



July 15, 2011

## **2011 OREGON EMPLOYMENT LEGISLATION UPDATE**

*The 2011 Oregon legislative session recently ended, and there are a number of new labor and employment laws that were passed which may impact Oregon employers and their businesses.*

*Available on the Harrang Long Gary Rudnick P.C. website is a link to a chart (<http://www.harrang.com/alerts.asp>), which shows all of the labor and employment bills that were considered during the 2011 Oregon legislative session and their status. To obtain the full text of a particular bill, you can click on the link provided under the bill column on the chart.*

*If you have questions about how any of the bills may impact your business, please contact one of our labor and employment lawyers.*

### **Bills Signed Into Law**

*Some of the labor and employment bills passed by the legislature and signed into law by Governor John Kitzhaber are as follows:*

#### **General Employment**

##### ***House Bill 2034 – Apprenticeship***

This bill modifies current Oregon apprenticeship statutes to bring them into alignment with revised federal apprenticeship regulations implemented by the United States Department of Labor, Employment and Training Administration. The modifications this bill makes to Oregon's apprenticeship law include, but are not limited to, reducing the timeline for registering new apprenticeship agreements from a 90-day timeframe to 45 days after the start of the apprenticeship; establishing a specific probationary period for all apprentices to the timeframe of either up to one year or 25 percent of the length of the apprenticeship program, whichever period is shorter; and allowing the transfer of apprentices between programs for reasons such as relocating to another geographic location. This bill was signed by the Governor on May 27, 2011, with an immediate effective date of May 27, 2011.

For employers in business and government alike, employees are your most valuable, and often most expensive, asset. How you handle employment issues can have a significant impact on your bottom line. Our labor and employment attorneys provide creative, strategic legal counsel – targeted to your mission and business environment – to help ensure the most proficient use of human resources, prevent costly disruptions, and help you identify and address issues before they become costly claims or lawsuits.

We specialize in providing labor and employment advice, counseling and litigation services to public and private employers.

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### ***House Bill 2049 – Department of Human Services / Needy Families Program***

This bill permits the Department of Human Services (DHS) to take actions during the biennium beginning on July 1, 2011, to reduce expenditures relating to temporary assistance for the needy families program. The bill allows DHS to prescribe by rule an employability assessment and orientation process that DHS will use to determine the level of participation by individuals applying for or receiving aid pursuant to the temporary assistance for needy families program. This bill was signed by the Governor on July 6, 2011, with an immediate effective date of July 6, 2011.

### ***House Bill 2060 – Disclosure of Employment Department Information***

This bill authorizes the Oregon Employment Department to disclose employment-related information, such as the names, addresses and payroll data of employer and employees, to the Department of Human Services (DHS) and the Oregon Health Authority (OHA) to assist in the collection of debts. The bill contains provisions prohibiting the DHS and OHA from subsequently disclosing the information to private collection agencies or using the information other than for debt collection purposes. This bill was signed by the Governor on May 16, 2011, with an immediate effective date of May 16, 2011.

### ***House Bill 3186 – Changes to Mobile Communication While Driving***

In 2007, the Oregon legislature passed legislation requiring the use of a hands-free accessory in order to lawfully use a mobile communication, such as a cell phone, while driving. In 2009, the Oregon legislature designated a driver's failure to use a hands-free accessory while driving as a primary offense, meaning that a law enforcement officer could stop and cite a driver solely for unlawfully using a cell phone. One exception to the 2009 law was that persons operating a vehicle in the scope of their employment were not required to use a hands-free accessory to use a mobile communication while driving. HB 3186 removes this "scope of employment" exception from the cell phone law. The removal

of this exception expands coverage of this law to employees who fail to use a hands-free accessory while driving in the scope of their employment. This bill was signed by the Governor on June 28, 2011, with an effective date of January 1, 2012.

### ***Senate Bill 110 – Notification of Unemployment Claim***

This bill allows the Oregon Employment Department to notify an agent of an employer, such as a third-party administrator, of unemployment insurance (UI) benefits claims or denial of claims. The prior law required the Employment Department to provide notice directly to the most recent employer when an individual filed for UI benefits, but did not require the Department to provide notice directly to an employer's agent, which would oftentimes lead to a delay in the claims process. The bill specifies that the Employment Department may provide notice of a filed claim for UI benefits with either the most recent employer or that employer's agent, with the notice then being provided to the next most recent employer or agent. This bill was signed by the Governor on May 5, 2011, with an immediate effective date of May 5, 2011.

### ***Senate Bill 628 – County Salaries***

This bill requires counties to annually publish the actual individual gross monthly salary of all regular officers and employees occupying budgeted positions. The bill permits counties to identify each budgeted position by the title of the position and deletes the provision under prior law which required counties to publish employee names with salary information. This bill was signed by the Governor on June 2, 2011, with an effective date of January 1, 2012.

### ***Senate Bill 638 – Emergency Unemployment Benefits***

This bill provides for payment of up to six weeks of state-funded unemployment benefits to qualifying unemployed workers who have exhausted all other unemployment benefit entitlements. Similar benefit extensions have been passed by the Oregon legislature in 2009 and in 2010. SB 638 contains a sunset provision

providing that the bill will be repealed on January 2, 2014. This bill was signed by the Governor on March 24, 2011, with an immediate effective date of March 24, 2011.

### ***Senate Bill 898 – Alcohol Servers***

This bill expands the Oregon Liquor Control Commission's authority to enforce minimum age requirements for workers who serve or sell alcohol and to investigate potential violations. This bill was signed by the Governor on May 19, 2011, with an effective date of January 1, 2012.

## **Employee Rights**

### ***House Bill 2240 – Food Service Employees***

In 2007, the Oregon legislature passed Senate Bill 403, which allowed tipped restaurant workers to voluntarily waive their meal periods, and prohibited an employer from coercing affected employees into waiving such meal periods. SB 403 was designed to allow tipped restaurant workers to be exempt from the provision of Oregon's wage and hour laws requiring non-exempt workers to take their meal periods during the middle of their work period, which for restaurant workers often coincides with their biggest opportunity to earn tips. HB 2240 removes the sunset provision in SB 403 (2007), which provided that the law would expire on January 2, 2010. HB 2240 was signed by the Governor on May 16, 2011, with an effective date of January 1, 2012.

### ***House Bill 2828 – Jury Service***

This bill creates an unlawful employment practice under Oregon law if an employer interrupts an employee's elected insurance benefits during times when the employee serves or is scheduled to serve as a juror. The bill also creates an unlawful employment practice if an employer discharges, threatens to discharge, intimidates or coerces an employee by reason of the employee's service or scheduled service as a juror on a grand jury, trial jury, or jury of inquest. This bill applies to Oregon employers with 10 or more employees. This bill was signed by the

Governor on May 20, 2011, with an effective date of January 1, 2012.

### ***House Bill 3482 – Harassment Victims***

This bill requires Oregon employers who employ six or more employees to allow eligible employees who are harassment victims to take unpaid leave from employment to address issues related to the harassment. The bill also requires employers to provide reasonable safety accommodations to employees who are harassment victims.

NOTE: This bill has been passed by both houses of the Oregon legislature, but as of July 14, 2011, this bill has not yet been signed by Governor Kitzhaber.

## **Veterans**

### ***House Bill 2241 – Military Leave***

In 2009, the Oregon legislature passed House Bill 3256, which gave service members the option to pursue a remedy in state court for employment discrimination based on military service instead of relying solely on the federal remedy provided by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). HB 2241 expands the definition of "uniformed service" under Oregon law to match the federal definition under USERRA. HB 2241 also allows public employees to take a leave of absence for a period not to exceed 15 days in any one training year without loss of time, pay or regular leave or other rights or employment benefits to which the employee is entitled for initial active duty for training when serving in the National Guard, National Guard Reserve, or reserve component of the U.S. Armed Forces or U.S. Public Health Service. This bill was signed by the Governor on April 14, 2011, with an immediate effective date of April 14, 2011.

### ***House Bill 2919 – Small Business Grants***

This bill authorizes the Oregon Business Development Department to make grants to small businesses from the Building Opportunities for Oregon Small Business Today Account

(BOOST) if the business hires a veteran as a new, full-time employee. The BOOST program currently serves to stimulate economic growth by providing loan and grant incentives to businesses that employ unemployed persons. This bill was signed by the Governor on May 20, 2011, with an effective date of January 1, 2012.

### ***House Bill 3207 – Required Interviews for Veterans***

This bill requires public employers to interview each veteran who applies for a civil service position, provided that the veteran applicant meets minimum qualifications and special qualifications for the position. This bill was developed in response to the Task Force on Veterans' Services' findings that a high percentage (estimated at 43%) of Oregon National Guard Troops returning from deployment in 2010 remained unemployed for an extended time period. Public employers will need to implement additional procedures in their hiring processes for mandatory interviews of qualifying veteran applicants. This bill was signed by the Governor on June 23, 2011, with an effective date of January 1, 2012.

### ***Senate Bill 72 – Definition of “Disabled Veteran”***

This bill amends the definition of “disabled veteran” under Oregon law relating to veterans' preference in public employment. Current law defines “disabled veteran” as, among other things, a person entitled to disability compensation from the United States Department of Veterans Affairs (USDVA). SB 72 removes the compensation determination from the definition of “disabled veteran,” bringing the state definition in alignment with the federal rating determination. This bill was signed by the Governor on May 16, 2011, with an immediate effective date of May 16, 2011.

### ***Senate Bill 277 – Veterans' Preference in Public Employment***

In 2009, the Oregon legislature amended Oregon's veterans' hiring preference statute, ORS 408.230, to clarify the definition of civil service

and remove a provision limiting the veterans' preference to positions for which application was made within 15 years of discharge or release from service. Some public employers have relied on the 2009 amendment to claim that the veterans' hiring preference law does not apply to them. This bill was requested by the Oregon Department of Veterans' Affairs to clarify that Oregon's veterans' hiring preference law requires that all public employers are subject to the hiring and promotion preference for veterans and disabled veterans. This bill was signed by the Governor on May 19, 2011, with an immediate effective date of May 19, 2011.

## **Workers' Compensation**

### ***House Bill 2093 – Managed Care Services***

Managed care organizations (MCOs) contract with workers' compensation insurers and self-insured employers to provide specified health care services to enrolled workers. HB 2093 was proposed in response to complaints about organizations that are not certified MCOs directing injured workers' care by not allowing them to choose their own physicians and by interfering with and delaying medical treatment. This bill limits the services of managed care services for injured workers to MCOs certified by the Oregon Department of Consumer and Business Services (DCBS), and allows the DCBS to take administrative action against non-certified organizations by imposing civil penalties and issuing cease and desist orders. This bill was signed by the Governor on May 20, 2011, with an effective date of January 1, 2012.

### ***House Bill 2094 – Workers' Compensation Claims***

This bill authorizes a delay in a reconsideration proceeding for notice of claim closure in workers' compensation claims under certain circumstances. HB 2094 allows a delay in the process for up to 45 days when the parties are actively engaged in settlement negotiations and agree to delay the process. This bill was signed by the Governor on May 20, 2011, with an effective date of January 1, 2012.

## **Senate Bill 173 – Medical Provider Reimbursement**

This bill limits the amount recoverable by a medical service provider or health insurance provider for medical services provided in workers' compensation claims resolved by a settlement to the full medical fee-schedule amount and allows payment to a medical service provider directly from the settlement proceeds. This bill was signed by the Governor on May 19, 2011, with an effective date of January 1, 2012.

## **Bills Which Did Not Pass**

*Although the following labor and employment bills did not pass during this last 2011 Oregon legislative session, the bills could reappear in future legislative sessions in the same or a similar format:*

### **General Employment**

#### **Senate Bill 7 – Income Tax Credit for New Positions**

This bill would have created an income tax credit for the creation of new employment positions by taxpayers. If passed, the bill would have set a total ceiling of \$10 million in tax credit to be allowed to Oregon taxpayers, including corporations, who create new employment positions that are filled by Oregon residents during a six-month period.

#### **Senate Bill 240 – School Harassment**

If passed, this bill would have required school districts to adopt policies prohibiting harassment, intimidation or bullying and prohibiting cyber-bullying, and to develop such policies after consultation with parents, guardians, school employees, volunteers, students, administrators and community representatives. The bill would have required school employees to report acts of harassment, intimidation or bullying and acts of cyber-bullying, and permitted remedial action for failure to report. The bill also would have required school districts to prominently post at schools their policies related to acts of harassment, intimidation or bullying and acts of cyber-bullying.

### **Collective Bargaining**

#### **Senate Bill 821 – Executive Session**

This bill would have modified Oregon's public meetings law and eliminated certain types of meetings that governing bodies of public bodies may conduct in executive session. If passed, this bill would have removed the provision under the current public meetings law which requires that labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session.

#### **Please Note**

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