BARRAN LIEBMAN LLP

ATTORNEYS

Employment | Labor | Benefits | Higher Education
www.barran.com | 503.228.0500

2021 Oregon Legislative Session: Impact on Employers

By Nicole Elgin & Blayne Soleymani-Pearson

The Oregon Legislative Assembly's current session is coming to an end with several bills creating notable changes for Oregon employers. These changes cover several aspects of business and employment, such as hiring practices, leave requirements, and discrimination, to name a few.

SB 169 - Noncompetition Agreements

Governor Brown already signed Senate Bill 169, requiring employers to modify noncompetition agreements for Oregon employees entered on or after January 1, 2022. Beginning in the new year, noncompetition agreements are void and unenforceable unless they follow these requirements:

- The employer must have a "protectable interest" with a revised definition of that term;
- The length of the noncompetition agreement can only be up to 12 months after termination;
- At the time of termination, the employee's gross salary and commission must be at least $100,533 (this amount adjusts annually with inflation);
- The employee is exempt from Oregon's minimum wage requirements as an executive, administrative, or professional employee under ORS 653.020;
- The agreement must be in writing;
- The agreement must be presented at least two weeks before the employee's start date or upon a bona fide advancement; AND
- Within 30 days of termination, the employer must provide the employee a signed, written copy of the agreement.

Even if an employee is not exempt from Oregon's minimum wage laws as an executive, administrative, or professional employee, and the employee's compensation does not meet the new salary requirements, employers may nonetheless enforce an otherwise valid noncompetition agreement. To do so, the employer must have a written agreement that it will pay the employee during the noncompetition period the greater of:

- at least 50% of the employee's annual gross base salary and commissions at the time of termination; or
- 50% of $100,533 (adjusted annually for inflation).

HB 2474 - Oregon Family Leave Act (OFLA)

Governor Brown also signed HB 2474, which expands OFLA eligibility during a public health emergency to cover all employees of a covered employer, with some exceptions. While this modifies the 180 day OFLA eligibility requirement during a public health emergency, employees will still not be eligible if they worked for the employer fewer than 30 days immediately before the date the leave would begin or worked fewer than 25 hours per week in the 30 days immediately before the leave

would begin. There are also new eligibility exceptions for employees that are rehired within 180 days of separation.

The changes also allow an employee to take OFLA to care for a child who "requires home care due to the closure of the child's school or child care provider as a result of a public health emergency." While employers may not require medical verification of the need for leave due to such a closure, the employer may require verification that states:

- the name of the child requiring home care;
- the name of the school or child care provider subject to closure;
- a statement from the employee that no other family member is willing and able to care for the child; and
- a statement that special circumstances exist that require the employee to provide home care for the child during the day if the child is older than 14 years of age.

SB 483 - Employee-Protected Activities and Workplace Safety

As of the writing of this article, SB 483 is headed to the Governor's desk for signature. Labor groups say that this bill makes it more difficult for employers to retaliate against employees who raise concerns or file safety complaints. The bill creates a rebuttable presumption that an employer engaged in unlawful discrimination if an employee or prospective employee is discharged, barred from employment, or is otherwise discriminated against within 60 days of that employee or prospective employee's protected activities. There are numerous protected activities under this law, including complaining of or opposing unsafe working conditions or filing an OSHA complaint.

This makes documentation of disciplinary action more critical than ever. To rebut the presumption, the employer must show by a preponderance of the evidence that the employer took no discriminatory action in retaliation for the employee's protected activities.

HB 2935 - Discrimination

The Governor signed Oregon's version of the CROWN Act into law. This Act amends the state definition of race-based discrimination to include physical characteristics historically associated with race including but not limited to natural hair, texture, types, and protective hairstyle. Protective hairstyle means hairstyle, hair color, or manner of wearing hair that includes, but is not limited to, braids, locs, and twists.

Employers need to review existing dress-code policies and employee handbooks for compliance. The law allows an employer to maintain an otherwise valid dress code policy so long as the employer provides reasonable accommodations on a case-by-case basis and the dress code or policy does not have a disproportionate adverse impact on members of a protected class.

For questions on compliance with these rules or other labor and employment matters, contact Barran Liebman attorney Nicole Elgin at nelgin@barran.com.