

STATE OF OREGON



1859

OREGON QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

In Oregon, the law allows termination of an employment relationship by either the employer or the employee without notice and without cause. This is called at-will employment. Generally, unless there is a contract or law that states otherwise, Oregon employers may discharge an employee at any time and for any reason, or for no reason at all. *Nees v. Hocks*, 272 Or. 210, 216 (Or. 1975). Likewise, an employee may terminate the employment relationship for any reason or for no reason. *Cocchiara v. Lithia Motors, Inc.*, 353 Or. 282, 290 (Or. 2013).

Ordinarily, both the employer and employee may terminate the employee relationship without liability. *Nees v. Hocks*, 272 Or. 210, 216 (Or. 1975). However, employers may not fire or let employees go because of discriminatory reasons. In addition, Oregon employers may not fire an employee in retaliation for bringing to light unlawful practices undertaken by the employer. Oregon employers are also not permitted to terminate employees for their adherence to public policy or for fulfilling a societal obligation. *Nees v. Hocks*, 272 Or. 210, 210 (Or. 1975); *Delaney v. Taco Time Int'l*, 297 Or. 10, 12 (Or. 1984).

Immigration Verification

Oregon places no requirement on employers to verify immigration status beyond federal I-9 compliance. Oregon does not mandate the use of E-Verify.

Drug and Alcohol Testing

OR. Rev. Stat. § 438.435

In Oregon, there is no law governing pre-employment or employment drug testing. However, all Oregon employers must comply with state alcohol testing laws. Or. Rev. Stat. §§ 659.840; 659A.300. An employer may require an employee or applicant to be tested for alcohol if the employee or applicant consents to the test or if there is reasonable suspicion the employee or applicant is under the influence of alcohol. Or. Rev. Stat. §§ 659.840(1); 659A.300(4).

While Oregon laws do not specifically regulate drug testing, employees can only be tested for substances in a laboratory licensed by the state that follows certain procedural safeguards, or onsite in limited circumstances. Or. Rev. Stat. § 438.435. Generally, positive test results must be confirmed by a state-licensed authority. Or. Rev. Stat. § 438.435(3).

Jury Duty Leave

OR. Rev. Stat. § 10.090

It is unlawful for an employer to discharge an employee because of missing work due to jury service. An employer also may not threaten to discharge, intimidate, or coerce an employee because of jury service. An employee who is subjected to such actions may bring a civil action or file a complaint with the commissioner of the Bureau of Labor and Industries. The employer's personnel policies, or specific employment agreements, will determine whether any compensation is payable to an employee during jury service. There is no statutory requirement that an employer pay salary or wages during an employee's jury service. An employer may not require that an employee use vacation leave, sick leave, or annual leave for time spent by the employee in responding to a summons for jury duty, and the employer must allow the employee to at least take leave without pay for time spent by the employee in responding to a summons for jury duty.

Voting Leave

No laws require companies to give workers time off to vote.

Family and Parental Leave

OR. Rev. Stat. § 659A.150 *et seq.*

If the employer has 25 or more employees, the employee can qualify for protected leave under the Oregon Family Leave Act (OFLA).

Beginning July 1, 2024, OFLA provides protected, unpaid time off to eligible employees for the following reasons:

- Sick-child leave to provide home care for a child (including home care for a child with a serious health condition);
- The employee can also take OFLA-protected time if the employee's child's school or childcare provider is closed due to a statewide public health emergency, such as the COVID-19 pandemic school closures;
- Bereavement leave (up to two weeks of leave after the death of a family member with a maximum of four weeks in a given leave year);
- Pregnancy disability for the employee's own pregnancy-related incapacity before or after the birth of the child or for prenatal care;
- Military family leave (up to 14 days if the employee's spouse or same-sex domestic partner is a service member who has been called to active duty or is on leave from active duty); and
- From July 1, 2024, through December 31, 2024, OFLA will also provide child placement leave to facilitate the legal processes required for placement of a foster child or adoption. (Paid Leave will incorporate this leave beginning 2025).

In terms of allowable leave, employers should note:

- OFLA leave is capped at 12 weeks for sick child leave and bereavement;
- Bereavement leave is further limited to two weeks per family member with a maximum of four weeks in a given leave year;
- OFLA provides up to 12 *additional* weeks of leave for pregnancy disability; and
- OFLA provides up to two *additional* weeks of leave for child placement leave.

The employer must continue to give the same health insurance benefits when the employee is on leave as when they are working. When they return to work, they must be returned to their former job or a similar position if the old job no longer exists. OFLA also prohibits discrimination or retaliation against an individual with respect to hiring or tenure or any other term or condition of employment because they have inquired about, submitted a request for family leave, or invoked any provision of OFLA.

Paid Leave

OR. Rev. Stat. § 657B.015 *et seq.*

Starting in September 2023, Oregon's Paid Leave program will allow employees to take paid time off for family leave, medical leave, and safe leave. The Paid Leave program allows employees to take up to 12 weeks of paid leave in a 52-week period (up to 14 weeks for pregnancy-related medical leave). Paid leave can be taken a week or a single day at a time.

The employee's job is protected while they use paid leave if they have been employed by their employer for at least 90 days. Employers cannot penalize employees for using paid leave.

While leave under Oregon's Paid Leave program will continue to run concurrently with leave under the federal Family Medical Leave Act (FMLA), employers may not run OFLA leave concurrently with leave under Oregon's Paid Leave program. Eligible employees may draw on either OFLA or Oregon's Paid Leave program (but not both at the same time) for qualifying events.

Both employees and employers contribute to the paid leave trust fund through payroll taxes. All employers must withhold contributions from employees' wages and submit them on their behalf. The total contribution rate for 2024 is one percent of gross wages up to \$168,600 in wages. Large employers with 25 or more employees pay 40 percent of the total one percent contribution rate and employees pay 60 percent of the one percent contribution rate. Employers with fewer than 25 employees can choose to contribute but are not required to pay into the program. An employee who earned at least \$1,000 during the year prior to claiming can apply for

Paid Leave Oregon benefits. The employee can be eligible if they work full-time, part-time, seasonal, or with more than one employer.

While many employees will receive 100 percent wage replacement, benefit payments depend on the employee's wages and/or income compared to the statewide average weekly wage.

Employers may elect to provide their own paid leave plan for their employees. These plans must provide equal to or greater benefits to employees compared to the state's paid leave plan, and they may not cost more for employees than the state's plan. The Paid Leave program must approve all employers' equivalent plans.

Other Leave Sick Time

OR. Rev. Stat. § 653.601 *et seq.*

An employee can get paid sick time if the employer has ten or more employees (six or more if they have a location in Portland). Otherwise, sick time is protected but unpaid. An employee can use sick time if the employee or a family member is sick, injured, experiencing mental illness, or needs to visit the doctor.

An employee gets at least one hour of protected sick time for every 30 hours they work up to 40 hours per year. (Employers can choose to frontload at least 40 hours of sick time at the beginning of the year.) An employee can begin taking sick time after they have worked for the employer for at least 90 days. The employer must regularly let the employee know how much sick time they have earned.

Vacation Time

Oregon Benefits, Holiday, and Vacation Pay

Vacation pay, holiday pay, bonuses, sick leave, and severance pay are examples of wage agreements that may be made between employers and employees as a part of the employee's total compensation. There is no legal requirement to offer these benefits. An employer is required to honor any established policy or agreement relating to the payment of benefits such as accrued vacation or severance pay upon termination.

Smoking Laws

OR. Rev. Stat. § 433.835 *et seq.*

Oregon is governed by the Indoor Clean Air Act (ICAA). The ICAA applies to the smoking, vaporizing, and aerosolizing of inhalants (or carrying a lighted smoking instrument) in and around workplaces. Smoking, vaporizing, and aerosolizing of inhalants is prohibited within ten feet of all entrances, exits, accessibility ramps, windows that open, and vents that serve a closed area.

With limited exceptions (e.g., cigar bars, smoke shops, designated hotel and motel rooms, ceremonial proceedings), workplaces and enclosed public places are subject to the law. This includes work vehicles that are not operated exclusively by one employee, as well as hotels and motels. Businesses are not required to allow smoking on the premises. Businesses may designate their premises as smoke- and tobacco-free.

The ICAA also applies to e-cigarettes and vape pens.

Break Time to Express Milk

OR. Rev. Stat. § 653.077

The law protecting employees who express milk applies to hourly, salaried, and part-time employees expressing milk for the employee's child 18 months of age or younger. Employers must make reasonable efforts to provide an appropriate location close to the employee's work area (other than a public restroom or toilet stall) for the employee to express milk in private. If the employer allows employees to use a refrigerator on site for personal use, then the employer must allow (but may not require) the employees to use the available refrigeration to store milk. The employer must provide the employee with reasonable unpaid rest periods to express milk for the employee's child each time the employee has a need to express milk. Employers with ten or fewer employees may assert an exemption if providing these breaks imposes an "undue hardship."

Meal Breaks

OR. Rev. Stat. § 653.261 (BOLI § 839-020-0050)

With some limited exceptions, for each eight-hour work shift, an employee must receive the following breaks free from work responsibilities:

- Two ten-minute paid rest breaks; and
- One 30-minute unpaid meal break

These are the minimum requirements. An employer can give longer breaks.

Minimum Wage, Overtime, and Wage Recordkeeping

Minimum Wage

OR. Rev. Stat. § 653.025

Oregon's minimum wage depends on work location. For July 1, 2024, through June 30, 2025, the minimum wage is \$13.70 per hour in non-urban areas, \$14.70 per hour in standard counties, and \$15.95 per hour in the Portland metro area.

Overtime

OR. Rev. Stat. § 653.261

Oregon state labor laws regarding the payment of overtime are mostly consistent with the federal overtime laws. Most employers are covered by the Fair Labor Standards Act (FLSA), so generally the FLSA will apply and requires employers to pay time and one-half for all hours worked more than 40 per work week unless an employee is properly classified as exempt.

Wage Recordkeeping

OR. Rev. Stat. § 652.120; OR. Rev. Stat. Ann. § 652.140

Regular paydays must be established and maintained by every employer. Payment to new employees must be made no later than 35 days from the time their work was begun. Pay periods may be established more frequently but may not exceed 35 days.

When an employer has notice that an employee has not been paid the full amount the employee is owed on a regular payday and there is no dispute between the employer and the employee regarding the amount of the unpaid wages:

- If the unpaid amount is less than five percent of the employee's gross wages due on the regular payday, the employer shall pay the employee the unpaid amount no later than the next regular payday; or
- If the unpaid amount is five percent or more of the employee's gross wages due on the regular payday, the employer shall pay the employee the unpaid amount within three days after the employer has notice of the unpaid amount, excluding Saturdays, Sundays, and holidays.

When an employee is fired, all wages earned by that person are due no later than the end of the first business day after discharge.

If an employee quits with at least 48 hours of notice, wages are due on the last working day (excluding Saturdays, Sundays, and holidays). If an employee quits without 48 hours of notice, wages are due in five days (excluding Saturdays, Sundays, and holidays) or on the next payday, whichever occurs first.

Final Payments

OR. Rev. Stat. § 652.150

- If an employee quits with less than 48 hours' notice (excluding weekends and holidays) the employee's paycheck and any wages owed to them are due within five business days or on the next regular payday, whichever comes first.
- If an employee quits with at least 48 hours' notice, the employee's final check is due on their last day of employment, unless that day is a weekend or a holiday. In that case, the check is due on the next business day.
- If an employee is discharged from their employment, their final paycheck is due by the end of the next business day.
- In the event an employer and employee mutually agree to terminate the employment relationship, the employee's check is due by the end of the following business day.

With limited exceptions, if an employer willfully fails to pay final wages when due, the employer risks the imposition of a penalty wage equal to the employee's wages for eight hours of work each day from the due date up to 30 days. With certain exceptions, employers may limit this liability to 100 percent of the employee's unpaid wages by paying the employee their final wages within 12 days of written notice from the employee notifying the employer that their wages remain due.

Oregon law also provides a \$1000 civil penalty for willful failure to pay wages at termination as well as costs, interest, and attorney fees.

Unemployment Insurance

OR. Rev. Stat. § 657.150

To be eligible to receive Oregon Unemployment Insurance, an individual must meet the following criteria:

- The individual must be unemployed;
- The individual must have worked in Oregon for the past 12 – 18 months;
- The individual must have earned the minimum amount of compensation determined by applicable unemployment eligibility guidelines; and
- The individual must be unemployed, physically and mentally able to work, available for work, and actively seeking employment each week he or she is collecting benefits.

Workers' Compensation

OR. Rev. Stat. Ch. 656

Employers in Oregon are required to maintain workers' compensation insurance for their employees, with the exception of a few categories of workers, including:

- Domestic servants;
- Handymen/Handywomen (gardening, maintenance, repair, remodeling, or similar work);
- Casual employment where the work in any 30-day period involves a total labor cost of less than \$1000;
- Most shipping, railway, and airline workers;
- Most firefighters and police; and
- Ski area workers who volunteer or work only for ski passes.

A "compensable injury" is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services, or resulting in disability or death. A resulting injury or disease is not compensable as a consequence of a compensable injury unless the compensable injury itself is the major contributing cause of the consequential condition.

Filing Time

- The employee must inform the employer as soon as possible.
- For aggravated injuries: five years from the date of the injury from the date of first notice of closure for a disabling claim, or after the date of injury, provided the workers' compensation claim has been classified as non-disabling for at least one year after the date of acceptance (OR. Rev. Stat. § 656.273(4)).
- Hearing regarding denial of claim must be requested within 60 to 180 days (OR. Rev. Stat. § 656.319).

Time Limits on Benefits

- For partial and temporary disabilities; the first three days are only paid if the employee is away from work for at least 14 days (OR. Rev. Stat. § 656.210(3)).
- Otherwise, payment is due on the 14th day after notice is given to the employer (OR. Rev. Stat. § 656.262(4)(a)).

Other Limits

- Subject to seniority rights and employment restrictions in a valid collective bargaining agreement, employers with 21 or more employees at the time of an employee's injury and of a request for reinstatement are required to reinstate recovered workers if the position exists and is available and the employee is not disabled from performing the duties of such position. An employee's former position is available even if that position has been filled by a replacement while the injured employee was absent. If the former position is not available, the employee shall be reinstated in any other existing position that is vacant and suitable. (OR. Rev. Stat. § 659A.043).

Child Labor

OR. Rev. Stat. § 653.315; OR. Rev. Stat. § 653.320

No child under 14 years of age may be employed in any work during the term when public schools are in session. The Bureau of Labor and Industries may allow children between the ages of 12 and 14 to be employed in any suitable work during any school vacation extending over a term of two weeks and may issue permits therefor.

A child under 16 years of age may not be employed for longer than ten hours for any one day or more than six days in any one week. The Commissioner of the Bureau of Labor and Industries shall issue special permits for the employment of children under 16 years of age in agriculture for longer than ten hours on any one day when the commissioner determines that such hours of work will not be detrimental to the health and safety of the child. Exceptions exist for children employed in youth camps, by newspaper vendors, and in private residences (e.g., domestic work, chores, childcare).

A child under 16 years of age may not work before 7:00 a.m., or after 7:00 p.m., except that between June 1 and Labor Day, a child under 16 years of age may be employed until 9:00 p.m.

In addition, every child under 16 years of age is entitled to at least 30 minutes for mealtime. The mealtime may not be included as part of the work hours of the day.

Gun Laws

Business owners are permitted to restrict the possession of firearms on their property.

https://www.usconcealedcarry.com/resources/ccw_reciprocity_map/or-gun-laws/

Additional Laws and Regulations

Employee v. Independent Contractor

OR. Rev. Stat. § 670.600

A worker must meet the following requirements to be considered an independent contractor:

1. The worker must be free from direction and control over the means and manner of the provision of their services, subject only to the right of the person from whom the services are provided to specify the desired result.
2. With limited exception, the worker must be customarily engaged in an independently established business.
3. The worker must be licensed under ORS 671 or 701 (CCB, State Landscape Architect Board, or LCB and State Board of Architect Examiners) if required for the service in question.
4. The worker must be responsible for other licenses or certificates necessary to provide their services.

Equal Pay

OR Rev Stat. § 652.220

It is illegal for an employer to pay an employee less than someone else for comparable work because of their race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. This includes wages, bonuses, benefits, and more. However, if there is a consistent and verifiable system for pay structure, limited circumstances allow for different pay based on bona fide factors, including one or more of these: a seniority system, a merit system, or a system that measures earnings by quantity or quality of production including piece-rate work, workplace location, travel, education, training, or experience.

An employer cannot give an employee a pay cut to make their pay equal to other employees.

It is illegal for employers to require employees to enter into a nondisclosure agreement that would stop employees from disclosing or discussing discriminatory conduct prohibited by ORS 659A.030, 659A.082, and 659A.112.

Genetic Information

OR. Rev. Stat. § 192.537

An individual's genetic information and DNA sample are private and protected. Any person authorized by law, an individual, or an individual's representative, to obtain, retain, or use an individual's genetic information or any DNA sample must maintain the confidentiality of the information or sample, and protect the information or sample from unauthorized disclosure or misuse.

Medical Information

OR. Rev. Stat. § 192.553

In the State of Oregon, an individual has:

- a. The right to have their protected health information safeguarded from unlawful use or disclosure; and
- b. The right to access and review their protected health information.

Social Media

OR. Rev. Stat. § 659A.330

Oregon employers may not require workers to disclose their social media account usernames and passwords or to permit the employer access to their personal social media accounts.

It is unlawful for an employer to require an employee or applicant to establish or maintain a personal social media account, or to advertise on their personal social media account.

Employees have a right to talk about working conditions, including engaging in online conversations that might at times be frustrating for employers and management. Even in a non-union workplace, the National Labor Relations Act (NLRA) provides protection for workers to discuss larger workplace issues that could reasonably result in the formation of a union.