



OREGON
BUSINESS
& INDUSTRY



In View: Employment



Regulatory Updates

OBI continues to work with legislators and others on a workgroup reviewing potential legislation that would require prevailing wages for building data centers and renewable energy projects in enterprise zones. The group, led by Sen. Kathleen Taylor, D-Milwaukie, has been meeting weekly since September. The committee has discussed the importance of economic development tools for local governments, particularly rural Oregon. The latest proposal was an opt-in that would allow local governments to negotiate with businesses for prevailing wage requirements on projects in enterprise zones.

OBI also continues work on the independent contractor workgroup. While nothing has been proposed for 2020, on everyone's radar are the [requirements passed in California](#), which set the [ABC test](#) for determining if someone is an independent contractor. The test determines an individual is an independent contractor if the business could prove the worker is:

- A. Free from the company's control;
- B. Doing work that isn't in the normal course of the company's business;
- C. An independent business in the industry.

Ballot Measures

Employer Assessment – The “Public Assistance Protection Act” aims to require employers to pay a tax based on the number of their employees eligible for public assistance. It is often referred to as an “employer assessment,” which is essentially a new tax on Oregon employers. Four initiative petitions were filed on this subject, but proponents have only taken steps to advance one of them, [IP 28](#). OBI prepared and [filed comments](#) on the ballot title in October. OBI and our partners are now challenging the ballot title in court.

October Employment Update

In October, unemployment in Oregon hit a new record by staying at a low 4.1%, the same as in September. Oregon's unemployment rate has been between 4% and 4.4% for 36 months, all the way back to November 2016. The Oregon Employment Department called this “unprecedented” in its report released last week.

The state gained 4,400 jobs in October. That reflects the net of gains and losses. Leisure and hospitality gained 2,400 jobs, government gained 2,300 jobs, wholesale trade gained 1,000 jobs. They offset losses of 700 jobs each in construction, health care and social assistance and 900 in retail trade.

Employment in Oregon: October 2019

From the Oregon Employment Department

Employment rose by **4,400 jobs** in Oct. 2019

Gains:

- +2,400 - leisure and hospitality
- +2,300 - government
- +1,000 - wholesale trade

Losses:

- -900 - retail trade
- -700 - health care
- -700 - construction
- -700 - social assistance

Unemployment rate: **4.1%**

Oregon's unemployment rate has been between **4% and 4.4%** for **36 consecutive months**.

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6,000 = number of people unemployed for a year or more

Lowest level in a dozen years and well below the high of **70,000** in 2010

To read the full report, [click here](#).

Top 5 Policy & Procedure Updates to Implement by January 1, 2020

By Heidi Mason, Innova Legal Advisors

It's that time of the year again. With Halloween behind us and holiday preparations in full swing, handbook-updating season has finally arrived. For those who reserve this special time of year to reviewing policies and procedures, be sure to add the following items to your list (and check them twice):



1. Adopt and/or Update Anti-Harassment Policies

The Workplace Fairness Act (SB 726) requires all employers to adopt “a written policy containing procedures and practices for the reduction and prevention of discrimination” on the basis of race, color, religion, sex (including sexual assault), sexual orientation, national origin, marital status, age, expunged juvenile record, disability, and service in a uniformed service. The term “sexual assault” is defined as “unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.”

The policy must contain at least the following provisions:

- A process for an employee to report prohibited conduct;
- The person responsible for receiving reports of prohibited conduct and his/her alternate;
- The statute of limitations period applicable to an employee's right of action for alleging unlawful conduct (five years after the occurrence of the alleged unlawful practice);
- A statement that an employer may not require or coerce an employee to enter into a

nondisclosure or non-disparagement agreement, including a description of the meaning of those terms;

- An explanation that an employee claiming to be aggrieved by unlawful discrimination may voluntarily request to enter into an agreement that contains a nondisclosure provision, a non-disparagement provision, a provision that prevents disclosure of factual information relating to a claim of discrimination or conduct that constitutes sexual assault, or a no-rehire provision. The explanation must also explain that the employee has at least seven days to revoke the agreement; and
- A statement that advises employers and employees to document any incidents involving prohibited discrimination, including sexual assault.

The Oregon Bureau of Labor and Industries (BOLI) plans to make a model policy available on its website by the end of the year. Please check their [Technical Assistance for Employers page](#) periodically for updates.

2. Provide Notice of Rights for Pregnancy-Related Conditions

Beginning January 1, 2020, employers with six or more employees must provide reasonable accommodations for employees with pregnancy-related conditions, absent undue hardship. Reasonable accommodations may include, but are not limited to, acquiring or modifying equipment or devices; granting more frequent or longer break period or periodic rest; assistance with manual labor; or modification of work schedules or job assignments.

Employers must also inform employees of their rights under this new law by posting signs in a conspicuous and accessible location and providing written copies to:

- New employees at time of hire;
- Existing employees on or before June 29, 2020; and
- Existing employees who inform the employer of the employee's pregnancy within 10 days of receiving the information

A [model notice](#) is currently available on BOLI's website. For additional information, please see BOLI's [Accommodations for Pregnancy Related Conditions FAQ](#).

3. Update Allowable Rest Periods for the Expression Breast Milk

Under current law, employers are required to provide "a 30-minute rest period...during each four-hour work period, or the major part of a four-hour work period, to be taken by the employee approximately in the middle of the work period" unless doing so would impose an undue hardship. Beginning January 1, 2020, this requirement will become much less rigid. Pursuant to HB 2593, employers "shall provide the employee a reasonable rest period to express milk each time the employee has a need to express milk." Employers with 11 or more employees may not claim an undue hardship exception.

Employers who have existing handbook policies regarding rest periods for the expression of breast milk should update their policies as necessary to reflect the more flexible standard.

4. Include Provision of Signed Non-Competition Agreement in Standard Exit Procedure

Providing departing employees with copies of their signed non-competition agreements is a good way to remind them of their post-employment commitments. Beginning January 1, 2020, this best practice will become a condition of enforcement. Non-competition agreements entered into on or after this date will be voidable by the employee unless the employer provides a "signed, written copy of the terms of the noncompetition agreement" to the departing employee within 30 days of termination.

Employers who do not currently provide copies of these agreements as part of their standard exit procedures should update their procedures accordingly.

5. Be Prepared to Give Rapid Notice of Federal Agency I-9 Inspection

SB 370 went into effect on June 6, 2019, but this new requirement to notify employees of an upcoming I-9 inspection is still worthy of mention. The law requires employers to notify

employees of such an inspection within three business days of receiving notice from ICE or the U.S. Department of Labor.

[Model notices](#) in English, Chinese, Korean, Russian, Spanish, and Vietnamese are currently available on BOLI's website. Within three business days of receiving word from a federal agency, employers should post these notices "in a conspicuous and accessible location, in English and in the language the employer typically uses to communicate with the employees" and make reasonable attempts to "individually distribute notifications to employees in the employee's preferred language."

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

Heidi Mason is contributing this column for the newsletter as part of Innova Legal Advisors partnership with OBI through the [LegalPlus Program](#). If you or your company would like to contribute content to OBI newsletters, please let us know by emailing communications@oregonbusinessindustry.com.



Upcoming Events

2020 OBI Annual Meeting



OBI is pleased to announce the keynote speaker for the 2020 Annual Meeting is A.B. Stoddard, associate editor and columnist at [RealClearPolitics](#). Stoddard is known for her extensive career in political journalism. She has worked at The Hill and ABC News and regularly appears on the Fox News Channel and Fox Business Network.

You can register for the Annual Meeting, which will be on Thursday, Feb. 13, in Salem. [Click here](#) to reserve your spot.



In the News

[Lane County Average Wages Rose Over Last Decade, but Other Counties Did Better](#)

[Oregon's Jobless Rate Holding Steady](#)

[Oregon Insight: Economic Activity Trending Downward, but no Recession Yet](#)

[8 Things to Know About Paid Family Leave Laws](#)



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.



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.



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