

2009 LEGISLATION ALERTS

LABOR / EMPLOYMENT LAW

ACCOMMODATION / DISCRIMINATION

WHISTLEBLOWER DISCRIMINATION ORS 659A.885

2009 OR LAWS CH 524 (HB 3162)

HB 3162 amends ORS 659A.885 by making it an unlawful employment practice for an employer to discharge, demote, suspend, or in any manner discriminate or retaliate against an employee who has, in good faith, reported information that the employee believes is evidence of a violation of a state or federal law, rule, or regulation.

Effective date: January 1, 2010

The amendments apply to conduct occurring on or after January 1, 2010.

MILITARY SERVICE DISCRIMINATION ORS 659A.885

2009 OR LAWS CH 378 (HB 3256)

HB 3256 establishes an unlawful employment practice of discriminating against a service member if an employer discriminates against that service member for fulfilling his or her military service obligation, prohibiting an employer from denying a service member initial employment, reemployment upon return from duty, job retention, promotion, or any other job term or condition because of that person's service in any uniformed service, or from discharging, disciplining, or retaliating against such individuals.

Effective date: January 1, 2010

The amendments apply to conduct occurring on or after January 1, 2010.

FILING CHARGES OF DISCRIMINATION ORS 659A.820

2009 OR LAWS CH 108 (SB 56)

SB 56 requires the complainant to sign a charge of discrimination filed with the Bureau of Labor and Industries (BOLI). Current law does not require a signature but instead states that the complainant "may" sign the charge; it also permitted an attorney to sign on the complainant's behalf. This amendment mandates a signature from a complainant and a complainant only.

Effective date: January 1, 2010

The amendments apply to complaints filed on or after January 1, 2010.

WORKPLACE COMMUNICATIONS 2009 OR LAWS CH 658 (SB 519)

SB 519 prohibits employers from taking any adverse action against an employee who declines to attend or participate in a meeting or communication with the employer if the primary purpose of the meeting is to communicate the employer's opinion about religious or political matters. It is intended to be broad enough to include meetings or communications about labor unions. The law also bars employers from threatening adverse action against an employee as a means to require attendance or participation in such meeting or communication. Employers are similarly prohibited from retaliating against

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Issue 109

CONTENTS

Accommodation /
Discrimination
Page 1

Leave / Other Benefits
Page 2

Wage / Hour
Page 3

DISCLAIMER

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an employee who makes a good faith report of a violation or suspected violation of this new law. The law further requires that all employers subject to this section must post a notice of employee rights under this section in a place reserved for employment-related notices commonly frequented by employees.

Effective date: January 1, 2010

The law applies to acts committed on or after January 1, 2010.

RELIGIOUS ACCOMMODATION
ORS 659A.342.650
2009 OR LAWS CH 744 (SB 786)

SB 786 amends ORS Chapter 659A by requiring employers to reasonably accommodate religious practices of employees. Types of accommodation include using vacation or other available leave to engage in religious observances or practices, allowing the employee to wear religious clothing, and taking time off for a holy day or other religious observance or practice. Significantly, Oregon law will now create a more stringent burden for an employer seeking to avoid accommodating an employee because of an “undue hardship,” defining that term as one involving “significant difficulty or expense,” compared to Title VII’s requirement, which only requires an employer to demonstrate something more than a de minimis cost.

Effective date: January 1, 2010

The amendments apply only to conduct that occurs on or after January 1, 2010.

DISABILITY DISCRIMINATION
ORS 659A.100 ET SEQ.
2009 OR LAWS CH 508 (SB 874)

SB 874 amends ORS Chapter 659A by conforming Oregon’s disability discrimination statute (which applies to those with six or more employees) to the more stringent federal ADA Amendments Act of 2008 (ADAAA), which went into effect on January 1, 2009. It instructs courts to adopt a broad standard when determining whether an individual is considered disabled, requires employers to ignore mitigating measures (except for ordinary eyeglasses or contact lenses) when determining whether the individual is disabled, expands the list of major life activities, and lowers the standard for determining whether an individual is “regarded as” disabled.

Effective date: January 1, 2010

The amendments apply to conduct occurring on or after January 1, 2010.

DOMESTIC VIOLENCE/STALKING
ORS 659A.885
2009 OR LAWS CH 478 (SB 928)

SB 928 requires employers to make reasonable safety accommodations for victims of domestic violence, sexual assault, and stalking. These may include a transfer, reassignment, modified schedule, unpaid leave, changed work telephone number, changed work station, installed lock, implemented safety procedure, or any other adjustment in response to an actual or threatened act of violence or stalking. Employers are not required to accommodate an employee if the proposed accommodation would impose an undue hardship on the business.

Effective date: January 1, 2010

The amendments apply to conduct occurring on or after January 1, 2010.

LEAVE / OTHER BENEFITS
CONTINUATION OF HEALTH BENEFITS
ORS 743.610
2009 OR LAWS CH 73 (HB 2433)

The federal economic stimulus package, the American Recovery and Reinvestment Act of 2009 (ARRA), provides for the payment of up to 65 percent of health insurance premiums for workers who lose their jobs.

When workers lose their jobs, they have the right to stay on their employer’s health plan. For employers with 20 or more employees, this right is provided by the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). For smaller employers, Oregon’s state continuation law, ORS 743.610, provides similar rights. In both cases, the former employees normally must pay the full cost of the insurance.

The federal subsidy is available to former employees for nine months after they lose their job.

Effective date: April 28, 2009

Section 2 of the Act is repealed on January 2, 2012. The amendments to ORS 743.610 by section 4 of this Act become operative on January 2, 2012.

SPOUSAL MILITARY LEAVE
2009 OR LAWS CH 559 (HB 2744)

HB 2744 requires employers otherwise subject to the Oregon Family Leave Act (OFLA) to provide up to 14 days unpaid leave to any employee who is the spouse of a member of the armed forces, the National Guard, or military reserve, during times of deployment or redeployment to active duty. The only employees eligible for this leave are those who are employed for an average of at least 20 hours per week. This leave must be deducted from an employee's OFLA leave bank (usually 12 weeks). Employees who take leave under this statute are entitled to continue benefits during a leave and to be restored to their job following a return from leave in the same manner required following any other OFLA-protected absence.

Effective date: June 25, 2009

The amendments apply to acts committed on or after June 25, 2009.

limitations by allowing the obligor or obligee to recover for any amounts improperly withheld and any damages as a result of a withholding violation. Such damages would include those alleged in *Arvidson*, like having to pay late fees as a result of late support payments.

Effective date: January 1, 2010

The amendments apply to all orders to withhold, whether served before, on or after January 1, 2010, except for any amount that was withheld or paid under an order to withhold before January 1, 2010.

*The Professional Liability Fund sincerely thanks
Richard R. Meneghello for assistance with this section of
the 2009 Legislation Alerts.*

WAGE / HOUR

INCREASED FEES FOR GARNISHING WAGES
ORS 18.736, 18.838
2009 OR LAWS CH 529 (HB 3474)

Currently, state law provides that an employer required to garnish wages is entitled to a \$1.00 processing fee for each week that wages are garnished. HB 3474 increases that processing fee to \$2.00 per week, which amount is withheld from the wages of the debtor and paid to the garnishee. This increased fee is solely intended to help small business owners who have to bear the administrative burden of processing an employee's paycheck and garnished wages.

Effective date: January 1, 2010

The amendments apply only to writs of garnishment issued on or after January 1, 2010.

ORDERS TO WITHHOLD
ORS 25.424
2009 OR LAWS CH 445 (SB 373)

SB 373 creates a private right of action, for both the obligor and obligee, against the withholding employer for failure to pay the DOJ (Department of Justice) as required by the withholding order. This bill supersedes *Arvidson v. Kurahashi*, 217 Or App 74, 81 (2007), which held that ORS 25.424 only provided a cause of action against a withholding employer for overwithholding, not for failure to pay the DOJ on time. SB 373 also removes damages