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OBI

## In View: Employment

The 2019 session of the Oregon Legislature is entering its final weeks: the Oregon Constitution requires adjournment no later than June 30, but leadership is hoping to complete this Legislature's work by June 21. Employment law has been a big topic, with many bills introduced. This newsletter focuses on a few we continue to watch. After adjournment, OBI will provide you with a recap of all the HR-related bills passed this year.



### Regulatory Updates

#### Changes to Noncompete Agreements

The enforceability of noncompete agreements was a focus in both Oregon and Washington during their 2019 legislative sessions. These agreements put limits on an employee's ability to work with a company's competitors. Courts have narrowed the enforceability of these provisions, viewing them as unreasonable restraints on trade. Generally, they are unenforceable unless certain criteria are met. Changes passed in both states will impact how employers utilize noncompete agreements. Below are the criteria in each state for a noncompete agreement to be enforceable.

| OREGON  | WASHINGTON   |
|---|--|
| <p>The employer informs the employee in writing that the noncompete agreement is a condition of employment in a written offer received by the employee at least two weeks before the first day of the employee of employment or the agreement is entered into upon a subsequent bona fide advancement of the employee.</p> <p>The employee is a salaried, exempt employee.</p> <p>The employer has a protectable interest, such as confidential business or professional information.</p> <p>The employee's total annual gross salary at the time of termination exceeds the median four-person family income as determined by the US Census Bureau.</p> <p><u>New: Effective January 1, 2020</u></p> <p>Employer provides a signed, written copy of the terms of the noncompetition agreement to the employee within 30 days after the date of termination of the employee's employment for agreements entered into after January 1, 2020.</p> | <p><u>New: Effective January 1, 2020</u></p> <p>Employer must disclose the terms of the noncompetition agreement no later than the time of acceptance of the job offer.</p> <p>Employee's annual earnings must exceed \$100,000 per year (adjusted for inflation).</p> <p>Noncompetition agreement limited to 18 months unless enforcing party can prove by clear and convincing evidence that longer is necessary to protect the party's business or goodwill.</p> <p>If employee is laid off, employer must pay the employee compensation equivalent to the employee's base salary (less other earnings) for the time the employee is restricted under the agreement.</p> <p>Enforceable against independent contractors if the enforcing party paid the contractor over \$250,000 per year.</p> |

The new Washington law does not apply to non-solicitation agreements; confidentiality agreements; covenants prohibiting the use or disclosure of trade secrets or inventions; a covenant entered into by a person purchasing or selling the goodwill of a business or acquiring or disposing of an ownership interest; or a covenant entered into by a franchisee if the sale complies with state requirements.

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## Paid Family Leave



An amended version of HB 2005, the negotiated paid family and medical leave bill, should be introduced soon. The current bill was treated by legislators as a starting point for conversations. OBI and others are working on the details after a general agreement was reached for a program of 12 weeks of paid family leave that will be funded by payroll taxes the costs of which will be paid 60% by employees and 40% by employers. The bill will allow for equivalent employer plans rather than forcing all employers into the public plan. HB 2005 is currently in the House Rules Committee. We expect to see an amendment any day now and for the bill to be scheduled for an initial hearing sometime next week.

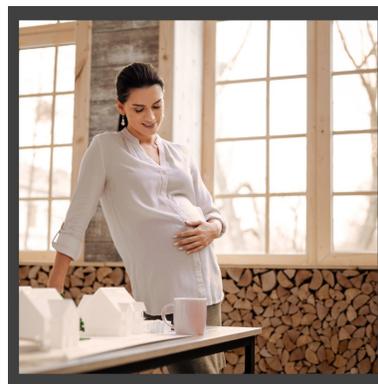
## Workers' Compensation

[HB 3022](#) is now a carefully negotiated bill related to workers' compensation. As introduced, HB 3022 was being pushed by the Oregon Trial Lawyers Association and would have rolled back many reforms from the 1990s. Prior to those reforms, there was no system for negotiating complex bills. Now, Oregon has the Management-Labor Advisory Committee (MLAC) to ensure the system focuses on safety and efficiency. OBI and other stakeholders worked closely with MLAC to ensure changes minimally affect employers and the health of the system as a whole, and safeguarded the reforms that have resulted in better results for Oregon workers. The bill now makes technical changes to diagnostic services and requirements for denials related to pre-existing conditions. Big thanks go to SAIF and MLAC for facilitating negotiations. The bill is currently in the Senate Rules Committee where we expect a hearing will be scheduled soon.

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## Pregnancy and New Mothers

OBI has engaged on two bills that impact how employers provide accommodations for pregnancy and nursing mothers. [HB 2341](#), which bans employers from denying employment, or failing to make reasonable accommodations, for employees relating to pregnancy, childbirth or related medical conditions, was signed by the Governor on Wednesday, May 22 and will go into effect on January 1, 2020. And on Tuesday, May 21, the governor signed [HB 2593](#), which requires employers to allow for breast milk pumping or feeding. The bill goes into effect 91 days after the Legislature adjourns. Assuming the constitutionally required June 30 adjournment, that would be September 30.



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## Expanded Statute of Limitation

[SB 726](#), along with several other bills, are the Oregon Legislature's response to the "Me Too" movement. While the bill language applies to all discrimination complaints for protected classes, proponents focused on the issue of workplace harassment. The bill narrows the circumstances in which non-disclosure agreements and no-rehire provisions can be used. It also drastically expands the statute of limitations from one year to five years. The introduced bill also contained personal liability for presidents, partners, owners and corporate officers who "should have known" that discrimination was occurring. OBI opposed that provision and it was ultimately removed from the bill. SB 726 has passed the Senate and is awaiting final action in the House, where it is expected to pass.



## In the News

[More People Are Moving to Oregon](#)

[Oregon Venture Fund Investment in Salt & Straw](#)

[Senate Passes New Workplace Discrimination Laws for Public Employers](#)



## 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.



PETROLEUM

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](mailto: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/](http://www.uwcstrategy.org/conferences/)
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Oregon Business & Industry  
[oregonbusinessindustry.com](http://oregonbusinessindustry.com)  
1149 Court Street NE  
Salem, OR 97301

