



e-alert

EFFECTIVE OCT. 1, 2020, OREGON WORKPLACE FAIRNESS ACT REQUIRES EMPLOYERS TO IMPLEMENT SIGNIFICANT CHANGES

The second phase of the 2019 Oregon Workplace Fairness Act (Act) goes into effect October 1, 2020, requiring employers to make significant changes in policies and processes related to discrimination and harassment claims, and the contents of settlement agreements concerning such complaints.

Required Policy Changes. The new law requires employers to modify existing policies concerning harassment and discrimination (or implement a new policy if none exists) as follows:

1. Provide a specific process for an employee to report prohibited conduct;
2. Identify an individual and an alternate individual designated to receive reports;
3. Include information regarding the applicable statute of limitations for an employee to file a claim under the particular anti-discrimination, harassment and retaliation statutes identified by the Act (i.e., ORS 659A.030, 659A.082 and 659A.112);
4. Include a statement that the employer may not require or coerce an employee to enter into a non-disclosure or non-disparagement agreement as part of the resolution of a harassment, discrimination or retaliation claim;
5. Include an explanation that an employee claiming to have been subject to prohibited conduct may *voluntarily* request to enter into an agreement resolving the claim that contains (a) non-disclosure, non-disparagement and/or no rehire provisions, and (b) a seven-day period within which the employee can revoke her/his decision to enter in the agreement; and
6. Include a statement advising employees and the company to document any incidents of alleged prohibited conduct.

Additionally, the Act mandates that (a) the policy be made available to all employees within the workplace; (b) a copy of the policy be provided to each employee at the time of hire; and (c) any individual within the company who is designated to receive complaints must provide a copy of

the policy to the employee at the time she/he/they discloses information regarding alleged prohibited conduct.

A sample [policy](#) incorporating these new requirements is available from the Oregon Bureau of Labor and Industries (BOLI).

Resolution of Harassment/Discrimination/Retaliation Complaints. Employers are reminded that Oregon Revised Statute (ORS) 659A.030 prohibits discrimination in employment on the basis of sex (gender), race, color, religion, sexual orientation, age, national origin, marital status, an expunged juvenile record, and retaliation for having made a complaint regarding an unfair employment practice. ORS 659A.082 prohibits sexual assault and ORS 659A.112 prohibits discrimination on the basis of a mental or physical disability.

Where an employee alleges she/he/they were subject to unlawful discrimination, harassment or retaliation, the Act prohibits the employer from entering into an agreement resolving such a claim if the agreement has any provision that has the purpose or effective of preventing the employee (or prospective employee) from disclosing or discussion the prohibited conduct, such as non-disclosure (confidentiality), non-disparagement, and/or no rehire provisions. The only exception is where the employee who alleged the prohibited conduct *voluntarily requests* the inclusion of a non-disclosure (confidentiality), non-disparagement and/or no rehire provision, and where the agreement gives the employee seven days to change her/his/their mind (revoke) the agreement.

Where an employer makes a good faith determination that an employee engaged in the prohibited conduct, the employer can enter into a separation or resolution agreement with the employee and can require inclusion of clauses like non-disclosure (confidentiality), non-disparagement and/or no rehire without the employee's consent and without a seven-day revocation period.

Voiding Severance Agreements. The Act also allows employers to void provisions in existing employment or severance agreements with managers and supervisors that would have provided for payment of severance to the manager or supervisor where the employer determines that the manager/supervisor has engaged in prohibited conduct, and that such conduct was a substantial contributing factor in causing the manager/supervisor to be separated from employment.

Expanded Statute of Limitations. Employers also are reminded that the first portion of the Act, which expanded the applicable statute of limitations for civil claims relating to unlawful harassment, discrimination and retaliation to five (5) years from one year, has been in effect since Oct. 1, 2019. This expanded statute of limitations applies to unlawful conduct alleged to have occurred on or after September 29, 2019. As part of the second phase of the Act, the applicable statute of limitations for alleged violations of the law related to the improper use of non-disclosure (confidentiality), non-disparagement and/or no rehire clauses also has increased to five (5) years.

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