

# Employment Law Highlights

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## Claim Prevention

### Keeping Labor Costs under Control in a Down Economy

In today's economy, employers can easily overlook changes in employment laws and how they affect their business. Likewise, down times drive many employers to cut costs while sacrificing business functions which are not revenue-generating. As a result, departments like HR tend to face financial challenges, and functions like training, communication and audits fall to the side.

Neglecting to be proactive and managing employee relations issues improperly can significantly increase the cost of business in the long run. Abandoning key HR practices can result in higher costs, reduced employee satisfaction and increased claims. The safest way to avoid employee claims is to prevent them from ever occurring.

To prevent claims, employers should implement three fundamental practices:

1. Audit current policies, procedures, and practices to ensure that they are compliant with state and federal employment laws.
2. Communicate all policies, procedures and practices to employees.
3. Train managers and supervisors on the policies, procedures and practices so that they are aware of their implications and effects and can assist employees accordingly.

When an issue develops, it is important to have prepared for and anticipated such occurrences. Implementing the above practices while always staying informed of state and federal employment laws are crucial to preventing and defending employment claims.

## Military Leave Expanded

**Oregon Military Family Leave Act.** The OMFLA went effect in June 2009, and provides protected leave to the spouse or domestic partner of a member of the federal Armed Forces, the National Guard, or the federal military reserve forces who has been called to (or notified of an impending call or order to) active duty, or who is on leave from active duty during a period of military conflict.

**Family Medical Leave Act.** Last year, the scope of the federal FMLA was expanded to include two new categories of protected leave: Qualifying Exigency Leave and Caregiver Leave. On October 28, 2009, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2009. Effective immediately, this law expands the FMLA's leave provisions for military families.

Qualifying Exigency Leave was initially created to give families of National Guard and military reservists time to manage affairs when the service member was called to active duty. Now this leave is extended to families of active duty service members.

Caregiver Leave provides an employee up to 26 weeks of unpaid leave to care for a family member who is injured while serving on active military duty. Now this leave is extended to include veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.

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## Labor and Employment Laws Effective January 1, 2010

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New and revised Oregon labor and employment laws affect employers on January 1, 2010.

The following list highlights some of those changes

### **Employment discrimination related to whistle blowing.**

All employers are prohibited from discharging or otherwise penalizing an employee for reporting in good faith information that the employee believes is evidence of a violation of any state or federal law, rule or regulation. This new law is in addition to ORS 659A.230 which prohibits discrimination against an employee for initiating or aiding criminal or civil proceedings.

**Service Members and Veterans.** Employers are prohibited from discriminating against a person because of a person's service in a uniformed service.

**Religious or Political Meetings or Communications.** All employers are prohibited from taking adverse action against an employee because the employee refused to attend an employer-sponsored meeting or communication to discuss the employer's opinion about religious, political, or union matters. The bill creates exceptions for certain religious and political organizations, and for meetings that are strictly voluntary. All employers are required to post a notice about these rights.

**Garnishment of Employee Wages.** Employers may increase the processing fee to the employee for the garnishment of an employee's wages, from one dollar to two dollars per week.

**Child Labor.** Children under 16 years of age can work longer hours during the summer. The previous law prohibited children under 16 from working past 7:00 p.m. This bill changes that time to 9:00 p.m.

**Employee Victims of Domestic Violence, Sexual Assault or Stalking.** All employers are prohibited from refusing to hire an otherwise qualified individual, discharging, threatening to discharge, demoting, suspending or in any manner discriminating or retaliating against an individual with regard to promotion, compensation, or other terms, conditions or privileges of employment because the individual is a victim of domestic violence, sexual assault or stalking.

**Oregon Workplace Religious Freedom Act.** All employers are required to allow employees to use vacation or other available leave for the employee's religious observances or practices so long as reasonably accommodating the employee's use of the leave will not impose an undue hardship on the employer, and it prohibits an employer from imposing an occupational requirement that restricts the ability of the employee to wear religious clothing, take time off for a holy day, or to take time off for other religious practices or observances unless (1) an employer's reasonable accommodation would impose undue hardship, or (2) the activities would have more than a temporary or tangential impact on the employee's ability to perform the essential functions of the employee's job. Although employers are already required to reasonably accommodate religious practices and observances, this bill makes it more difficult to establish that accommodating a practice would constitute an undue hardship.

**Oregon Disability Law.** Applicable to employers with six or more employees, this law essentially adopts recent amendments made to the ADA making Oregon law more consistent with its federal counterpart. The law expands protections for individuals with disabilities by redefining the term disability; clarifying that protections extend to individuals who have a history of, or have been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities; and creates additional categories of major life activities.

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**DISCLAIMER** This summary provides general information and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you have specific legal questions, please contact Lisa Amato at Meyer & Wyse, LLP 503.228.8448 or [laa@meyerwyse.com](mailto:laa@meyerwyse.com).

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