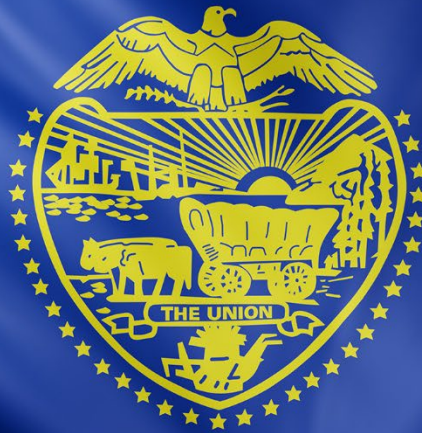


STATE OF OREGON



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.

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At-Will Employment

(Oregon At-Will Employment)

In Oregon, the laws allow 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. However, employers may not fire or let employees go because of discriminatory reasons.

Right-to-Work Laws

Oregon has no right-to-work statute or constitutional provision.

Immigration Verification

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

Drug Testing

(OR. Rev. Stat. § 438.435)

Testing an applicant or employee is generally permitted only if there is reasonable suspicion the applicant or employee is under the influence of alcohol or controlled substances.

Any drug testing must be done by a third party. All positive test results must be confirmed by a state licensed authority.

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 may file a complaint with the commissioner of the Bureau of Labor and Industries. The employer's personnel policies, or specific employment agreement, 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.

Voting Leave

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

Parental Leave

(OR. Rev. Stat. § 659A.150 – 659.A 186)

If the employer has 25 or more employees, the employee can qualify for protected leave under the Oregon Family Leave Act (OFLA). Thus, by law, the employee is allowed to take protected time off to take care of oneself or family members. Currently, family leave is protected, but often unpaid unless the individual has vacation, sick or other paid leave available to use. Paid family leave is coming to Oregon in 2023.

Under OFLA, an employee can take up to a total of 12 weeks of time off per year for any of these reasons:

- Parental leave (either parent can take time off for the birth, adoption or foster placement of a child). *If the employee uses all 12 weeks on this, he or she can take up to 12 more weeks for sick child leave.
- Serious health condition (employee's or to care for a spouse, parent, parent-in-law or child)
- Pregnancy disability leave (before or after birth of child or for prenatal care). *Employee can take up to 12 weeks of this in addition to 12 weeks for any reason listed here.
- Sick child leave (for employee's child with an illness or injury that requires home care but is not serious)
- Employee can also take OFLA protected time if 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.
- Military family leave (up to 14 days if the employee's spouse is a service member who has been called to active duty or is on leave from active duty)

- Bereavement leave (up to two weeks of leave after the death of a family member)

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.

Other Leave

Sick Time

[\(OR. Rev. Stat. § 653.601-653.661\)](#)

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 for many reasons, including 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 start 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

[\(OR. Rev. Stat. § 433.835 – 433.875\)](#)

Oregon's Indoor Clean Air Act (ICAA) protects nearly all Oregonians from the harms of secondhand smoke. The ICAA creates smoke free public places and places of employment with the intent of protecting the health of employees and the public. Tobacco remains the main cause of preventable death and disease in the United States, including in Oregon.

The ICAA applies to smoking, vaporizing and aerosolizing of inhalants in and around public places and places of employment.

Smoking, vaporizing and aerosolizing of inhalants is also prohibited within ten feet of all entrances (including stairs), exits (including stairs) and accessibility ramps that lead to and from an entrance or exit, windows that open and air-intake vents.

What places are subject to law?

- All workplaces and enclosed public places must be smoke, vapor and aerosol free. This includes work vehicles that are not operated exclusively by one employee, as well as hotels and motels.

In 2016, "inhalant delivery systems" were added to the ICAA. This means that the ICAA applies to products such as e-cigarettes and vape pens.

Exceptions to the ICAA include:

- Smoking tobacco products in certified smoke shops
- Smoking cigars in certified cigar bars
- Smoking in hotel or motel rooms that are designated as smoking allowed (may not exceed 25% of sleeping rooms)
- Smoking of non-commercial tobacco for American Indian ceremonial purposes

Some cities and counties in Oregon have enacted stricter local smoke free workplace laws. Employers must comply with all local laws, though OHA enforces the state law only.

Businesses are not required to allow smoking on the premises. At any time, an owner may designate the entire business premises tobacco-free or smoke-free.

Break Time to Express Milk

[\(OR. Rev. Stat. § 653.077\)](#)

This law protects hourly, salaried and part-time workers until the child the employee is expressing milk for reaches 18 months of age. Oregon employers must also make reasonable efforts to provide an appropriate location for the employee to express milk in private. That means a place other than a public restroom or toilet stall, close to the employee's workstation, where the employee may express milk concealed from view and without intrusion. The employer must allow the employee to bring a cooler or other insulated container to store the expressed milk. If the employer allows workers to use a refrigerator onsite for personal use, the employee must be allowed (but may not be required by the employer) to use the available refrigeration to store milk. Employers with ten or fewer employees may assert an exemption if providing these breaks imposes an "undue hardship." In addition, employers must provide reasonable accommodations for pregnant and lactating workers, those who have given birth to a child and other related medical conditions.

Meal Breaks

[\(OR. Rev. Stat. § 653.261\)](#)

For each eight-hour work shift an employee must receive the following breaks free from work responsibilities:

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

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

Minimum Wage, Overtime and Wage Recordkeeping

Minimum Wage

[\(OR. Rev. Stat. § 653.025\)](#)

Oregon's minimum wage depends on work location. The minimum wage is \$11.50 per hour in non-urban areas, \$12 per hour in standard counties and \$13.25 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. As most employers are covered by the FLSA, generally the FLSA will apply and requires employers to pay time and a-half for all hours worked more than 40 per workweek, unless an employee is properly classified as exempt.

Wage Recordkeeping

[\(OR. Rev. Stat. § 652.120\)](#)

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 five percent or more of the employee's gross wages due on the regular payday, the employer must 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 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 paychecks may not be held pending return of a uniform or tool or for any other similar reason.

Final Payments

[\(OR. Rev. Stat. § 652.150\)](#)

There are strict requirements that apply to the payment of final wages when an employee is fired, laid off or quit.

- If an employee quits with less than 48 hours' notice (not including weekends and holidays) his or her paycheck and any wages owed 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, his or her final check is due on his or hers 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 let go or fired, the final paycheck is due by the end of the next business day.
- If an employer and worker mutually agree to terminate the relationship, the check is due by the end of the following business day.
- When employment is related to state and county fairs, and employment terminates on weekends or holidays, the check is due by the end of the second business day after the termination.

Employers that fail to pay final wages when they are due, risk the imposition of a penalty wage equal to eight times the employee's regular rate of wage for each day that final wages go unpaid up to 30 days. With certain exceptions, employers may limit this liability to 100 percent of unpaid wages by paying final wages within 12 days of written notice from the employee that wages remain due.

Oregon law also provides a \$1,000 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 for this benefit program, the employee must a resident of Oregon and meet all of the following:

- Unemployed, and
- Worked in Oregon during the past 12 months (this period may be longer in some cases), and
- Earned a minimum amount of wages determined by Oregon guidelines, and
- Actively seeking work each week the worker 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
- Casual employment with a maximum labor cost of \$500
- Most shipping, railway and airline workers
- Most firefighters and police
- Ski area workers who volunteer or work only for ski passes

Any injury or occupational disease which arises out of and in the course of employment, including mental disorders, whether sudden or gradual in onset.

Filing Time

- Employee must inform employer as soon as possible.
- For aggravated injuries: five years from the date of the injury or from the date of first notice of closure for a disabling claim ([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

- First three days are only paid if the employee is away from work for at least 14 days. ([OR. Rev. Stat. § 656.212](#))
- Otherwise, payment is due on the 14th day after notice is given to employer. ([OR. Rev. Stat. § 656.262\(4\)](#))

Other Limits

- Employers with 21 or more employees at time of injury and of request for reinstatement are required to reinstate recovered workers. ([OR. Rev. Stat. § 659A.043](#))

Child Labor

[\(OR. Rev. Stat. § 653.315\)](#)

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 for any one day when the commissioner determines that such hours of work will not be detrimental to the health and safety of the children so employed. Exceptions exist here in the following job capacities: youth camps, newspaper carriers, employment in private residences (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 during the period between June 1 and Labor Day a child under 16 years of age may be employed until 9:00 p.m.

Additionally, every child under 16 years of age is entitled to not less than 30 minutes for mealtime and the mealtime may not be included as part of the work hours of the day.

Gun Laws

[\(OR. Rev. Stat. § 166.291\)](#)

Oregon is a shall-issue state with concealed carry applications processed at the county level by the local sheriff's office. However, the sheriff has some discretion if there are reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others.

No license is required to purchase a firearm. Private-party firearms transfers must be conducted through a licensed firearms dealer while both parties are present. The dealer is required by federal law to conduct a background check and keep a record of the sale. The Oregon State Police keep records of all gun sales from firearm dealers for five years.

Open carry is legal in Oregon without a license although local cities and counties are authorized to place restrictions on who may open carry in public places (which includes vehicles). The minimum age is 18 years old. Some areas are off-limits, including federal facilities and Indian reservations.

Concealed carry is legal only with an Oregon Concealed Handgun License (CHL). Oregon CHLs require an applicant to be at least 21 years of age and demonstrate competence with a handgun. Non-residents who live in contiguous states may apply for a CHL. In terms of reciprocity, Oregon does not honor permits from any other states.

Oregon does not restrict the right of employers to ban employees possessing firearms on company property, including in private automobiles.

Additional Laws and Regulations

Employee v Independent Contractor

[\(OR. Rev. Stat. § 670.600\)](#)

Worker must meet all of the requirements of ORS 670.600 to be considered an independent contractor:

1. Free from direction and control over the means and manner of providing the services, subject only to the right of the person from whom the services are provided to specify the desired result; and
2. Customarily engaged in an independently established business; and
3. Licensed under ORS 671 or 701 (CCB, State Landscape Architect Board, or LCB and State Board of Architect Examiners) if required for the service; and
4. Responsible for other licenses or certificates necessary to provide the service.

Equal Pay

[\(OR. Rev. Stat. § 652.210 – 652.235\)](#)

It is illegal for an employer to pay an employee less than someone else because of his or her race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age doing comparable work (including 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 the following: a seniority system, a merit system, 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 with other employees.

***Genetic Information**

[\(OR. Rev. Stat. § 192.537\)](#)

An individual's genetic information and DNA sample are private and protected. Any person authorized by law or by 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.

Gender Discrimination

[\(OR. Rev. Stat. § 659A.006\)](#)

It is unlawful to discriminate against any of its inhabitants because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability or familial status.

Medical Information

[\(OR. Rev. Stat. § 192.553\)](#)

In the State of Oregon, an individual has:

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

Social Media

[\(OR. Rev. Stat. § 659A.330\)](#)

Oregon employers are not allowed to require workers to disclose their social media account usernames and passwords or require access to 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 require employees 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.