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In View: Employment

In the Legislature

2019 Session Ends

The 2019 session of the Oregon Legislature ended on June 30, with legislators passing 150 bills in the final two day to finish up the work of the session. OBI has prepared a detailed summary of the major legislation we tracked during the 2019 session. [Click here](#) to read more about what passed, what didn't and what we expect to see again.



Regulatory Updates

Paid Family and Medical Leave: The Employment Department will be tasked with implementing and managing [HB 2005](#), the new paid family and medical leave program. The bill allocated start-up funds so that the department can hire the initial staff to begin designing and planning the program. We expect hiring will begin in the next couple of months. The department has until Sept. 1, 2021, to complete rulemaking. Contributions begin in 2022 and employees will be eligible for benefits in 2023.

Sign up for Employment Department rulemaking notices [here](#).

Pregnancy and Breastfeeding Accommodation: [HB 2341](#) requires employers to provide reasonable accommodations for employees who are pregnant or experiencing complications from pregnancy. [HB 2593](#) requires employers with more than 10 employees to provide breaks for nursing employees to pump or breast feed. The Bureau of Labor and Industries (BOLI) will begin rulemaking for both of these laws in September.

Workplace Fairness: [SB 726](#) expands the statute of limitations for harassment and discrimination claims to five years. The bill also limits the use of nondisclosure, nondisparagement, and no-rehire provisions. Again, we expect BOLI will begin the rulemaking and model notice drafting process in September.

Pay Equity: [SB 123](#), the pay equity fix bill was an OBI priority that we began working on shortly after BOLI rulemaking concluded in 2018. The bill makes several fixes including clarifying pay equity analyses, addressing light duty assignments and other technical corrections.

Sign up for BOLI rulemaking notices [here](#).

Beyond Ban the Box: Tips for Effective Second Chance Hiring

By Heidi Mason, attorney,
Innova Legal Advisors, LegalPlus Program

Oregon's unemployment rate continues to decline and employers across all industries are struggling to find and retain talent. However, many organizations have not fully accessed a talent pool of approximately 75 million people – individuals with prior criminal records. In the United States, approximately one in three adults have a criminal history and about 75% of formerly incarcerated people remain unemployed one year after release. Many of these individuals possess valuable knowledge, skills, and experience gained before during, and after incarceration. Some have advanced degrees.

Below are answers to frequently asked questions about second chance hiring for employers interested in hiring individuals with criminal records.

1. Is second chance hiring optional?

As an employer, you should have procedures to evaluate candidates with criminal backgrounds. In 2012, the U.S. Equal Employment Opportunity Commission (EEOC) published enforcement guidance about the use of criminal history information when considering applicants for employment.¹ Under that guidance, the automatic, across-the-board exclusion of candidates from all employment opportunities solely because prior arrests or convictions occurred could violate Title VII of the Civil Rights Act.

That doesn't mean employers should stop running background checks or asking about prior convictions altogether. Instead, they should inquire about criminal history at the appropriate time and seek information to help evaluate whether the nature of the offense is job related and consistent with business necessity.

With respect to timing, most Oregon employers may not ask about a candidate's criminal history on an employment application. For jobs performed a majority of the time in Portland, the timing requirement is stricter. The employer may not inquire about a candidate's criminal history until after making a conditional job offer.

2. What questions may I ask a candidate about his or her criminal history?

At the appropriate time, an employer may and should ask questions of the candidate designed to elicit the following information:

- The facts and circumstances leading up to the offense;
- The number of offenses for which the candidate was convicted;
- The candidate's age at the time of the offense and conviction;
- Whether the candidate has performed similar work post-conviction without incident, and how much time has elapsed without incident;
- The length and consistency of employment history before and after the offense;
- Rehabilitation efforts, education, training;
- Employment or character references; and
- Whether the candidate is bonded under a federal, state, or local bonding program.

In addition to considering the substance of a candidate's responses, look for honesty, transparency, growth, and accountability. A candidate who readily acknowledges a past mistake, accepts responsibility for his or her actions, learns from the experience, and takes

intentional steps to improve demonstrates job readiness.

3. *If one candidate has a background and another does not, whom should I hire?*

Always hire the best candidate for the job based on a thorough and fair evaluation of each candidate's qualifications, skills, and experience.

4. *Where can I find additional resources about second chance hiring?*

The Society for Human Resource Management has a free toolkit available for download at <https://www.gettingtalentbacktowork.org/#resources>. The toolkit is designed to empower businesses to “confidently evaluate applicants with criminal records by equipping them with the latest research, evidence-based best practices and industry guidance needed to reduce legal liability and increase inclusive hiring from this untapped talent pool.”

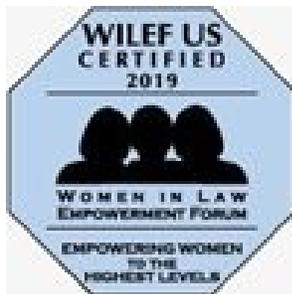
Dave's Killer Bread Foundation also a free online Second Chance Playbook at <https://www.dkbfoundation.org/playbook-3/>. The playbook consists of videos “designed for business leaders and human resource professionals looking to understand and adopt this talent philosophy within their organizations.”

This article is provided for educational purposes only, does not constitute legal advice and does not create an attorney-client relationship.

1 https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.



Stoel Rives Gold Standard Certification from the Women in Law Empowerment Forum.



In July 2019, Stoel Rives once again received **Gold Standard Certification** from the **Women in Law Empowerment Forum (WILEF)**. WILEF's Gold Standard Certification is the only initiative directed toward certifying, publicly recognizing and broadly publicizing eligible law firms where women are integrated into the highest leadership positions in the firm. Stoel Rives has received this recognition for nine consecutive years and is one of only 11 to have received the certification for the nine years since its inception. More information can be found [here](#) and [here](#).

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In the News

[Oregon Enacts Sweeping #MeToo Law](#)

[Union Loses a Vote to Organize 12 Oregon Restaurants](#)

[Portland Diamond Project Announces Labor Agreement for Future Ballpark Employees](#)



Resources

Wholesale Fuel Pricing

OBI has partnered with MCP Petroleum to drive down OBI members' fuel cost. OBI is leveraging the collective purchasing power of our membership to get wholesale fuel pricing for our members. In addition to fuel savings, OBI members will have access to a comprehensive fuel management system that will reduce slippage, save valuable employee time and provide accountability and oversight of your company's fuel consumption.

OBI members who use 900 gallons of fuel annually through their company are eligible for this program. Please contact [Jeff DeSantis](#) for more information.



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LegalPlus Program



Did you know, by being an OBI member you can get free legal advice? OBI and Innova Legal Advisors provides members 15 minutes of legal consultation each month through the LegalPlus program. Check it out by [clicking here](#). Or contact Bob Blackmore at Innova Legal Advisors: Phone: 503-479-7175; email: Bob.Blackmore@innovalegaladvisors.com.



OBI HealthChoice

Big Business Options on a Small Business Budget

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Upcoming Events

Statesman Dinner – October 7

The OBI Board Executive Committee has selected former Governor Ted Kulongoski and longtime Oregon leader Gerry Frank to receive the 2019 Statesman Award. We have also lined up Alaska Sen. Lisa Murkowski to be the keynote speaker at the



dinner, scheduled for Oct. 7 at the Portland Art Museum. If you would like to acquire tickets, email [Morgan Beltz](mailto:Morgan.Beltz).

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