



SALEM HUMAN RESOURCES MANAGEMENT ASSOCIATION

Affiliate of the Society for Human Resource Management



FINAL SESSION REPORT FOR 2015¹

Jennifer Paul, J.D. *Salem Human Resources Management Association, Advocacy Director*

The 2015 Oregon Legislative Session closed on Monday, July 6, 2015. Employment-related bills were a significant focus of this year's session. This report covers the outcome of many employment-related bills considered by the Oregon Legislature, including laws that passed related to statewide mandatory sick leave; social media protections; wage discussion protections; updates to the Oregon Family Leave Act; criminal background inquiries; and new limits on non-competition agreements. This report also provides a summary of failed bills, which may reappear in future sessions.

BILL	DESCRIPTION	COMMENT
SENATE BILLS		
SB 185	<p>Restrictions to Employer Required Employee Social Media Accounts: This bill makes it an unlawful employment practice for employers to require employees or applicants to establish and maintain personal social media accounts or to require an employee or an applicant for employment to authorize the employer to advertise on the personal social media account of the employee or applicant.</p>	<p><i>This bill adds some requirements to the existing social media law, which prevents employers from asking employees and applicants for passwords or usernames to their personal social media accounts.</i></p> <p><i>The bill adds a definition for "personal social media account" and defines such an account as a social media account that is used by an employee or applicant for employment, exclusively for personal purposes unrelated to any business purpose of the employer or prospective employer and that is not provided by or paid for the employer or prospective employer.</i></p> <p><i>This bill has passed and is effective January 1, 2016.</i></p>

¹ ¹Jennifer Paul is an attorney 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 7/13/2015. 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 Salem Human Resource Management Association, its board 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](#).

SB 454	<p>Oregon Paid Sick Leave: This bill had many amendments since its original proposed version. In its final form, the bill generally requires that employers with ten or more employees, working anywhere in Oregon, provide a sick time policy that allows employees to earn and use up to 40 hours of <u>paid</u> sick time per year. Generally, Employers with fewer than ten employees, working anywhere in Oregon, must also establish the same sick time policy, but sick time may be <u>unpaid</u>. Sick time shall accrue at the rate of one hour for every thirty hours worked or 1-1/3 hour for every 40 hours worked. The employer must allow for carryover of accrued but unused sick time from year-to-year, but employers are allowed to cap total accrued sick time at 80 hours or require that employers not use more than 40 hours of sick time in any one year. Alternatively, employers and employees can enter into certain end-of-year payout agreements by mutual consent. An employee begins accruing sick leave on the first day of employment, but is not eligible to use sick leave until their 91st day of employment.</p> <p>Sick leave must be paid out at the employee's regular rate of pay and can be used in hourly increments for the employee's own self-care or to care for the employee's qualifying family member. The employer may not require more than 10 days' notice for the use of foreseeable sick time. The bill generally provides for employer required health verifications where the employee uses more than three consecutive scheduled work days for sick time at the employer's cost. The bill does not require pay-out at termination or resignation, but does require reinstatement of accrued and unused sick time when the employee is reemployed within 180 days of separation. The bill outlines specific protections against retaliation for employees that inquire about sick time. The bill creates additional record keeping requirements for employers related to paid sick leave, with quarterly updates provided to employees. This bill further makes any violation of the paid sick leave law an unlawful employment practice subject to the jurisdiction of BOLI.</p>	<p><i>This bill is a statewide mandate for paid and unpaid sick leave. Prior to passage of this bill, paid and unpaid sick leave was not required in Oregon, except by Portland's local ordinance, and Eugene's local ordinance, which would have gone into effect this summer. The bill expressly states that for employers located in a city exceeding populations of 500,000 (only Portland exceeds 500,000 in Oregon to date) and employing six or more employees, such employers shall be subject to the paid sick time requirements. In other words, this provision creates an exception for Portland employers and requires paid sick leave for those employers with six or more employees, and unpaid sick time for Portland employers with less than six employees. The bill provides that an employer's existing PTO or sick leave policy may satisfy the new law as long as it meets the minimum requirements of the law.</i></p> <p><i>This bill has passed and will go into effect on January 1, 2016. Civil penalties may be assessed on or after January 1, 2017.</i></p>
SB 468	<p>BOLI Warrants for Debt Collection: This bill authorizes the Commissioner of Bureau of Labor and Industries to issue warrants for collection of debts owed the bureau, within 30 days of the date payment becomes due, where no provision has been made to secure the payment. This bill would apply retroactively and covers debts owed to the bureau before, on or after the effective date of the bill.</p>	<p><i>The final bill has no provision that expressly requires notice to the employer or entity that may be subject to a BOLI warrant to collect debts, other than mailing the warrant to the debtor's last known address, and the bill does not provide a right to cure.</i></p> <p><i>This bill has passed and will be effective January 1, 2016.</i></p>

SB 492	<p>Authorized use of Accrued Sick Leave or Personal Leave for Victims of Domestic Violence: This bill authorizes the use of accrued sick leave or personal business leave by certain employees who are victims of domestic violence, harassment, sexual assault or stalking.</p>	<p>Oregon law already allows employees whom are eligible for leave as victims of domestic violence, harassment, sexual assault or stalking, to use any paid accrued vacation leave or any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave. This bill expressly adds any "accrued sick leave or personal business leave" to accrued leave that the employee may use during the covered leave period.</p> <p>This bill has passed and will go into effect on January 1, 2016.</p>
--------	---	--

HOUSE BILLS

HB 2007	<p>Protection for Wage Information Disclosures: This bill makes it an unlawful employment practice to take disciplinary action, including discharging, demoting, suspending, discriminating or retaliating against an employee who inquires about, discusses or discloses, in any manner, wage information about him or herself or another employee. Such disclosure includes discussing wage information to make a complaint or institute an investigation. The bill carves out an exception for an employee who has access to wage information as a part of that employee's job, and allows employers to discipline such an employee for unauthorized disclosures of wage related information acquired through an employee's position.</p>	<p><i>The NLRA already restricts employers, both in union and non-unionized workforces, from creating or enforcing policies that stifle employees' discussions about hours, wages, and working conditions. In this respect, discussions about pay are already protected by the NLRA. This bill creates a cause of action under Oregon law.</i></p> <p>This bill passed and is effective January 1, 2016</p>
HB 2600	<p>Health Insurance Coverage Continuation: This bill requires continuation of group health insurance coverage for an employee on family leave, covered by OFLA, pursuant to the same terms as if the employee were not on leave.</p>	<p><i>This bill requires employers to pay an employee's insurance premiums during the full duration of an employee's family leave. This bill also applies to coverage for family members. The employee is still required to make any regular contributions to the cost of the health insurance premiums.</i></p> <p>This bill passed and is effective January 1, 2016.</p>
HB 2764	<p>Increase to Workers' Compensation Costs: Requires payment of interest on certain compensable benefits, attorney fees, penalties and costs withheld pending appeal. Requires attorney fees awarded to be equitable in aggregate in relation to fees earned by attorneys representing insurers and self-insured employers. Instructs the Workers' Compensation Board to adjust the schedule of attorney fees biennially based on increases to average weekly wages.</p>	<p>This bill has passed and is effective January 1, 2016.</p>

HB 3025	<p>Ban the Box: This bill makes it an unlawful employment practice to exclude an applicant from an initial interview by requiring an applicant to disclose a criminal conviction on an application or otherwise requiring an applicant to disclose a criminal conviction prior to an initial interview. If no interview is conducted, it is an unlawful employment practice for the employer to require the applicant to disclose a criminal conviction prior to making a conditional job offer. Other than the limitation set out in the statute, nothing in the proposed bill prevents an employer from considering an applicant's conviction history when making a hiring decision.</p> <p>The application, interview and conditional offer requirements discussed above do not apply where federal, state or local law, including corresponding rules and regulations, require the consideration of an applicant's criminal history for an employer with a law enforcement agency, an employer in the criminal justice system, or an employer seeking a nonemployee volunteer.</p>	<p>This bill passed and is effective January 1, 2016.</p>
HB 3236	<p>Limitations of Noncompetition Agreements: This bill amends current law regarding noncompetition agreements, and limits the term of non-competition to 18 months.</p>	<p><i>The previous law in Oregon limited non-competition agreements to 2 years.</i></p> <p><i>The law will apply to non-competition agreements entered into on or after January 1, 2016.</i></p> <p>This bill passed and is effective January 1, 2016.</p>

FAILED BILLS- These Bills did not pass during the 2015 Oregon Legislative Session.

SB 48	Extended Dependent Care Assistance Tax Credit for Employers: This bill would extend the sunset for the tax credit for employer-provided dependent care assistance.	<i>This bill died in the Senate Human Services and Early Childhood Committee.</i>
SB 130	Repeals State Preemption On Minimum Wage	<i>But see SB 332- the companion bill to SB 130 is moving forward.</i>
SB 327	Oregon Minimum Wage Increase: This bill would increase Oregon's minimum wage in graduated steps through 2017, in relation to certain federal guidelines, from current levels to \$12.20 per hour.	<i>This bill died in the Senate Committee on Rules.</i>
SB 332	Repeals State Preemption On Minimum Wage: This bill would repeal the state preemption of authority of local governments to set minimum wage requirements, allowing individual cities to set their own minimum wage thresholds.	<i>This bill died in the Senate Committee on Rules.</i>
SB 597	Oregon Minimum Wage Increase: This bill would increase Oregon's minimum wage in graduated steps through 2017 to \$13.50 per hour.	<i>This bill died in the Senate Committee on Rules.</i>
SB 610	Oregon Minimum Wage Increase: This bill would increase Oregon's minimum wage in graduated steps through 2018 from current levels to \$15.00 per hour.	<i>This bill died in the Senate Committee on Rules.</i>
SB 653	Income Tax Credit for Certain Employer's that Provide Paid Sick Leave: This bill would create an income tax credit for certain employers that have no more than 50 employees at any time during the tax year and provide paid sick leave to their employees, where required under state, federal or local law. Credits vary between C-Corporations and S-Corporations. Generally, the amount of the credit is equal to 50% of the qualified paid sick leave wages that are paid by the employer during the tax year.	<i>This bill died in the Senate Workforce Committee.</i>
SB 682	Oregon Minimum Wage Increase: This bill would increase Oregon's minimum wage to \$10.75 per hour by 2016.	<i>This bill died in the Senate Committee on Rules.</i>

SB 701	<p><u>Worker's Compensation Medical Examinations:</u> This bill would modify the process for independent medical examinations of injured workers to provide for random selection of qualified physicians to conduct independent medical examinations in workers' compensation claims. The selection process for physicians would be the equivalent of a lottery.</p>	<p><i>This bill died after being referred to the Senate Ways and Means Committee.</i></p>
SB 718	<p><u>Wage Claims:</u> This bill would require employers to maintain time and pay records of terminated employees for three years from the date of termination, and to provide records to an employee if requested. The bill also requires employers to provide a former employee with a written statement of the reasons for the employee's termination, within 10 days after written request for the reason for termination from the employee. The bill further modifies the information that must be included in an itemized statement provided to the employee each pay period.</p> <p>This bill also establishes a civil right of action for certain claims for unpaid wages and for violation of certain wage statutes, by providing a right for the employee to file a lien or lis pendens for the amount of unpaid wages against employer.</p>	<p><i>This bill died in the Senate Committee on Rules.</i></p>
SB 814	<p><u>Preemption for Local Employment Benefit Mandates:</u> This bill would establish a state preemption of local government's ability to mandate employment benefits for employees of private employers.</p>	<p><i>This bill died in the Senate Rules Committee.</i></p>
SB 845	<p><u>Health Insurance Fair Share Penalty:</u> This bill would establish a penalty for large employers whose employees receive health care coverage through a medical assistance program, rather than through employer's own health insurance program. Any such penalties would be collected by the Oregon Health Authority. This bill also provides a remedy for an employee who is retaliated against by an employer for applying for or receiving medical assistance or premium tax credits under the Patient Protection and Affordable Care Act.</p>	<p><i>This bill died in the Senate Ways and Means Committee.</i></p>

SB 888	<p>Flexible Scheduling: This bill requires employers to engage in the interactive process with employee to attempt to establish a mutually acceptable work schedule. This bill makes it an unlawful employment practice to discharge or retaliate against an employee whom requests or discusses a flexible or predictable work schedule, or whom files a complaint related to work scheduling.</p>	<p><i>This bill died in the Senate Committee on Rules.</i></p>
HB 2005	<p>Oregon Paid Sick Leave: See comments to SB 454, which has passed.</p>	<p><i>This bill died in the House Rules Committee.</i></p>
HB 2006	<p>Gender Related Pay Equity: This bill makes it an unlawful employment practice to pay employees of the opposite sex who hold equivalent jobs at a different wage rate. The bill does allow employers to pay different wage rates for "equivalent" jobs based on: a seniority system; a merit system; a system that measures earnings by quantity or quality or production; or a different bona fide factor other than sex (such as education, training, or experience) if the employer can demonstrate that the factor is job-related, furthers a legitimate business purpose and was applied reasonably in light of the asserted basis for paying the employees at different wage rates. The employee still has the ability to demonstrate that an alternative employment practice exists that would serve the same business purpose without resulting in such a factor and that the employer has refused to adopt the alternative practice.</p>	<p><i>This bill died in the House Business and Labor Committee.</i></p>
HB 2008	<p>Oregon Minimum Wage Increase: See comments to SB 327.</p>	<p><i>This bill died in the House Rules Committee.</i></p>
HB 2009	<p>Oregon Minimum Wage Increase: See comments to SB 610.</p>	<p><i>This bill died in the House Rules Committee.</i></p>
HB 2012	<p>Oregon Minimum Wage Increase: This bill would increase Oregon's minimum wage in graduated steps through 2017 to \$13.50 per hour.</p>	<p><i>This bill died in the House Rules Committee.</i></p>

HB 2043	E-Verify Required Use: This bill would require employers to verify the legal status of employees through the federal E-Verify program prior to deducting expenses related to worker's employment from Oregon taxable income.	<i>This bill died in the House Judiciary Committee.</i>
HB 2090	Task Force to Study Employees Receiving Public Assistance: This bill establishes a task force to study the relationship between large employers and their employees who are receiving public assistance to make recommendations regarding feasibility of imposing employer fees to offset shifting of expenses to public assistance	<i>This bill died in the House Business and Labor Committee.</i>
HB 2212	Requires Regular Pay Days: This bill authorizes the imposition of a civil penalty against employers that fail to pay wages owing to employees on a regular payday. Payment is considered made upon delivery or mailing of the payment. The bill does carve out an exception for circumstances beyond the control of the employer.	<i>This bill died in the House Business and Labor Committee.</i>
HB 2386	BOLI Cease and Desist Orders: This bill authorizes the Commissioner of Bureau of Labor and Industries to issue temporary cease and desist orders under certain circumstances, including alleged violations related to prevailing wage issues, farm labor contractors, wages, record keeping, minimum wage, employment conditions, and dealings with minors, and requiring an employer to refrain from the unlawful practice alleged.	<i>This bill was in the House Committee upon adjournment.</i>
HB 2387	BOLI Bond Rights: This bill authorizes the Commissioner of Bureau of Labor and Industries to compel a bond through administrative action from an employer, where the employer has failed to establish or maintain a regular payday as required by Oregon law and the employer has failed to provide the required bond within 10 days after demand from the bureau.	<i>This bill died in the House Business and Labor Committee.</i>

HB 2390	<p>Workplace Wellness Programs: This bill would create a subtraction from federal taxable income for up to \$300.00 in cash dividends paid by employer to employee for participation in workplace wellness program.</p>	<p><i>This bill died in the House Health Care Committee.</i></p>
HB 2535	<p>Required Leave for Firefighting Forces: This bill requires employers to provide unpaid leaves of absence to employees serving with firefighting forces during a declared fire emergency, and provides job protections for such employees. This bill applies to employers with one or more employees.</p>	<p><i>This bill died in the House Business and Labor Committee.</i></p>
HB 2542	<p>Expanded Unpaid Wage Definition: This bill expands the definition of “compensation” for purposes of determining unpaid wages to include “wages and all amounts payable for vacation leave and other personal business leave accrued by an employee under a policy implemented by the employer.”</p>	<p><i>This bill died in the House Business and Labor Committee.</i></p>
HB 2606	<p>OFLA Sibling Coverage: This bill expands coverage of the Oregon Family Leave Act to include siblings as a qualifying family member for whom an employee may take protected leave to care for or grieve under OFLA’s bereavement leave coverage.</p>	<p><i>This bill died in the House Business and Labor Committee.</i></p>
HB 2607	<p>OFLA Reduction in Hours for Eligibility: This bill reduces the number of average hours an employee must work on a weekly basis, from 25 hours to 24 hours, to qualify for OFLA.</p>	<p><i>This bill died in the House Business and Labor Committee.</i></p>

HB 2646	<p>Unpaid Parental Leave: This bill makes it an unlawful employment practice to fail to grant an employee, as the parent, guardian, or custodian of a child, unpaid parental leave to attend certain school-related activities, such as a conference required by a school administrator, or to deal with an emergency concerning the child. The bill also requires an employer to provide an employee up to eight hours of unpaid leave per school year to: attend conferences, attend school-related activities during school hours, volunteer at the school during regular school hours, and attend school sponsored events. Employees would be able to take this leave in increments as small as one hour. An employer may require written request for the leave at least 5 school days prior to the date leave is taken and documentation from the school related to the requested leave.</p>	<p><i>This bill died in the House Business and Labor Committee.</i></p>
HB 2685	<p>Expanded Protected Class—Familial Status: This bill adds “familial status” as a protected class under Oregon law, prohibiting discrimination in employment based on the familial status of employee. For purposes of this bill “familial status” means the state of being, or having the potential to become, a provider of care or support to a family member.</p>	<p><i>This bill died in the House Business and Labor Committee.</i></p>
HB 3097	<p>Ban the Box: This bill would make it an unlawful employment practice to misuse information about criminal charges and convictions of an applicant for employment. Background checks must only be done after a conditional job offer is made and employers can only consider convictions specifically related to the job and the employer is required to do so by law.</p>	<p><i>This bill died in the House Business and Labor Committee. But See, HB 3025, which is moving forward.</i></p>
HB 3137	<p>False Working Time: This bill would make it an unlawful employment practice for employers to require employees to create, file or sign documents containing false information related to hours worked or compensation received by employees. This bill also makes it an unlawful employment practice to retaliate against an employee whom refuses to sign such documentation.</p>	<p><i>This bill died in the House Business and Labor Committee.</i></p>
HB 3377	<p>Flexible Scheduling: See comments to SB 888.</p>	<p><i>This bill died in the House Committee on Business and Labor. But its companion bill, SB 888, is moving forward.</i></p>

