

Your Oregon Legislature in Action

Employers Face Statewide Sick Leave, “Ban the Box” and More

BY PAUL M. OSTROFF

An onslaught of bills affecting employers were introduced during the 2015 legislative session. Much of the Legislature’s time was spent crafting a statewide sick leave bill with the result that many of the proposed bills (covering minimum wage, employee scheduling, equal pay and many other subjects) were not acted upon. This article summarizes the major bills that were enacted that will have an impact on employers, and what employers should be doing to prepare for them.

STATEWIDE SICK LEAVE

Modeled after the Portland Sick Leave ordinance, the new statewide sick leave mandate goes into effect January 1, 2016, and requires all employers with at least 10 employees to provide up to 40 hours of paid sick leave per year. Under Portland’s city ordinance, employers of at least six employees must provide paid leave. Employers with a maximum of nine employees (five in Portland) will be required to provide up to 40 hours of unpaid leave.

Accrual. Employees may accrue sick leave at the minimum rate of one hour for every 30 hours worked. Sick leave accrual begins when employment starts, but employees hired on or after January 1, 2016, may be required to wait up to 90 days before using accrued sick leave. Employees hired before that date can use accrued sick leave immediately. A “paid time off” (PTO) plan that is “substantially equivalent to or more generous than the minimum requirements,” will be deemed in compliance.

Use of Sick Leave. Sick time may be used in one-hour increments for an employee’s mental or physical illness or that of a family member. Sick leave may also be used for obtaining preventative care and diagnosis; absences covered by the Oregon Family Leave Act (OFLA); due to workplace or school closures; or for reasons related to domestic violence, sexual assault or stalking that affect the employee or the employee’s family. In some circumstances, leave may be used in a minimum of four-hour increments.

Carryover and Rehiring. If accrued sick time is not used in the calendar year, up to 40 hours of unused time may be carried over to the following year. If an employee departs and returns in six months, previously accrued leave must be restored.

Verification. Employers may require

verification from a health care provider for absences of more than three consecutive days or where patterns of sick leave use occur on or adjacent to weekends, holidays, vacation days or paydays. If the cost of obtaining verification is not covered by insurance, the employer must bear the cost.

Notice and Documentation. When leave is not foreseeable, the employee must give notice “as soon as practicable.” Employers will be required to post a notice of employee rights and must provide quarterly written notification to employees of accrued and used leave time.

Remedies. Employers who fail to comply with the law are subject to civil penalties, and employees may file lawsuits in Circuit Court.

WHAT EMPLOYERS SHOULD DO

- Revise policies to eliminate “use it or lose it” provisions;
- Adopt policies concerning communication of absences; and
- Have sick leave and PTO policies reviewed by experienced legal counsel.

“BAN THE BOX”

HB 3025 makes it unlawful for an employer to consider a job applicant’s history of conviction on a job application or prior to an initial interview. If an interview is not conducted, an employer may not inquire about criminal convictions prior to making a conditional offer of employment. An exception is recognized if federal, state or local law requires consideration of an applicant’s criminal history.

WHAT EMPLOYERS SHOULD DO

- Remove references to criminal background checks from applications and consider modifying ads and listings;
- Instruct managers not to inquire about criminal convictions until late in the initial interview or not at all;
- Condition job offers on the applicant’s consent to and passing of a criminal background check;
- Adopt guidelines for determining when or if the results of a criminal background check may disqualify an applicant from employment; and
- Identify positions for which there is a legal requirement that an individual cannot have a criminal record.

LEGAL PROTECTION FOR EMPLOYEES’ DISCUSSIONS OF WAGES

HB 2007 makes it unlawful for an employer to discriminate, discipline or retaliate against an employee because he/she inquired about or disclosed information concerning his/her wages or the wages of another employee, or because the employee made a complaint based on the disclosure of wage information.

OTHER LAWS ENACTED:

- Prohibit an employer from requiring an employee to maintain a social media account.
- Require continuation of health insurance for employees on OFLA leave on the same terms as when the employee is not on leave.
- Reduce the maximum period for a non-compete to 18 months for agreements signed after 2015.
- Mandate participation in a new state retirement savings program for employers that do not offer a qualified retirement plan. ■



Paul M. Ostroff is a shareholder at Lane Powell, where he advises and represents employers in all phases of labor and employment law. He can be reached at 503.778.2122 or ostroffp@lanepowell.com.