



# Oregon Employers Breathe Sigh of Relief: 2011 Legislative Session Concludes On Positive Note

Insights

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Employers in Oregon – you have cause to celebrate, or at least breathe a sigh of relief. The Oregon state legislature recently wrapped up its 2011 session without passing any major pieces of legislation that could be considered harmful to employers. Although there are a few new statutes that will soon go into effect that may slightly alter the way you do business, the impact of these new laws are minimal. In fact, a few new laws were passed that are actually beneficial to employers.

Heading into this session, many employers felt as if they were at the mercy of the legislature. The last few sessions had produced an onslaught of new and confusing statutes that resulted in additional burdens on employers trying to do the right thing. Coupled with the lingering effects of the economic meltdown, employers were just hoping to escape the 2011 session unharmed and without further problems. The message from employer advocacy groups to lawmakers was simple: "Please just leave us alone." The legislature – fairly evenly-split down party lines – heard this message and largely ignored employers during this session.

But it was not without some trying times. In particular, the Oregon Bureau of Labor and Industries proposed a number of new statutes which would have aided disgruntled workers and provided them new pathways to the courthouse. These proposals would have required new kinds of mandatory employee leave, paid family leave, new paycheck-discrimination laws, liens on employer property for alleged wage claims, and other regulations. Luckily, the majority of these proposals did not find traction in the business-friendly legislature. While it would not be surprising to see the agency come back next year with another round of bad-for-business bills, the business community can feel happy about where they stand now.

## **Helpful New Laws**

There were two new laws that were passed in this year's legislative session that should provide employers some welcome relief:

### ***Written Demand for Non-Payment of Wages***

This new law will require those employees (and their attorneys) who believe they have been shorted wages to specifically indicate how much money they believe they are owed when making a written demand for non-payment. Currently, employers often receive vague demands for some unknown

amount of money and are forced to play a guessing game when trying to make good on a threatened wage claim.

Due to the nature of Oregon's wage and hour laws, failing to fully compensate an employee in a timely manner can lead to the imposition of a very large penalty, exponentially higher than the actual money owed to the employee. Starting on January 1, 2012, these wage demands must include an actual figure owed, which will allow employers a clear and direct path to make good on their obligations and avoid a large penalty and costly litigation.

### ***Advance Notice of Arbitration Agreements***

Another piece of legislation designed to tighten up an area of concern for employers, this bill will reduce the advance notice requirement for mandatory arbitration agreements from two weeks to 72 hours. Currently, if you want your employees to enter into a mandatory arbitration agreement (which would preclude an employee from suing you in court, and instead force them into a much friendlier arbitration forum for resolving employment disputes) you must provide a written job offer notifying employees of the existence of the arbitration agreement two full weeks before they start work. This proved almost unworkable in practice, especially with the fast-paced nature of today's business environment and the mobile nature of the workforce. The legislature heard the gripes from the business community and reduced the advance notice period to 72 hours, starting January 1, 2012.

### ***New Laws Benefitting Workers***

There were only four new laws of any consequence passed that could be seen as benefitting employees, and their impact should be minor.

### ***Jury Duty Protections***

Two new laws will add further protections to those employees who serve on jury duty. The first will prohibit employers from mandating use of vacation time while an employee serves on jury duty, and the second prohibits employers from rescinding health insurance benefits for employees on jury duty. Neither of these practices are common anyway, and it is most probable that the second law described is preempted by federal ERISA law. These laws are effective on January 1, 2012.

### ***Leave Laws For Harassment Victims***

This law extends the existing statute, which already grants leave and accommodation rights for victims of criminal stalking, sexual assault, and domestic violence. Starting immediately upon the Governor signing this bill (expected shortly), victims of criminal harassment will also get the same protection.

### ***Penalty For Bounced Paychecks***

This new law, effective January 1, 2012, will allow the Bureau of Labor and Industries to seek penalties from those employers who issue dishonored paychecks to employees, with the penalty to be paid to the affected employee. The penalty will either be \$100 or triple the amount for which the check was drawn, whichever is greater, but may not exceed by more than \$500 the amount for which the check was drawn.

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## **What's On Deck For 2012?**

Now that the Oregon legislature will be regularly meeting on an annual basis, employers will face another challenge sooner than usual as the legislature will convene less than six months from now. But the even-numbered year's sessions are abbreviated (they cannot be longer than 35 days), and might be too short for lawmakers to cause too much trouble. There are already rumblings about a "workplace bullying" bill that might be floated out to the legislature – which has the potential to cause havoc – but odds are that this current group of legislators will not let such a bill go far.

Fisher Phillips will monitor the Oregon legislature and will continue to provide updates throughout the year. For more information about these, or any Oregon laws, contact any lawyer in the firm's Portland, Oregon office at 503-242-4262.

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