



A.B. Stoddard
RealClearPolitics

OBI ANNUAL MEETING

The 2020 National Political Scene

Hear from a national political commentator about what's really going on.

Thursday, February 13 | 7:30 - 9:30 a.m.
Salem Convention Center

REGISTER



What to Look for in the 2020 Legislative Session

The 2020 session will begin on Monday, Feb. 3, and will last just 35 days. Despite that short timeframe, legislators will pack a lot into those five weeks, including several proposed changes to laws impacting employers. Working with our partners, OBI's Paloma Sparks and contract lobbyists Kelsey Wilson and Fawn Barrie of Legislative Advocates, will be advocating for employers throughout the session.

We asked Paloma to give us a quick overview of bills that could impact employers, and here is what she said:

After the 2019 session, when several major, and costly, employment-related laws were enacted, we were hoping businesses would get a breather and time to assimilate everything coming at them. But that's not happening. We have seen several bills introduced for February, and it will be a full-time task to track all of them. Here are some that are top of mind as the session starts:

Prevailing Wage: Working with our partners in economic development, OBI opposed and successfully defeated a bill in the 2019 session that would have required prevailing wages on construction projects in enterprise zones. Over the fall we participated in a workgroup looking at proposals to bring a similar concept back for 2020. The discussion included requiring prevailing wage on projects within the enterprise zone, rural long-term enterprise zone, and strategic investment programs. We were successful in convincing Sen. Kathleen Taylor, D-Milwaukie, that such proposals would make Oregon less attractive for new businesses. Instead she has proposed [SB 1525](#), which will require enhanced notification and data collection for construction projects by businesses benefiting from those economic development incentives. OBI will support Sen. Taylor's efforts to pass this compromise bill. A conflicting bill, [HB 4045](#), has been introduced that would require prevailing wage on construction projects by private businesses that benefit from economic development incentives. OBI will actively work to defeat that bill.



Non-Compete Agreements: The AFL-CIO is working on a bill proposing significant changes to Oregon's non-compete law. [SB 1527](#) was introduced by the Senate Labor and Business Committee and is supported by Sen. Taylor, who is also the committee chair. The bill would set a salary threshold of \$97,000 that would be indexed to inflation. Non-compete agreements would be enforceable only for six months; currently they are enforceable for 18 months. We are very concerned that the bill would make most non-compete agreements void. OBI will oppose this bill because it poses a risk to many employers and their investments in innovation and business relationships. This bill could also deter technology companies from locating in Oregon.

Unemployment Insurance for Striking Workers: [HB 4007](#) would allow employees engaged in a labor dispute, including striking workers, to claim unemployment benefits. The AFL-CIO is promoting the bill, which would require employers to shoulder an additional financial burden on top of the already disruptive effects of a strike. OBI will join with our coalition partners to oppose the bill.

Expansion of Non-Discrimination Laws: There are several proposals that would expand or change existing non-discrimination laws. We know that OBI's members set high standards to ensure their workplaces are free from discrimination and we expect the same of all of our fellow employers. [HB 4076](#) proposes a taskforce to study the issue of age discrimination. [HB 4107](#) prohibits discrimination based on hair types or hair styles but also prohibits cash-free policies. We will keep you updated as these bills progress through the session.

Wage Claims: Finally, [HB 4087](#) proposes several changes related to wage claims at the Bureau of Labor and Industries. Current law only permits wage claims to the wage security fund by employees who are entitled to unpaid wages, but the business has shut down and is unable to pay those wages. This bill would allow all employees whose employers have not paid them after BOLI has issued a final order to be paid by the wage security fund. Additionally, BOLI proposes to redirect civil penalties from the common school fund to the agency to pay for technical assistance for employers. While we are concerned about the precedent of using civil penalties to fund agency operations, OBI strongly supports increased funding for technical assistance for employers and we are working with Labor Commissioner Val Hoyle and legislative leaders on this proposal.

The schedule for considering bills moves fast in the short legislative sessions, so if you have thoughts about any of these bills, please [email me as soon as you can](#). My job, representing Oregon employers on these issues, is easier when I hear from all of you about how proposals would work in the real world. So, please, don't hesitate to reach out.

Paloma Sparks, OBI vice president

Paid Family and Medical Leave

The Oregon Employment Department has [created a committee](#) to advise the department on implementing the new paid family and medical leave law. Paloma Sparks is on the committee, as are representatives of both employee and employer interests. The state has a website for the new program; check it out by [clicking here](#).

Ballot Measures

The Oregon Supreme Court [certified the ballot title](#) for [IP 28](#), which aims to [require employers to pay a tax](#) based on the number of their employees eligible for public assistance. OBI challenged the ballot title in the Oregon Supreme Court but was overruled. We opposed a similar bill in the 2019 session that would have imposed similar burdens on employers, and successfully negotiated to stop it from moving forward then. With a ballot title in hand, proponents can now begin gathering signatures. They need 112,020 valid signatures by the July 2 deadline to get this on the November ballot.



Regulatory Updates

Workers' Compensation

OBI is involved in rulemaking on two workers' compensation issues. The first involves increasing claimant only attorney fees, the second relating to preexisting conditions. Previously, employers or insurers only had to compensate for injuries that occurred on the job, not those that had happened before, or were exacerbated after. Rule changes could put employers on the hook for those additional injuries. Paloma Sparks is working on a [coalition letter](#) to oppose this overreach on preexisting conditions. On Dec. 17 she testified in front of the Workers' Compensation Board in opposition to the attorney fee issue.

December 2019 Employment Report

Oregon's job growth and unemployment rate continues to set records. In the [December Employment Report](#), the unemployment rate dropped to 3.7%. That's below the 3.9% unemployment rate from November, and the lowest on record back to 1976.

"The latest estimates suggest there are fewer unemployed Oregonians now than at any point since 1976, when comparable records begin," said Nick Beleiciks, systems and economic analysis manager at the Oregon Employment Department said in the report [press release](#). "That's especially striking considering Oregon's labor force is twice as large as it was 44 years ago."



The report listed other record-setters, including:

- The number of people who were unemployed for less than half a year dropped to the lowest level in at least 18 years.
- The number of people who were unemployed due to a layoff also dropped to the lowest level in the past two decades.
- The U-6 measure, which includes the unemployed, plus those who want a full-time job but who were working part-time due to the economy, came in at the lowest on record dating back nearly two decades.

The report also listed Oregon's job growth over the past year, from December 2018 to December 2019. [Click here](#) to read the full report.

Regular Rate of Pay for Overtime: What Is It?



*By Ronald G. Guerra, attorney
Innova Legal Advisors*

Most employers are aware that under the Fair Labor Standards Act (FLSA), overtime compensation is 1.5 times the regular rate of pay for hours worked over 40 in the same workweek. But what is included in the regular rate of pay? Are discretionary bonuses included? What about parking benefits or gym memberships?

On Dec. 12, The U.S. Department of Labor (DOL) announced a final rule to specifically address these questions. This is the DOL's first major update to the regular rate of pay regulation in more than 50 years. Under the current rule, the regular rate of pay for nonexempt workers includes hourly wages and salaries, plus most bonuses, shift differentials, on-call pay and commissions. Specifically excluded are health insurance, paid leave, holiday and other discretionary bonuses and certain gifts.

DOL's new rule, which goes into effect on Jan. 15, provides more specific guidance. For example, parking benefits are specifically excluded from the calculation of an employee's regular rate of pay, as are employee discounts on retail goods or services, certain tuition benefits and adoption assistance. Several other benefits or perks are also excluded, such as:

- Wellness programs, onsite specialist treatments, gym access and fitness classes
- Unused paid leave, including paid sick leave and paid time off
- Certain penalties employers must pay under state and local scheduling laws
- Business expense reimbursement for items such as cellphone plans, credentialing exam fees, organization membership dues and travel expenses that don't exceed the maximum travel reimbursement under the Federal Travel Regulation system or the optional IRS substantiation amounts for certain travel expenses
- Certain sign-on and longevity bonuses
- Complimentary office coffee and snacks
- Discretionary bonuses (Caution here because the label given a bonus doesn't determine whether it is discretionary)
- Contributions to benefit plans for accidents, unemployment, legal services and other events that could cause a financial hardship or expense in the future

Now is a good time for employers to review their benefits and perks against the new rule. In some cases, employers may find that they can offer additional benefits or perks without necessarily increasing their potential overtime liability or cost when calculating the regular rate of pay. Employers that follow the rule can show that they made a good-faith effort to comply with the FLSA.

Employers should consult with their employment legal counsel to assist them in ensuring that any changes in the application of the new rule meets all the necessary state and federal wage and hour requirements. Remember that OBI members can utilize the OBI Legal Plus program to obtain legal assistance with this employment issue or any other employment or business issue.

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

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[Oregon Insight: The 15 Places Where Incomes are Growing Fastest – and Three Where They're Falling](#)

[Oregon Insight: Number of Older Workers Quadruples](#)

[What to Expect When Employees Are Expecting](#)

[State Analysis: Oregon Economy is Strong, but Growth is Slowing](#)

[Oregon Insight: Jobless Claims Fall Amid Renewed Strength in the Labor Market](#)



Upcoming Events

OBI Annual Meeting Update

At the 2020 OBI Annual Meeting you'll get a beat of what's happening in government at the state level and nationally. We'll hear from Gov. Kate Brown and a panel of Oregon legislators, as well as keynote speaker A.B. Stoddard of RealClearPolitics, who will help us untangle what's happening in Washington, D.C.

We will celebrate this year's Jobs Champion Awardees, Reps. Jeff Barker and Shelly Boshart Davis with this award that recognizes individuals who foster job growth by supporting Oregon companies and standing up for Oregon businesses at the Capitol.

We'll also hear from keynote speaker A.B. Stoddard, of RealClearPolitics, who will help us sort out what's happening in Washington, D.C.

It's right around the corner so make sure to get your ticket for our big event on Feb. 13. Reserve your spot soon! [Click here for more.](#)

The 2020 Annual Meeting is sponsored by

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College Opportunity Grant Tax Credit Auction

When: Feb. 10-12

Where: Online: Instructions on bidding will be available on the [Oregon Department of Revenue \(DOR\) Tax Credit Option webpage](#)

The Oregon Higher Education Coordinating Commission has announced an online [College Opportunity Grant tax credit auction](#) happening Feb. 10-12. Individuals and businesses with Oregon income tax liability are eligible to place bids on tax credit certificates applicable for tax year 2019. If the certificates are not allowed on a 2019 return they can be carried forward up to three years. The Oregon Department of Revenue administers the auction. To learn more, sign up for updates from the Higher Education Coordinating Commission by [subscribing here](#).

Save the Date: Eastern Oregon Economic Summit

This event brings state, regional, and local leaders from across private and public sectors to Hermiston to discuss issues and set goals to improve our Eastern Oregon communities and region.

July 23: Regional industry and issue tours

July 24: General session and breakout discussions

[Click here](#) to learn more.



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 [Nancy Marquay](#) for more information.



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Did you know, by being an OBI member you can get free legal advice? OBI and Innova Legal Advisors provides members 15 minutes of free 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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