

Employment Law Summary

Fair Employment Laws – Overview



Because You're Different

Several [federal laws](#) provide workplace discrimination protections. In addition, Oregon has laws that provide workplace discrimination protections for employees and applicants in the state. This Employment Law Summary provides a high-level overview of these state laws, which are enforced by the [Oregon Bureau of Labor and Industries \(BOLI\)](#).

DISCRIMINATION BASED ON PROTECTED TRAITS

Oregon law generally prohibits all employers in the state from treating individuals, including apprentices, differently in employment based on certain characteristics. Commonly known as protected traits or classes, these characteristics include:

- Race (including physical characteristics that are historically associated with race, such as natural hair, hair texture, hair type and protective hairstyles);
- Color;
- Religion;
- Sex (including pregnancy, childbirth and related medical conditions or occurrences);
- Sexual orientation;
- Gender identity;
- National origin;
- Marital status;
- Age (18 and older); and
- Juvenile record that has been expunged.

PROHIBITED ACTIONS

Under the law, it is unlawful for an employer to take any of the following actions against an applicant, employee or apprentice because of their protected trait (or because of the protected trait of any other person with whom the individual associates):

- Refuse to hire or employ the individual;
- Bar or discharge the individual from employment; or
- Discriminate against the individual in compensation or in terms, conditions or privileges of employment.

In addition, the law prohibits employers from:

- Including any limitation, specification or discrimination based on a protected trait in any job advertisement, statement or publication;
- Asking about or expressing any limitation, specification or discrimination as to an individual's protected trait on a job application or in connection with prospective employment;
- Retaliating against an individual because they opposed any unlawful practice, filed a complaint, testified or assisted in any proceeding under the law, or have attempted to do so; and

- Aiding, abetting, inciting, compelling or coercing others to engage in prohibited practices.

PERMITTED PRACTICES

Oregon's law against discrimination does not prohibit employers from:

- Requiring employees to retire at a particular age, if allowed under federal law;
- Providing child care services to employees who have custody or legal guardianship of a minor child or act in loco parentis to the child;
- Enforcing an otherwise valid dress code or policy, as long as it provides for reasonable accommodation of an individual's health and safety needs on a case-by-case basis and the dress code or policy does not have a disproportionate adverse impact on members of a protected class to a greater extent than the policy impacts persons generally; or
- Selecting an apprentice based on the ability to complete the required apprenticeship training before attaining the age of 70 years.

RELIGIOUS EXCEPTIONS

Bona fide churches and other religious institutions (such as religious schools, hospitals and church camps) may prefer an employee or applicant of one religious sect or persuasion over another if:

- The religious sect or persuasion to which the individual belongs is the same as that of the church or institution;
- The preference will best serve the church or institution's purposes (in the church or institution's own opinion); and
- The employment involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

These religious entities may also take any employment action based on a bona fide religious belief about sexual orientation or gender identity for certain employment positions. These include positions that:

- Directly relate to the operation of a church or other place of worship (such as clergy, religious instructors and support staff);
- Are within certain nonprofit religious entities, including schools, camps, day care centers, thrift stores, bookstores, radio stations and shelters; or
- Involve religious activities, as long as the employment involved is closely connected with or related to the primary purposes of the entity and is not connected with a commercial or business activity that has no necessary relationship to the entity.

DISCRIMINATION BASED ON UNIFORMED SERVICE

Oregon law prohibits all employers from discriminating against an individual because they are a member of, apply to be a member of, perform, have performed, apply to perform or have an obligation to perform in a uniformed service. This includes the Armed Forces of the United States, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the United States Public Health Service and any other category of persons designated by the president of the United States in time of war or national emergency.

Actions that are prohibited when taken based on uniformed service include:

- Denying initial employment, reemployment following leave for military service, retention in employment, promotion, or any other term, condition or privilege of employment; and
- Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights under the law.

EXCEPTIONS FOR BONA FIDE OCCUPATIONAL QUALIFICATIONS

Certain exceptions allow employers to factor in protected traits when they are bona fide occupational qualifications (BFOQs) or requirements for a position. For example, an employer may factor in an individual's age if it is subject to regulations prohibiting employers from hiring a bartender who is under 21. Another example is where an employer acts based on a bona fide occupational requirement reasonably necessary to the normal operation of its business, and the actions cannot be avoided by making a reasonable accommodation for the individual's uniformed service. An employer may not claim a BFOQ for customer, co-worker or employer preference, nor for stereotypes or assumed characteristics of a protected class. To prove a BFOQ, an employer must show that the BFOQ is reasonably necessary to the normal operation of the business. If so, the employer must then show:

- A factual basis exists for believing that all or substantially all individuals in the protected class adversely affected by the BFOQ would be unable to perform the tasks required in the job safely and efficiently; or
- It is impossible or highly impractical to screen applicants on an individual basis.

WORKPLACE HARASSMENT

Harassment based on an individual's protected trait is a type of intentional unlawful discrimination. Conduct of a verbal or physical nature relating to protected traits other than sex may be found unlawful when:

- The conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;
- Submission to the conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

SEXUAL HARASSMENT

Sexual harassment is a type of unlawful discrimination based on sex and includes the following types of conduct:

- Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when it is directed toward an individual because of their sex and:
 - Submission to the conduct is made either explicitly or implicitly a term or condition of employment; or
 - Submission to or rejection of the conduct is used as the basis for employment decisions affecting that individual.
- Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

The standard for determining whether harassment based on an individual's sex is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

REASONABLE ACCOMMODATIONS FOR PREGNANCY AND RELATED CONDITIONS

All employers in Oregon must treat people affected by pregnancy, childbirth or related medical conditions or occurrences the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work by reason of physical condition. In addition, the state requires employers with six or more employees to make reasonable accommodations to an individual's known limitations relating to pregnancy, childbirth or a related medical condition, including lactation. Examples of reasonable accommodation for these conditions include:

- Acquisition or modification of equipment or devices;
- More frequent or longer break periods or periodic rest;
- Assistance with manual labor; and
- Modification of work schedules or job assignments.

This law also makes it unlawful for an employer to:

- Deny employment opportunity based on the need to provide accommodations;
- Retaliate against an employee for requesting, asking about or using reasonable accommodations; and

- Force an employee to take leave time or accept accommodation if they have no known limitation due to pregnancy or if it is unnecessary to perform the essential duties of the job.

Employers must post signs in a conspicuous and accessible location informing employees of these protections and reasonable accommodation rights. The BOLI provides a [template](#) for this notice, which employers may adapt. In addition to posting, employers must provide a written copy of the notice:

- To each new employee at the time of hire; and
- To any employee who informs their employer of their pregnancy within 10 days.

DISABILITY DISCRIMINATION

Oregon's Unlawful Discrimination Against Persons with Disabilities Act (Disability Discrimination Law) prohibits all employers with six or more employees (other than the National Guard) from discriminating against applicants and employees based on disability. It also requires employers to provide reasonable accommodation for qualified individuals with disabilities unless it would impose undue hardship.

PROTECTED INDIVIDUALS

In general, an individual has a disability if they:

- Have a physical or mental impairment that substantially limits one or more major life activities;
- Have a record of, or have been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities; or
- Are regarded as having a physical or mental impairment that substantially limits one or more major life activities.

Not every impairment will constitute a disability. In general, the determination as to whether an individual has a substantially limiting impairment is made by comparing their abilities to those of most people in the general population and without regard to the ameliorative effects of any mitigating measures (such as medication, medical supplies, equipment or appliances).

Qualified Individual With a Disability

Some of the Disability Discrimination Law's protections only apply if an employee or applicant is a "qualified individual with a disability." To meet the definition of this term, an individual must:

- Be qualified for the position in question; and
- Be able to perform, with or without reasonable accommodation, the essential functions of the position.

To determine the essential functions of a position, due consideration is given to the employer's determination as to the essential functions of the position. If an employer has prepared a written description before advertising or interviewing applicants for a job, the position description is considered evidence of the essential functions of the job.

Exceptions

While the Disability Discrimination Law is generally construed in favor of protecting individuals with impairments, it specifies that the following conditions are not physical or mental impairments for purposes of determining whether an individual has a disability:

- Pedophilia, exhibitionism, voyeurism or other sexual behavior disorders;
- Compulsive gambling, kleptomania or pyromania; or
- Psychoactive substance use disorders resulting from current illegal use of drugs.

In addition, an individual is not regarded as having a physical or mental impairment if they have an impairment that is minor and has an actual or expected duration of six months or less. The law's protections also do not apply to individuals who are currently engaging in the illegal use of drugs (including state-legalized marijuana) if the employer takes action against the individual on that basis. However, the protections may apply to individuals who:

- Are erroneously regarded as engaging in the illegal use of drugs;
- Have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and are no longer engaging in the illegal use of drugs; or
- Are participating in a supervised rehabilitation program and are no longer engaging in the illegal use of drugs.

Employers may have drug testing and other policies and procedures designed to ensure that an individual described in the second and third bullet points above is no longer engaging in the illegal use of drugs.

PROHIBITED ACTIONS

Under the Disability Discrimination Law, it is unlawful for an employer to take any of the following actions against an individual because of their disability:

- Refuse to hire, employ or promote the individual;
- Bar or discharge the individual from employment;
- Discriminate against the individual in compensation or in terms, conditions or privileges of employment;
- Limit, segregate or classify the individual in a way that adversely affects the individual's opportunities or status;
- Participate in a contractual or other arrangement or relationship (such as with an employment or referral agency, a labor union, an organization providing fringe benefits to an employee, or an organization providing training and apprenticeship programs) that has the effect of subjecting the qualified individual to prohibited discrimination;

It is also unlawful for an employer to:

- Use standards, criteria or methods of administration that have the effect of discrimination against an individual with a disability or that perpetuate the discrimination of others who are subject to common administrative control;
- Exclude or otherwise deny equal jobs or benefits to any qualified individual because the individual is known to have a relationship or association with an individual with a disability;
- Deny employment opportunities to a qualified individual with a disability if the denial is based on the employer's need to provide reasonable accommodation;
- Use qualification standards, employment tests or other selection criteria (including any based on an individual's uncorrected vision or unaided hearing) that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities (unless they are job-related and consistent with business necessity);
- Fail to select and administer tests relating to employment in the most effective manner to ensure that when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or other characteristics of the individual that the test purports to measure, rather than reflecting the individual's impaired sensory, manual or speaking skills.

Finally, the following are prohibited unless the examination or inquiry is job-related and consistent with business necessity:

- Conducting medical examinations on applicants;
- Requiring employees to submit to medical examinations;
- Asking an applicant or employee whether they have a disability; and
- Asking about the nature or severity of an applicant or employee's disability.

Permitted Medical Examinations and Inquiries

Despite the above prohibitions against medical examinations and inquiries, the Disability Discrimination Law allows employers to:

- Conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site; and
- Ask about an individual's ability to perform job-related functions.

An employer may also require an applicant to undergo a medical examination after it makes an offer of employment to the individual but before the individual starts work and condition the employment on the results of the examination if:

- All individuals entering the employ of the employer are subject to the examination regardless of disability;
- Information obtained about the applicant's medical condition or history is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record (with certain exceptions, such as where supervisors and managers need to be informed about restrictions and accommodations, where first aid and safety personnel may need to be informed if the disability might require emergency treatment, and where the BOLI requests the information); and
- The results of the examination are only used for appropriate purposes under the law.

REASONABLE ACCOMMODATION REQUIREMENTS

Employers with six or more employees in the state (except the Oregon National Guard) must provide reasonable accommodation to qualified individuals with disabilities who need the accommodation to perform the essential functions of their jobs. Examples of reasonable accommodation for this purpose include:

- Making existing facilities used by employees readily accessible and usable;
- Job restructuring, part-time or modified work schedules or reassignment to a vacant position;
- Acquisition or modification of equipment or devices;
- Appropriate adjustment or modification of examinations, training materials or policies; and
- Provision of qualified readers or interpreters.

Undue Hardship Exception

An accommodation imposes an undue hardship on the operation of an employer's business if it requires significant difficulty or expense. To determine whether an accommodation meets this standard, the following factors must be considered:

- The nature and the cost of the accommodation needed;
- The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation;
- The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer's facilities; and
- The type of operations the employer conducts, including the composition, structure, and functions of the employer's workforce, as well as the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.

Permitted Actions Related to Drug Use

The Disability Discrimination Law does not affect an employer's ability to:

- Prohibit the transfer, offering, sale, purchase or illegal use of drugs at the workplace by any employee;
- Prohibit possession of drugs not prescribed by a licensed health care professional;
- Prohibit the use of alcohol at the workplace by any employee;
- Require that employees not be under the influence of alcohol or illegally used drugs at the workplace;
- Require that employees behave in conformance with the requirements under the federal Drug-Free Workplace Act;
- Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment, job performance and behavior to which it holds other employees, even if the unsatisfactory performance or behavior is related to the alcoholism or illegal drug use;
- Require employees to comply with all federal and state statutes and regulations regarding alcohol and illegal drug use.

PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE, HARASSMENT, SEXUAL ASSAULT OR STALKING

Employers with one or more employees (including any unpaid interns) may not take any of the following actions against an otherwise qualified individual who is a victim of domestic violence, harassment, sexual assault, bias or stalking because of or based on that status:

- Refuse to hire the individual;
- Discharge, threaten to discharge, demote or suspend the individual;
- Discriminate or retaliate against the individual regarding promotion, compensation, or other terms, conditions or privileges of employment; or
- Refuse to make a reasonable safety accommodation in response to actual or threatened domestic violence, harassment, sexual assault or stalking requested by the individual unless the employer can demonstrate undue hardship on the operation of its business.

REASONABLE SAFETY ACCOMMODATION

Reasonable safety accommodation in response to actual or threatened domestic violence, harassment, sexual assault or stalking may include transfer, reassignment, modified schedule, use of available paid leave from employment, provision of unpaid leave, changed work telephone number, changed workstation, installed lock, implemented safety procedure, or any other adjustment to a job structure, workplace facility or work requirement.

Undue Hardship

A reasonable safety accommodation imposes an undue hardship on the operation of an employer's business if it requires significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expense, the following factors must be considered:

- The nature and the cost of the accommodation needed;
- The overall financial resources of the facility or facilities involved, the number of persons employed at the facility, and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation;
- The overall financial resources of the employer, the overall size of its business with respect to the number of its employees, and the number, type and location of its facilities; and
- The type of operations conducted by the employer, including the composition, structure and functions of its workforce, as well as the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.

NOTICE, CERTIFICATION AND CONFIDENTIALITY REQUIREMENTS

Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, harassment, sexual assault, bias or stalking. An individual must provide certification within a reasonable time after receiving the employer's request for it. The certification may be in the form of any of the following related to the domestic violence, harassment, sexual assault, bias or stalking:

- A police report;
- A copy of a protective order or other evidence from a court, administrative agency or attorney that the individual appeared in or is preparing for a civil, criminal or administrative proceeding; and
- Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy, employee of the Department of Justice division providing victim and survivor services, or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating.

All records and information an employer keeps regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual unless otherwise required by law.

ADDITIONAL LEAVE AND NONDISCRIMINATION REQUIREMENTS FOR LARGER EMPLOYERS

Employers with six or more employees in Oregon for each working day during each of the 20 or more calendar workweeks a year may be subject to additional requirements to provide leave related to domestic violence, harassment, sexual assault or stalking for certain employees. These employers are prohibited from discharging, threatening to discharge, demoting, suspending, or in any manner discriminating or retaliating against an employee for taking the leave required under the law.

PROHIBITED GENETIC TESTS AND DISCRIMINATION

Under Oregon law, it is unlawful for any employer to subject an employee or prospective employee to a genetic test either directly or indirectly. It is also unlawful to otherwise seek to obtain, obtain or use genetic information of an individual (or their blood relative) to distinguish between, discriminate against or restrict any right or benefit otherwise due or available to the individual. However, a genetic test may be allowed if it is administered solely to determine a BFOQ and the tested individual or their representative grants informed consent. A genetic test includes any test for determining the presence or absence of genetic characteristics in an individual or the individual's blood relatives, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to diagnose or determine a genetic characteristic.

OREGON WORKPLACE FAIRNESS ACT

The Oregon Workplace Fairness Act (OWFA) prohibits all employers in Oregon from entering into certain agreements containing nondisclosure, nondisparagement or similar confidentiality provisions. It also requires employers to adopt and disseminate specific written policies.

CONFIDENTIALITY AGREEMENTS

Under the OWFA, all employers in the state are prohibited from entering into an agreement with a former, current or prospective employee as a condition of employment, continued employment, promotion, compensation or the receipt of benefits that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing:

- Conduct that constitutes prohibited discrimination, including sexual assault; and
- Conduct that occurred between employees or between an employer and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer or that occurred between an employer and an employee off the employment premises.

Certain exceptions are available upon an employee's request or when an employer makes a good faith determination that the employee engaged in conduct that constitutes prohibited discrimination, including sexual assault. This law also imposes additional requirements and prohibitions on employers that seek to or do enter agreements as described above. Violations of this law may result in civil actions against an employer in which an individual may recover a civil penalty of up to \$5,000 along with other remedies.

WRITTEN POLICY REQUIREMENTS

The OWFA also requires every employer in Oregon to have a written policy containing procedures and practices for preventing discrimination and harassment. At a minimum, the required policy must include:

- A process for employees to report discrimination and harassment;
- Identification of the person(s) responsible for receiving reports of discrimination and harassment;
- The five-year statute of limitation for bringing a claim of discrimination or sexual assault;
- A statement that the employer may not require or coerce employees to sign a nondisclosure or nondisparagement agreement;
- An explanation that an aggrieved employee may voluntarily request to enter into a nondisclosure or nondisparagement agreement or no-rehire agreement and will have seven days to revoke the agreement; and
- A statement advising employers and employees to document incidents of unlawful discrimination or sexual assault.

The BOLI provides a model policy template employers may use to create their own policies for this requirement. The OWFA requires employers to make the policy available in their employees' workplaces. It also requires employers to provide a copy to each employee when they are hired, when an employee seeks to enter into a nondisclosure or nondisparagement agreement, and to any individual who makes a complaint about prohibited discrimination or harassment.

OREGON EQUAL PAY ACT

Oregon's Equal Pay Act (OEPA) applies to all employers with one or more employees in the state. This law addresses:

- When an employer may seek an applicant or employee's pay history;
- What constitutes unlawful pay discrimination based on a protected trait, past compensation or participation in enforcement proceedings; and
- How individuals may enforce these provisions against employers.

In addition, the OEPA requires employers to post a notice in their employees' workplaces.

PAY HISTORY INQUIRIES

The OEPA prohibits employers from asking an applicant or employee about their salary history and from seeking this information from the individual or their current or former employer until they make an employment offer to the individual. Employers are not prevented from requesting written authorization from a prospective employee to confirm their prior compensation after the employer makes an offer of employment that includes a specified compensation amount.

UNLAWFUL PAY DISCRIMINATION

With certain exceptions for differences based entirely on a bona fide factor related to the position, the OEPA also makes it an unlawful practice for an employer to:

- Discriminate in wages or other compensation for work of comparable character based on a protected class;
- Pay one employee more than it pays others who are in a protected class for work of comparable character;
- Reduce an employee's compensation to comply with the law;

- Screen job applicants based on current or past compensation;
- Determine a prospective employee's compensation based on their current or past compensation (with an exception for current employees who transfer, move or are hired to a new position with the same employer); and
- Discriminate in wages or other compensation against an employee because:
 - The employee has filed a complaint alleging a pay history inquiry violation;
 - The employee testified or is about to testify in an investigation or proceeding under the OEPA; or
 - The employer believes the employee may testify in an investigation or proceedings under the OEPA.

For these purposes, the OEPA defines:

- "Protected class" as a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age;
- "Work of comparable character" as work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or title; and
- "Compensation" to include wages, salary, bonuses, benefits, fringe benefits and equity-based compensation.

Exceptions

An employer may pay employees for work of comparable character at different compensation levels if all of the difference in compensation levels is based on a bona fide factor that is related to the position in question and is based on:

- A seniority system;
- A merit system;
- A system that measures earnings by quantity or quality of production, including piece-rate work;
- Workplace locations;
- Travel, if travel is necessary and regular for the employee;
- Education;
- Training;
- Experience; or
- Any combination of the above factors, if the combination of factors accounts for the entire compensation differential.

WORKPLACE RELIGIOUS FREEDOM ACT

The Oregon Workplace Religious Freedom Act (OWRFA) requires employers with one or more employees to:

- Allow an employee to use vacation or other available leave to engage in religious observance or practices; and
- Reasonably accommodate an employee's use of leave as long as it will not impose an undue hardship on the operation of their business.

This applies only to leave that is not restricted to how the leave may be used and that the employer allows the employee to take by adjusting or altering the employee's work schedule or assignment.

PROHIBITED ACTIONS

The OWRFA also prohibits employers with at least one employee from imposing an occupational requirement that restricts an employee's ability to wear religious clothing in accordance with the employee's sincerely held religious beliefs, to take time off for a holy day, or to take time off to participate in a religious observance or practice if:

- Reasonably accommodating those activities does not impose an undue hardship on the operation of the employer's business; and
- The activities have only a temporary or tangential impact on the employee's ability to perform the essential functions of the employee's job.

UNDUE HARDSHIP FOR RELIGIOUS ACCOMMODATIONS

Under the OWRFA, a reasonable accommodation imposes an undue hardship on the operation of an employer's business if it requires significant difficulty or expense. The following factors are considered in making this determination:

- The nature and the cost of the accommodation needed;

- The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation;
- The employer's overall financial resources, the overall size of the employer's business with respect to the number of persons employed, and the number, type and location of the employer's facilities;
- The type of business operations the employer conducts, including the composition, structure and functions of the employer's workforce and the geographic separateness and administrative or fiscal relationship of the employer's facility or facilities;
- The safety and health requirements in a facility, including requirements for the safety of other employees and any other person whose safety may be adversely impacted by the requested accommodation; and
- For a school district, education service district or public charter school, the degree to which an accommodation may constrain the entity's obligation to maintain a religiously neutral work environment or refrain from endorsing religion.

CRIMINAL HISTORY INFORMATION LAW

Oregon law generally prohibits all private employers with one or more employees and all job placement and referral agencies in the state from excluding an applicant from an initial interview for employment based solely on a past criminal conviction. It also prohibits employers from requiring an applicant to disclose a criminal conviction:

- On an employment application; or
- Any time prior to an initial interview.

If an employer does not conduct an initial interview of an applicant, these prohibitions apply until the employer makes a conditional offer of employment to the applicant.

PERMITTED ACTIONS

This law does not prevent employers from excluding an applicant from an initial interview solely because of a past criminal conviction if:

- Federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history;
- The employer is a law enforcement agency or an employer in the criminal justice system; and
- An employer is seeking a nonemployee volunteer.

In addition, employers may access criminal history reports containing records of convictions and arrests less than 1 year old in which there has been no acquittal or dismissal. However, an employer must notify an applicant or employee that criminal history information may be obtained before requesting a records check.

ENFORCEMENT

Individuals who believe an employer has violated Oregon's fair employment laws may file a lawsuit in circuit court against an employer. These individuals may also file a complaint with the BOLI, but only if no lawsuit alleging the same matters has been filed in any state or federal court. Employers may not discharge, demote, suspend, or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment against an employee for filing or testifying in connection with a civil proceeding in good faith. Employers that violate this prohibition may be ordered to pay the remedies described below for the retaliation in addition to the remedies for the conduct underlying the claim or lawsuit.

BOLI COMPLAINTS

For most unlawful practices, a BOLI complaint must be filed within one year after the action alleged. However, a complaint alleging discrimination based on a protected trait, uniformed service, or disability and complaints alleging violations of the prohibitions against nondisclosure and nondisparagement agreements may be filed within five years after the alleged unlawful action. If substantial evidence shows that a violation has occurred, the BOLI may attempt to settle the matter or conduct an administrative hearing. It may also impose injunctions, order other equitable remedies against noncompliant employers and award actual damages to individuals affected by the employer's violation. For complaints filed with the BOLI for alleged violations of the OEPA, the BOLI may order an employer to pay an individual back pay for the lesser of either:

- Two years before the filing of the complaint plus the period between when the complaint was filed and the date of the BOLI's order; or

- The whole time the individual was subject to an unlawful wage differential plus the period between when the complaint was filed and date of the BOLI's order.

LAWSUITS

If a lawsuit is filed in circuit court, the court may order injunctive relief and any other equitable relief that may be appropriate, such as reinstatement or the hiring of employees with or without back pay for up to two years. For most types of claims, the court may also order the employer to pay the greater of either \$200 or the amount of any compensatory damages plus punitive damages. However, punitive damages are not available for claims of retaliation for filing or participating in claims or lawsuits or for discrimination based on pregnancy, childbirth or related medical conditions. In addition, a court may not award punitive damages for a claim under the OPEA unless the employer:

- Has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or
- Was previously found in violation of the OEPA.

Employers that violate the OEPA's prohibitions against wage discrimination may also be ordered to pay double the amount of the unpaid wages for the one year before a lawsuit is filed, plus reasonable attorney fees.

MORE INFORMATION

For more information on Oregon's fair employment laws, visit the BOLI's [website](#) or contact Heffernan Insurance Brokers.

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