

ARTICLES

## 2022 Oregon and Washington Employment Law Updates

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### 2022 Oregon Employment Updates

**Topic: Oregon Family Leave Act (“OFLA”) Amendments (HB 2474)**

**New Law:** All employees of a covered employer are eligible to take protected leave during a statewide public health emergency, except: (1) those that have worked for the employer fewer than 30 days before the date the leave would commence; or (2) those that have worked for an average of 25 hours per week in the 30 days prior to the date the leave would commence.

Prior iteration of the law required 180 days of employment prior to eligibility. Note that on December 21, 2021, Oregon Governor Kate Brown issued Executive Order No. 21-36, extending Oregon’s state of public health emergency until June 30, 2022, so this new law is currently in effect under this Executive Order.

**New Law:** Time that an employee has worked for a covered employer prior to a break in service or temporary cessation of scheduled work hours must be restored if the employee is re-employed within 180 days.

**New Law:** An employee may take OFLA leave to care for a child who requires home care due to the closure of the child’s school or childcare provider as a result of a public health emergency.

**Recommended Action:** Update or issue addendum to employee handbook.

**Topic: Employment Eligibility Based on Driver’s License (SB 569)**

**New Law:** Prohibits employers from requiring a valid driver’s license as a condition of employment unless the ability to legally drive is an essential function of the job or is related to a legitimate business purpose.



**Recommended Action:** Update hiring practices and application materials; confirm that Human Resources, Supervisors, and others involved in hiring understand change in law.

**Topic: Oregon CROWN Act Amends Anti-Discrimination Laws (HB 2935)**

**New Law:** Adds two new definitions to ORS 659A.001 (anti-discrimination statute) for “protective hairstyle” and “Race.”

Protective hairstyle means “a hairstyle, hair color, or manner of wearing hair that includes, but is not limited to, braids—regardless of whether the braids or created with extensions or styled adornments — locs, and twists.”

Race is defined to include “physical characteristics that are historically associated with race including, but not limited to, natural hair, hair texture, hair type, and protective hairstyles.”

Employers may enforce valid dress codes as long as the dress code does not have a disproportionate impact on members of a protected class.

**Recommended Action:** Review existing dress code policy and update if necessary.

**Topic: More Restrictions on Noncompetition Agreements (SB 169)**

**New Law:** Limits duration of enforceable Noncompetition Agreements to 12 months post-employment for Agreements entered into after January 1, 2022 (enforceable up to 18 months, or more, under prior law, depending on date of execution); and increases salary minimum to \$100,533 (measured at the time of separation). Additionally, under the new law, Noncompetition Agreements that do not satisfy all of the statutory requirements of ORS 653.295 are “void and unenforceable” whereas under the prior law Noncompetition Agreements that did not meet the statutory requirements were “voidable,” requiring some affirmative action by the employee to void the agreement.

The new law retains the “garden leave” provision of the statute that allows employers to enforce a noncompetition agreement, even where it did not meet the exempt, salaried employee requirement or the salary minimum requirement of ORS 653.295, by paying the employee the greater of 50% of their annual gross base salary and commissions at the time of termination or 50% of the salary minimum (currently \$100,533). To exercise the “garden leave” option, the employer must confirm payment of the “garden leave” enforcement in writing.

**Recommended Action:** Update new Noncompetition Agreements executed after January 1, 2022, and consider strengthening non-



solicitation, non-servicing, and non-disclosure obligations which are not subject to the statutory requirements of ORS 653.295.

**Topic: Rebuttable Presumption of Violation if Employee is Terminated Within 60 Days of Protected Activity (SB 483)**

**New Law:** In any action before the Oregon Bureau of Labor and Industries (“BOLI”) regarding an unlawful employment practice, there is now a rebuttable presumption that a violation occurred if an employer terminates an employee within 60 days after the employee engaged in protected activity.

This presumption may be overcome by a preponderance of the evidence showing otherwise and if the employee is terminated outside the 60 days, there is no presumption and the employee has the burden of proof to demonstrate, by a preponderance of the evidence, that a violation occurred.

**Recommended Action:** If an employee has engaged in protected activity and is being considered for termination, the employer should confirm that termination is warranted under the existing policies, and that these policies have been routinely and uniformly enforced. This issue of “temporal proximity” is often a key factor in employment litigation, so this practice is a good rule of thumb in all states.

**Topic:** Extending Time to File a Health and Safety BOLI Complaint from 90 days to One Year (HB2420)

**Topic:** Childcare Accommodation in Predictive Scheduling Laws Allows Employee to Identify Limitations or Changes in Their Work Schedule Based on Childcare Needs (SB 716)

**Topic:** Exclusion from Oregon Equal Pay Act or Hiring and Retention Bonuses Expires on March 1, 2022

No commentary for these last three topics as titles are self-descriptive.

**2022 Washington Employment Law Updates**

**Topic: Wage Claim Enforcement Allows for Liens on Employer’s Real or Personal Property (HB 1369)**

**New Law:** Allows all employees, except highly compensated employees as defined by statute, to place liens on their employer’s real or personal property to satisfy a wage claim.

**Recommended Action:** Update wage and hour policies to ensure compliance.

**Topic: Workplace Safety Citation Must Be Posted for Seven Working Days (WAC 296-900-13015)**





**New Law:** Extends the time period for posting a work place safety citation to seven working days and permits an employer to post a citation electronically in addition to workplace posting.

**Recommended Action:** Update posting practice; consider other forms of electronic dissemination in addition to workplace posting.

**Topic: Salary Threshold for Enforcing Noncompetition Agreement Increased from \$101,390 to \$107,301.04**

**Recommended Action:** Update new Noncompetition Agreements executed after January 1, 2022, and consider strengthening non-solicitation, non-servicing, and non-disclosure obligations.

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