "materially" could open the door to disability protections for very minor conditions.</i></p>

<p>HB 2112</p>	<p><u>Allows BOLI to Impose Civil Penalties on Paycheck Deductions:</u> This bill amends 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.</p>	<p>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, where penalties are focused on only those situations where the employer did not properly pay out deducted funds, 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.</p>
<p>HB 2242</p>	<p><u>Allows UI Alternative “Base Year” only if the Change Benefits the Employee:</u> This bill limits the use of an alternative base year to those situations where the alternative definition makes the individual eligible for benefits.</p>	
<p>HB 2243</p>	<p><u>Excludes Individuals Serving as the Sole Corporate Officer & Director from Coverage as an “Employee” under UI:</u> This bill would exclude those individuals who serve as the sole corporate officer of the corporation, and who have substantial ownership in the interest in the corporation, from the definition of “employment” under the UI statutes, unless the corporation elects to provide such coverage.</p>	
<p>HB 2416</p>	<p><u>Employee leave for search and rescue volunteer:</u> Makes 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.</p>	<p><i>Oregon law provides that upon request of an employee who is an authorized search and rescue volunteer, the employer <u>may</u> but is not required to grant a leave of absence to the employee until release from the search and rescue activities.</i></p> <p><i>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.</i></p>
<p>HB 2502 (& HB 2683)</p>	<p><u>Payment by Direct Deposit at Employer Discretion:</u> This bill allows an employer to require payment by direct deposit or by electronic transfer to a debit or similar card, so long as the employee may withdraw the full amount of the funds at no cost.</p>	<p><i>Direct deposit is very convenient and cost effective for employers, and can help overcome challenges in timely providing a paycheck to the employee under applicable final paycheck laws.</i></p>
<p>HB 2606</p>	<p><u>Extends time limit for Discrimination Complaints:</u> 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.</p>	<p><i>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. This is already longer than the 300 day federal rule for filing an EEOC charge.</i></p>

HB 2645	Paid Disability & Family Leave: This bill would provide for approximately 55% of an employee's wages to be paid when out with a "disability" that prevents the employee from working. The benefits would be available to any employee who has worked at least 720 hours (18 F/T work weeks), and could last as long as 52 weeks. Leave would be paid from a fund generated by employer withholdings from pay.	<i>"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.</i>
HB 2654 (& SB 344)	Employee rights to Social Media: This bill would prohibit employers from seeking to obtain or obtaining user name, passwords or other information related to an employee or applicant's social networking activity. The bill creates an exception for publically available information.	<i>This social media bill is far more specific in its application than SB 344, which does not include many details or carve-outs. However, many of the same issues discussed above with regard to SB 344 also apply to this bill.</i>
HB 2669	Workplace Protections for Unpaid Interns: This bill would expand protections under various Oregon employment laws to unpaid interns.	<i>This bill would expand to unpaid interns a wide gamut of statutory legal protections now enjoyed by employees. As written, 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.</i>
HB 2672	Protections for Domestic Service Employees: Would provide additional protections to domestic service employees.	<i>This bill has far reaching implications for those who hire housekeepers, nannies, and yard maintenance workers.</i>
HB 2682	Confidential Investigation Files Not a "Personnel Record" This bill would exclude witness statements, investigator notes and other underlying documentation that are gathered to support an employment decision from production in response to a personnel records 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 or employment termination or other disciplinary action. There is ambiguity under the law as to production of confidential investigative files. This bill would clarify that the 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 2683	Payment by Direct Deposit at Employer Discretion: This bill allows an employer to require payment by direct deposit or by electronic transfer to a debit or similar card, so long as the employee may withdraw the full amount of the funds at no cost.	<i>See discussion of HB 2502.</i>