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New Year, New Challenges for Oregon Employers

Oregon's 2019 biennial legislative session brought some significant changes to Oregon employment law and new action items for employers. Happy New Year!

Review Document Retention Policies

Pursuant to Oregon Senate Bill 726, the Workplace Fairness Act, the statute of limitations for discrimination claims in Oregon increased from one year to five years, effective January 1, 2020. The new law makes a number of other dramatic changes to Oregon employment discrimination laws. Those changes will be addressed in a later alert, but by October 1, 2020, employers will need to revise, or create, their discrimination and harassment policies and review and revise their confidentiality, nondisclosure, and termination agreements to comply with the new law. Oregon employers should review their document retention policies to ensure they retain relevant employment documents for at least five years. Many employers already use a minimum six-year retention period because the statute of limitations in Oregon for bringing a claim for breach of employment contract is six years.

Update Pregnancy Accommodation Policy and Training

Effective January 1, 2020, Oregon employers with six or more employees must provide reasonable accommodations to pregnant employees. They will now be entitled to the same types of accommodation and interactive process requirements required for a worker with a disability under state and federal law. Oregon House Bill 2441, the Employer Accommodation for Pregnancy Act, requires reasonable accommodation for any known limitations related to pregnancy and childbirth, or related medical conditions. The law suggests some potential accommodations, such as acquisition or modification of equipment, more frequent or longer breaks or rest periods, assistance with manual labor, and modification of work schedules. It also prohibits employers from imposing an accommodation or requiring pregnant employees to take leave where there is an alternative reasonable accommodation. Although the law has an exception for accommodations that create undue hardship, proving an undue hardship is often a very high standard.

Employers must post a written notice of the new law. All new employees should be provided written notice of the new pregnancy accommodation law. Further, any employee who informs the employer of pregnancy should be provided written notice of the law within 10 days. Lastly, by June 29, 2020, all current employees should have been provided written notice of the law.

Create a Process for Noncompetition Agreements in a Termination

Also effective January 1, 2020, employers may only enforce an Oregon noncompetition agreement if a copy of that agreement is provided to the employee after termination. If an employee does not receive a copy of the noncompetition agreement after termination, even though the employee was provided with a copy before termination, the noncompetition agreement will be unenforceable. Presumably, providing a copy of the signed noncompetition agreement at a termination meeting should suffice. However, the belt and suspenders approach may be better. To avoid the situation where a terminated employee leaves without receiving a copy of the agreement, employers may also want to mail a copy of the agreement to the ex-employee with proof of delivery within 30 days of termination.

Revise Milk Expression Policies

For most employers, this will not be a significant change if they are covered by federal law. However, Oregon has now revised its milk expression policy to match federal law. Previously, for employees covered only by Oregon law, a milk expression break needed to be provided only every four hours. Now employees must be allowed time to express milk whenever needed.

Participate in the Oregon Retirement Savings Program if Required

Oregon employers who do not offer retirement plans for their employees must make payroll deductions from their worker's wages into an Oregon state retirement savings program beginning January 1, 2020. Oregon employers who do not comply with these rules will face penalties.

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