



In the Legislature

2019 Session Winding Down

The 2019 session of the Oregon Legislature is entering its final days, with the constitutionally required June 30 adjournment day looming close. A number of employment-related bills have been considered this year, and OBI has attempted to represent employer concerns on all of them. We will send out a complete report when the Legislature adjourns, but here are a few bills that have moved recently:



- [SB 726](#), which was initially intended to address workplace harassment but became a broader discrimination bill, passed the House May 30 and was signed into law by Gov. Kate Brown June 11. OBI opposed the bill when it was introduced because of several concerning provisions, including creation of individual liability for violations certain individuals who “should have known about.” We successfully lobbied with partners for deletion of the individual liability provision and a narrowing of the bill’s scope. As passed, the bill makes changes for individuals alleging violation of three discrimination laws – protected class, disability and military – particularly with regards to nondisclosure agreements. The bill also expands the statute of limitations for claims under the law to five years from the current one year. Even as amended, the bill remained problematical for employers in our view, but passage was expected given national discourse around harassment.
- Two bills accommodating new mothers were passed. [HB 2341](#) will require employees to provide reasonable accommodations for pregnant employees, aligning with standards for reasonable accommodation under disability laws. This new law will apply to employers with six or more employees. [HB 2593](#) will expand existing requirements for rest breaks for expression of milk and will apply to all employers, however

Paid Family Leave

As we expected, paid family leave has been a major topic of conversation in the 2019 legislative session, and OBI has been at the table to ensure employer concerns were considered as a bill was drafted.

The enactment of broader family leave laws, including paid leave requirements, has become a national trend in recent years, with Washington and California already enacting legislation. Multiple bills were introduced early in Oregon's 2019 legislative session and there also has been discussion of a 2020 initiative measure if no legislation is passed. OBI's polling showed voter interest in expanded leave requirements, so we joined with partners to work with legislative leaders to craft language that would strike a balance for employer and employee interests.

This week, [negotiated amendments](#) to HB 2005 were introduced and heard by the House Rules Committee. They would provide for 12 weeks of paid leave for leave related to the birth, adoption or fostering of a child; leave for serious health conditions of the employee or a family member; and leave needed for a victim of domestic violence. (An additional two weeks of paid leave is possible for individual with medical complications due to pregnancy.) Leave available to employees under the Oregon Family Leave Act would be combined and capped under the bill, with a maximum 16 weeks of leave available to anyone taking paid leave under the new program (12 weeks paid, four weeks unpaid), or 18 weeks for individuals qualifying for the additional two weeks for pregnancy complications (14 weeks paid, 4 weeks unpaid).

The cost of this program would be shared 60 percent by employees and 40 percent by employers, with a maximum payroll tax of 1%. Employers with fewer than 25 employees would not be required to contribute to the cost of the premium but could do so if they chose. Their employees would contribute and qualify for leave under the program.

This negotiated bill, HB 2005, addresses employer concerns far more effectively than the other options that were on the table this year. While OBI is always wary of new requirements on employers, we believe, as our Chair Scott Parrish said in a column earlier this week, that it is better to go to the table and have influence on a new law we expect to pass than to sit by and let legislation pass without our input. We appreciated the ability to work with legislative leaders on a bill that considered the needs of both employers and employees.

The bill is expected to be voted out of the House Rules Committee today. It will then move to Ways & Means.

[Click here](#) for a more detailed summary of all the elements of the bill and a comparison with other paid family leave proposals that were introduced this session.

Washington Proposed Changes to Overtime

For OBI members with operations in Washington state, the Washington Department of Labor & Industries (L&I) is proposing to change the salary threshold for executive, administrative and professional workers to be exempt from minimum wage, overtime pay and paid sick leave.

Washington's overtime regulations and exemptions are mostly in administrative rules rather than statute. Current rules set the minimum salary at \$455 per week, mirroring federal law. The [proposed rules](#) would require a new salary threshold for an employee to be considered exempt. By 2026, that salary threshold would be 2.5 times minimum wage. For most employers, the first increase would take effect July 1, 2020 when the minimum salary would reach \$675 per week for employers with 50 employees or less, and \$945 per week for employers with more than 50 employees. L&I is also updating the job duties tests to more

closely match the federal job duties test.

Employers should be aware that like Washington, Oregon agencies have a lot of discretion in this area. The salary threshold for exempt employees is only in BOLI administrative rules. If advocates have convinced Washington to make this change, we should be vigilant about such a move in Oregon.

Here is a link to a [fact sheet](#) from L&I including the public hearing schedule. Comments on the rules are due by September 6, 2019.



Beware No-Match Letters

By Ronald G. Guerra, attorney,
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After a seven-year hiatus, the Social Security Administration has resumed sending out No-Match Letters, also called “Employer Correction Requests.” If you received one of these, beware, as it can become highly problematic for employers.

The Social Security Administration sends out these NMLs when From W2s don’t match their records. The letter suggests employers set up a Business Service Online account to learn the names and social security numbers in that system, but law does not require the employer to do this.

Employers who choose to acquire this information and then fail to take appropriate follow-up actions take on additional legal risks. For example, U.S. Immigrations and Customs Enforcement may consider the employer to have “constructive knowledge” that an employee may not be lawfully present and eligible to work in the United States.

So, what is an employer required to do upon receipt of a NML?

1. Review W-4 form information against employer payroll records to confirm accurate name and number transferred when creating the employee’s payroll account;
2. Review 2018 Form W-2 report against the employers’ payroll records to confirm no discrepancy exists between name and number, as reported on W-4 and employer’s payroll records;
3. Correct any discrepancies in the payroll record or the 2018 W-2 annual report and submit corrections to SSA via Form W-2c;
4. If no corrections necessary, notify SSA that your employer records have been reviewed and found to be accurate; and,
5. DO NOT retain NML in employer records after completing steps 1-4 above, (law does not require that the NML be retained) because this could be used in an ICE audit of Form I-9 records to demonstrate that employer may have had constructive knowledge when coupled with other information and took no action to resolve.

For most employers, the risk of an audit is low. But those in what are deemed “high risk” industries (agriculture, construction, hospitality, low-skilled manufacturing and nursery/landscape services) should pay careful attention to NMLs to avoid creating undue liability for themselves, especially since there is no longer a “safe harbor” exception for employers who follow SSA’s instructions.

There are many reasons a W-2 may not match the Social Security Administration’s records: a typographical error, an unreported name change, a transposition of name or number, and even identity theft. The letter is not a statement regarding an employee’s work authorization or immigration status. An employer should not take any adverse employment action against any employee based solely on the NML to avoid potential claims of unlawful discrimination.

If you or your company would like to contribute content to OBI newsletters, please let us know by emailing communications@oregonbusinessindustry.com.



In the News

[Oregon Lawmakers Consider Paid Family Medical Leave](#)

[Gov. Brown signs PERS reform bill](#)

[Report: Employers Having Trouble Filling Vacancies in Oregon](#)

[Oregon Modifies Noncompete Law for 2020](#)

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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.



Calendar of Events

Unemployment Insurance Conference

June 27 is your chance to get the scoop on unemployment insurance strategies to improve your bottom line. The National Unemployment Insurance Policy Conference is coming to Portland and offers a unique opportunity for businesses and companies to learn about unemployment tax, benefits and policy to 2020 and beyond.

OBI has a special single-day pass rate for members for June 27. [Click here](#) to learn more.

- What: National Unemployment Insurance Policy Conference
- When: June 26-28
- Where: Portland Marriott Downtown Waterfront Hotel
- Event information: www.uwcstrategy.org/conferences/

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