Stoel Rives World of Employment
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Happy New Year from the Oregon Legislature: New Employment Laws To Watch Out For in 2014

Today we continue with our recent New Years theme. Not to be outdone by their neighbors to the south, the Oregon Legislature was also busy in 2013. And now that 2014 is upon us so too are a slew of new Oregon employment laws. In areas ranging from social media to sick leave, Oregon employers should carefully review their policies and practices to ensure current compliance with these new laws. Here is a round up of the major changes to employment laws enacted by the Oregon Legislature (and the City of Portland) that employers should be aware of in 2014:

- **Employers may not demand access to employees' social media accounts.** Beginning on January 1, 2014, employers may not demand access to employees' or applicants' personal social media accounts. House Bill 2654, which Governor Kitzhaber signed into law on May 22, 2013, prohibits employers from requiring an employee or applicant to disclose her username, password, or "other means of authentication that provides access to a personal social media account." It further prohibits employers from requiring that an employee "friend" or otherwise connect with an employer via a social media account, and from compelling the employee to access the account in the employer's presence such that the employer can view it. A number of other states have passed or are considering similar legislation.

  The Oregon statute has two features that may prove particularly complicated in practice. First, the statute permits an employer to "require an employee to disclose any user name and password, password or other means for accessing an account provided by, or on behalf of, the employer *or to be used on behalf of the employer*." (My emphasis.) What about a personal social media account that an employee uses occasionally for work purposes? The statute's language suggests that an employer could validly demand access, say, to a personal Facebook account that an employee uses in part to advertise her employer's products or services. But, from the employee's perspective, how much use is too much? A recent California case in which an employee used his personal email address to set up a business-related Twitter account looked as though it would provide guidance in the area, but the case has since settled.

  Second, the statute defines "social media" quite broadly. "Social media," it says, includes "an electronic medium that allows users to create, share and view user-generated content, including, but not limited to, uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet website profiles or locations." The breadth of that definition provides yet another reason for employers to design and implement

strong, carefully-considered policies related to employees' use of electronic communications technology for work purposes.

- **Employers with employees in Portland are required to provide sick leave.** In March 2013, the Portland City Council passed a new ordinance requiring employers with six or more employees to provide at least 40 hours of paid sick leave ("PSL") per year for employees who work within city limits (smaller employers must also provide leave, but it can be unpaid). The ordinance takes effect on January 1, 2014. The City Council slightly revised the ordinance in early October, and the accompanying regulations became available on November 1, 2013. Because the ordinance is only effective with respect to employees working within the City of Portland, it creates a number of twists, especially associated with companies who have employees working both within and outside of city limits. We previously blogged about the ordinance and its complexities here – check it out.

- **Oregon employers must provide bereavement leave under OFLA.** In June 2013, Governor Kitzhaber signed House Bill 2950, an amendment to the Oregon Family Leave Act ("OFLA") that requires employers to provide up to two weeks of bereavement leave to OFLA-covered employees. The change becomes effective on January 1, 2014. We previously blogged about the changes here.

  The amendments require employers to provide a covered employee with leave "[t]o deal with the death of a family member" by (1) "[a]ttending the funeral or alternative to a funeral of the family member," (2) "[m]aking arrangements necessitated by the death of the family member," (3) or "[g]rieving the death of the family member." The leave must be completed within 60 days of the date on which the covered employee receives notice of the death of the family member. The two weeks of bereavement leave count toward a covered employee's the 12 total weeks of OFLA leave per year. The law incorporates OFLA's existing definition of "family member," which includes a spouse, same-gender domestic partner, parent, parent-in-law (including the parents of same-gender domestic partners), grandparent, grandchild, child, stepchild, or child of the employee's same-gender domestic partner.

  As with any OFLA provision, however, there are a few potential pitfalls for employers. For example, the new law prohibits an employer from "requir[ing] an eligible employee to take multiple periods of [bereavement] leave . . . concurrently if more than one family member of the employee dies during the one-year period." Thus, if an employee suffers a single tragedy involving the deaths of her mother, father, and sibling, the employer will usually be required to provide up to *six* total weeks of leave to the employee.

- **Oregon veterans are entitled to time off for Veterans Day.** This one is simple: employers must provide veterans with paid or unpaid time off on Veterans Day. Governor Kitzhaber signed the legislation (Senate Bill 1) in March 2013, and it took effect immediately. The veteran employee need only provide documentation that she qualifies as a veteran and 21 days' notice of her intent to take the day off. Then, within 14 days of Veterans Day, the employer must tell the veteran employee whether it can provide time off and, if so, whether the time will be paid or unpaid. An employer may only refuse to provide time off if doing so would "would cause the employer to experience significant economic or operational disruption, or undue hardship." In that case, the employer must also either deny time off to *all* employees who requested time off for Veterans Day or "[d]eny time off to the minimum number of employees needed by the employer to avoid" disruption or hardship. The employer must further allow the employee "to choose, with the employer's approval, a single day off within the year after the

Veterans Day on which the employee worked as a replacement for Veterans Day to honor the employee's service."

- **Employers may require direct deposit of wages for Oregon employees.** Until now, Oregon law required employers to obtain an employee's consent before paying her via direct deposit. House Bill 2683 abolished the consent requirement. Beginning on January 1, 2014, "[a]n employer may pay wages *without discount* through direct deposit of wages due to an employee into the employee's account in a financial institution . . . in this state." Note the emphasis; employers may not charge employees a fee for the direct deposit service. Employers must pay employees by paper check "upon the written or oral request of the employee."

- **Oregon's employment discrimination statutes cover unpaid interns.** In June 2013, Governor Kizthaber signed House Bill 2669, which extends Oregon's existing employment discrimination laws to unpaid interns and which took effect immediately. The key question facing employers to whom the law might apply involves the definition of "unpaid intern," for which the law states three requirements. First, the employer must "not [be] committed to hire the person performing the work at the conclusion of the training period." Second, the employer must obtain an "agree[ment] in writing that the person performing the work is not entitled to wages for the work performed." Third, the intern's work must:

  1. "Supplement[] training given in an educational environment that may enhance the employability of the intern;"

  2. "Provide[] experience for the benefit of the person performing the work;"

  3. "[N]ot displace regular employees;"

  4. Be "performed under the close supervision of existing staff;" *and*

  5. "Provide[] no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer."

- **Victims of sexual assault, domestic violence, and related offenses need not meet a minimum length-of-employment threshold before taking leave.** House Bill 2903 eliminated the requirement that victims of domestic violence, harassment, sexual assault or stalking work an average of 25 hours per week for 180 days prior to requesting leave. It also requires covered employers to post summaries of ORS 659A.270-659A.285 and of related rules promulgated by the Oregon Bureau and Labor and Industries (BOLI). Note that the statute makes both victims and the parents or guardians of minor victims eligible for leave. The law takes effect on January 1, 2014.

- **Oregon's definition of "disabled" depends on the abilities of "most people in the general population."** House Bill 2111 revised the standard for determining whether an individual is substantially limited in a major life activity for the purposes of Oregon disability law. The old statutory definition required merely that the condition "materially restrict[] one or more major life activities of the individual." The 2013 revision deleted the word "materially." The statute now provides that the condition must impair a major life activity "as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting."

If that definition sounds overbroad, never fear – the legislature included an illuminating, one-sentence caveat to the new standard: “[n]onetheless, not every impairment will constitute a disability within the meaning of this section.” It declined, however, to suggest what types of impairments might fall within that caveat. The new law takes effect on January 1, 2014.

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