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EMPLOYMENT ALERT

News for Oregon Employers from the 2007 Legislative Session

Oregon's 2007 Legislative Session was eventful and evidenced different priorities than in years past. Now that the session is over, it is time to learn about the new requirements. Unless otherwise specified, the changes described in this Alert will take effect on January 1, 2008.

EMPLOYMENT CONTRACTS

Arbitration Agreements and Noncompetition Agreements

Senate Bill 248 amends ORS 36.260 (arbitration agreements) and ORS 653.295 (non-competition agreements) to significantly limit the ability of employers to utilize and enter into with their employees valid and enforceable arbitration and noncompetition agreements. The changes affecting arbitration agreements are simpler and more straightforward; the changes affecting noncompetition agreements are more complex.

Arbitration Agreements

Under existing Oregon law, agreements to arbitrate disputes involving employment matters are governed by the general statute regarding arbitration agreements. This statute provides that arbitration agreements are valid, enforceable and irrevocable except for reasons for which a contract can be revoked. Under the new law, an agreement between an employer and an employee to settle employment disputes by arbitration will only be valid under the following circumstances:

1. Upon initial employment if the employer, in a written employment offer, received by the employee at least two weeks before the employee's first day of employment, informs the employee that an arbitration agreement is a condition of employment;

– or –

2. The arbitration agreement is entered into between the employer and the employee upon a subsequent bona fide advancement of the employee.

If these conditions are not met, the arbitration agreement will be voidable and is not enforceable in court.

Noncompetition Agreements

Under existing law, noncompetition agreements, generally, are valid and enforceable if entered into upon the initial employment of the employee or upon a subsequent bona fide advancement of the employee. Under the new law, the following conditions must be met to create a valid and enforceable noncompetition agreement:

1. Similar to the new rules that will govern employment arbitration agreements, to create a valid, enforceable noncompetition agreement, the agreement must either be entered into upon initial employment or upon a subsequent bona fide advancement of the employee. If entered into upon initial employment, the agreement must be contained in a written employment offer, received by the employee at least two weeks before the employee's first day of employment, in which the employer informs the employee that a noncompetition agreement is a condition of employment;

2. The employer must have a protectable interest. This is defined as the employee having access to trade secrets, competitively sensitive confidential business or professional information (such as product development plans, product launch plans, marketing strategy or sales plans) or when the employee is employed as an "on-air talent" (for which special rules apply);

3. The employee must be salaried and engaged in administrative, executive or professional work – essentially, the employee must meet the requirements under the FLSA and Oregon law for being an "exempt employee;"

4. Have a gross annual salary (including commissions) which, at the time of the employee's termination, exceeds the median family income for a four-person family "as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination." It is not clear whether this is based on Oregon or national statistics. For 2005, the most recently available year, those numbers are $60,262 and $70,312, respectively; and

5. The term of the noncompetition agreement cannot exceed two years from the date of the employee's termination.

If these conditions are not met, the noncompetition agreement is voidable and is not enforceable in court.

The new law does provide an option if these conditions are not met and the employer wants to create a valid, enforceable, noncompetition agreement. The employer can pay compensation to the employee equal to 50 percent of the employee's annual gross base salary and commissions at the time of the employee's termination or 50 percent of the median family income for a four-person family, as determined by the

U.S. Census Bureau, for the most recent year available at the time of the employee's termination.

The new law does not restrict or affect covenants not to solicit employees or business customers of the employer. It also does not affect the validity of "bonus restriction agreements." To be valid, noncompetition agreements must still be limited to a reasonable geographic area.

The law, which takes effect on January 1, 2008, only affects arbitration agreements and non-competition agreements entered into on or after that date.

DISCRIMINATION AND RETALIATION

Discrimination Based on Sexual Orientation

The 2007 session saw a major expansion of the rights of gays and lesbians in the workplace. The Oregon Equality Act (Senate Bill 2) extends the Oregon discriminatory employment practices law to prohibit discrimination based on sexual orientation. Effective January 1, 2008, it will be unlawful to refuse to hire, discharge, or otherwise discriminate in the terms and conditions of employment or compensation based on a person's sexual orientation. Churches and religious institutions are exempt from the law's requirements under certain circumstances.

Sexual orientation is defined broadly as "an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth." Oregon employers should update their EEO and anti-harassment and discrimination policies to reflect these changes. All employees, and supervisors in particular, should have training on up-to-date policies.

Scope of Damages for Discrimination Claims Under State Law

Currently, state law claims for discrimination against an employee based on race, religion, color, sex, national origin, marital status and age are tried to a court, not a jury, and the remedies are limited to injunctive and equitable relief, including reinstatement and back pay. General compensatory damages, including emotional distress damages, and punitive damages, are unavailable to successful claimants.

Effective January 1, 2008, with the passage of HB 2260, employers will be liable under Oregon's law against discrimination not only for back pay and other forms of equitable relief, but for the full spectrum of compensatory and punitive damages. In addition, at the request of any party, such discrimination claims will be tried to a jury, not a judge. Unlike the basic federal law against discrimination, Title VII, Oregon's law against discrimination will contain no cap on compensatory damages.

Practice Tip

It is critical for employers to remain vigilant in preventing workplace discrimination and harassment of all forms.

With the passage of HB 2260, expect an increase in discrimination claims filed under state law.

Statute of Limitations for Filing Retaliation Claims

HB 2259 extends the statute of limitations from 30 to 90 days for an employee to file an administrative complaint with BOLI alleging retaliation for opposing violations of Oregon OSHA or exercising the right to complain under that law. As before, this limitation runs from the date the employee had reasonable cause to believe that the discriminatory violation occurred. This bill took effect June 1, 2007, and applies only to employment practices occurring after that date.

DOMESTIC PARTNERSHIP LAW

The Oregon Family Fairness Act establishes a domestic partnership system that provides legal recognition to same-sex relationships. Under this Act, individuals who meet age and other requirements and who wish to become partners in a domestic partnership may complete and file a Declaration of Domestic Partnership with the county clerk. The county clerk will register the Declaration in a domestic partnership registry and return a Certificate of Registered Domestic Partnership to the partners. Registered domestic partners have the same legal rights and responsibilities under Oregon law as granted to or imposed on married persons. As Oregon state law cannot control federal rights, the Act does not create new rights or responsibilities under federal law.

As the Act grants all privileges, rights, immunities, benefits, and responsibilities afforded to married people and their children to domestic partners and their children, employers should note the following implications:

Employers will need to bring subject benefit plans into compliance by extending such plans to domestic partners and children as if the partners were married. Note important caveats to this rule. First, the Act does not require the extension of an employee benefit plan that is subject to federal regulation under ERISA. It also does not require or permit the extension of any employee benefit plan under PERS, the Oregon Public Service Retirement Plan, or any other retirement, deferred compensation, or employee benefit plan if the plan administrator concludes that such extension would conflict with a condition for tax qualification or favorable tax treatment under Federal law.

The law requiring payment of final paycheck to a surviving spouse will apply to a surviving domestic partner.

OFLA rights for leave to care for a spouse with a serious health condition will apply equally to domestic partners. As the Act does not create rights under federal law, FMLA remains unchanged and does not provide leave for a seriously ill domestic partner.

The law prohibiting discrimination against a person because a member of the individual's family works or has worked for the employer will apply to domestic partners.

Key areas of employer handbooks that should be updated are: bereavement policies, OFLA policies, sick leave notification policies, and status-change notification policies.

BENEFITS

Health Insurance Rate Regulation for Small and Medium Employer Plans

HB 2002 provides for increased regulation of health insurance rates for medium-sized employers. The bill creates incentives for businesses employing 26-50 people to offer insurance and healthy lifestyle programs which promote preventive care. Insurance carriers are also allowed to take more factors into account in setting small group rates. This bill became effective on June 30, 2007.

Mandated Benefits

The Legislature passed a number of bills mandating coverage of specific medical conditions, equipment, or services in certain insurance plans. These requirements do not place any obligation on employers, but some argue that they could increase the cost of insurance.

HB 2348 – Health insurance policies other than disability income policies must cover the treatment of injuries and illnesses caused in whole or in part by the insured's use of alcohol or controlled substances.

HB 2517 – All policies providing coverage of hospital, medical, or surgical expenses must provide coverage for prosthetic and orthotic devices. The bill only mandates coverage of devices that are medically necessary to allow the insured to complete activities of daily living or essential job-related activities. The policy need not cover devices solely for the comfort or convenience of the insured.

HB 2918 – Health benefit plans must cover treatment of any pervasive development disorders of an enrolled child under 18 years of age. A "pervasive development disorder" is defined as a neurological condition that includes Asperger's syndrome, autism, developmental delay, developmental disability or mental retardation.

SB 8 – Health benefit plans that provide coverage for chemotherapy must provide coverage for orally administered anti-cancer medication on at least as favorable a basis as intravenously administered or injected cancer medication.

SB 59 – This bill reenacts a lapsed requirement that health insurance policies which cover acupuncture services by a physician must cover acupuncture services by a licensed acupuncturist.

SB 491 – If a health insurer provides coverage for cochlear implants, the insurer must provide coverage for bilateral cochlear implants.

RECORDS

Attorney-Client Privilege for Investigation Records Compiled by Public Entities

SB 671 amends the Public Records Law and potentially alters the scope of the attorney-client privilege for public entities when conducting investigations into "possible wrongdoing by the public body." Investigations of "possible wrongdoing" are common in personnel matters – in fact, "possible wrongdoing" forms the basis of most personnel-related investigations.

The new provisions of the Public Records Law added by SB 671 apply to "factual information compiled in a public record" when the factual information is compiled "as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body." If factual information is compiled as a result of an investigation into allegations of possible wrongdoing by "the public body" under the direction of an attorney on behalf of the public body, the factual information may be subject to disclosure, despite being compiled by or under the direction of legal counsel, if the following apply:

1. The basis of the public entity's claim of exemption from disclosure is the attorney-client privilege;

2. The factual information is not otherwise prohibited from disclosure under state or federal law, a regulation, court order or another applicable provision of the Oregon Public Records Law;

3. The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that has been initiated or is reasonably likely to be initiated by or against the public body; and

4. The holder of the privilege (i.e. the public body) has made or authorized a public statement "characterizing or partially disclosing the factual information compiled by or at the attorney's direction."

Perhaps the most important thing for public entities to remember is disclosure is only required if the holder of the privilege – that is, the client who receives the results of the investigation – makes or authorizes "a public statement characterizing or partially disclosing the factual information."

If a situation requires disclosure or the public entity chooses to disclose information about the investigation, the public entity has the option of releasing a

condensation of "significant facts that are not otherwise exempt from disclosure." A person or entity seeking to inspect or receive a copy of a condensed version of significant facts provided by the public entity may file a petition for review of the condensed record with the Attorney General, the district attorney or the court, as applicable and as otherwise provided in the Public Records Law.

The new law clarifies that a voluntary or compelled disclosure of facts does not constitute a waiver of the attorney-client privilege. The changes to the law do not affect the confidentiality of opinions or legal analysis given by counsel to clients.

If legal counsel is involved in the investigation, be sure to consult with your attorney before disclosing or discussing facts or information developed during the course of the investigation. The bill took effect upon its passage on June 20, 2007 and applies to records created after that date.

Timely Response to Requests to View Personnel Records

HB 2254 creates a 45-day deadline for employers to respond when an employee or former employee requests inspection or a copy of his or her personnel records. The employer and employee may agree to extend this time if the records are not readily available. The legislature added teeth to this bill by including a $1,000 civil penalty for failure to comply. Under the personnel records law, an employer is permitted to charge an employee only the actual cost of services resulting from furnishing the records. This law applies to requests made after January 1, 2008.

Mediation of Interpersonal Disputes Between Public Entity Employees

Communications and agreements between two public bodies in mediation are generally not confidential. HB 2139 allows confidential mediation of workplace interpersonal disputes between employees of a public body.

Disclosure of Education Employee's Disciplinary and Investigatory Records

Before the passage of SB 380, a public or private K-12 provider had a statutory obligation to turn over investigations of suspected child abuse by employees upon law enforcement request. The schools were also required to turn over disciplinary records to any person who asked for them upon an employee's conviction of certain crimes. This bill adds to (or clarifies) this requirement by directing the schools to turn over records of *former* employees under the same circumstances. The bill took effect May 30, 2007.

PAID AND UNPAID LEAVE

Leave of Absence for Victims of Domestic Violence and Other Crimes

Senate Bill 946 requires an employer to grant an eligible employee a leave of absence if the employee or that employee's minor child or dependent needs time to address domestic violence, sexual assault, or stalking. Upon receipt of notice from an

employee, employers must provide reasonable leave to seek legal or law enforcement assistance, seek medical treatment, recover from injuries, obtain counseling, relocate or secure a home, or seek the help of a victim services provider. Employers may limit the amount of leave for these purposes only if the employee's absence creates an "undue hardship," meaning a significant difficulty and expense to an employer's business.

The law applies to employers with six or more employees. An eligible employee is one who worked an average of 25 hours or more per week for at least 180 days immediately before taking leave, and who is a victim of domestic violence, sexual assault or stalking, or is the parent or guardian of a minor child or dependent who is a victim. An employee is required to give reasonable advance notice of the employee's intention to take crime victim leave, unless giving advance notice is not feasible.

The employer may require certification of the victimization, and the law provides that police reports, protective orders, and documentation from an attorney, law enforcement officer, health care professional, licensed counselor, clergy member or victim services provider are sufficient forms of certification. That information, including the fact that crime victim leave was requested or obtained, must be kept confidential by the employer. The leave is unpaid, but an employer must allow an eligible employee to apply vacation leave (or other paid leave offered in lieu of vacation leave) to the absence. There is no fixed limit on the amount of leave that must be given. Rather the employee is entitled to "reasonable" leave, and what is reasonable will depend on the circumstances.

Like OFLA leave, crime victim leave is legally protected. An employer may not deny leave to an eligible employee or discriminate or retaliate against an employee with regard to any terms and conditions of employment because the employee took the protected leave.

In light of this new law, employers should develop new policies and processes for addressing crime victim leave, and notify and train employees on the changes. The bill took effect on May 25, 2007, and created a civil cause of action for an employer's failure to comply with the law.

Employer Cannot Require OFLA Leave to Recover From Work-Related Injuries

HB 2460 amends provisions of the Oregon Family Leave Act (OFLA) and the Oregon Workers' Compensation Law to address the relationship between OFLA leave and workers' compensation leave. The law changes OFLA's definition of "family leave" to exclude leave taken by an eligible employee who is unable to work because of a "disabling compensable injury." A "disabling compensable injury" is one that entitles the worker to compensation for disability or death under the Workers' Compensation Law. In general, then, OFLA leave will no longer run concurrently with a workers' compensation leave.

Currently, an injured worker who refuses an employment offer for light duty or modified employment, will lose his or her right to reinstatement under workers'

compensation rules. Although HB 2460 does not change that, it does provide that an employee who refuses a light duty offer while on a workers' compensation leave will automatically commence OFLA leave (provided that he/she is otherwise entitled to OFLA). No written or oral notice of this commencement of OFLA to the employer is required.

Employees May Apply Accrued Sick Leave For Any OFLA Absence

Under existing law, an employee on OFLA leave is entitled to use accrued vacation leave, but not accrued sick leave, unless the purpose of the leave is to care for an infant or newly adopted child, or a mentally or physically disabled child incapable of self-care. HB 2485 amends OFLA to provide that employees may apply accrued sick leave unconditionally to any OFLA-covered absence.

OFLA Leave Will Be Available To Care For Seriously Ill Grandparents and Grandchildren

Under existing law, employees are permitted to use OFLA leave to care for family members with serious health conditions, but the definition of family member does not include grandparents or grandchildren. In HB 2635, the 2007 Legislature changed that. That law redefines "family member" to include an employee's grandparent and grandchild. As a result, an eligible employee may take OFLA leave in order to care for a grandparent or grandchild with a serious health condition. FMLA remains unchanged and does not extend to leave to care for a seriously ill grandparent or grandchild.

Note that HB 2635 did not change the provisions of sick child leave under OFLA. Thus, it remains the case that OFLA leave is available to an eligible employee who is the parent of a child who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care. This type of leave – commonly referred to as "sick child leave" – is in addition to any leave that an employee is entitled to when he or she is needed to care for a family member with a serious health condition and may only be taken by the parent of a child.

EMPLOYEE BREAKS

Accommodation of Breastfeeding Mothers

In 2005, legislators balked at passing a *mandatory* law requiring employers to provide a private area other than a public restroom or toilet stall for employees to express breast milk. In 2007, legislators went beyond the aspirational guidelines enacted in 2005, passing HB 2372. That law requires employers to make reasonable efforts – meaning efforts that do not impose an undue hardship on the operation of the business – to provide a private location for an employee to express milk. The employee must provide her employer reasonable notice of her intent to express milk upon returning to work.

In addition, unless otherwise agreed between employer and employee, an employer must provide a 30 minute rest period to express milk for each four hours of

work. If feasible, the employee should take this rest period at the same time as other rest or meal periods that are otherwise provided to the employee. To the extent the break period needed to express milk exceeds the employee's paid rest period, it is unpaid, though an employer may allow an employee to work before or after her normal shift to make up the amount of time used during the unpaid rest periods. If the employer's contribution to the employee's health insurance is based on the number of hours worked, the break counts as paid work time for the purpose of measuring the number of hours the employee works.

These requirements will apply to employers with 25 or more employees and across all industries. Administrators, executives and professionals fall within its scope. School districts must adopt rules to ensure compliance. The law also directs BOLI to develop an advisory committee to address compliance difficulties in specific industries or professions.

Relaxed Break Requirements for Tipped Food and Beverage Service Workers

SB 403 directs the Commissioner of BOLI to adopt rules regarding meal periods for food and beverage service workers who receive tips and report those tips to their employer. The rules will permit the employee to waive meal periods, and forbid an employer from coercing the employee to do so. An employer who coerces an employee to waive their meal period is subject to a civil penalty of up to $2000 for each separate violation. In the case of a continuing violation, each day constitutes a separate and distinct violation. The law sunsets in 2012.

WAGES

Timely Payment of Wages Upon Notice of Payday Mistakes

HB 2258 ensures timely payment of wages after the employer receives notice that an employee did not receive the full amount owed on payday. If the amount is less than 5 percent of the employee's gross wages due on the regular payday, the employer must pay the unpaid amount by the next regular payday. If the amount is greater than 5 percent, the employer must pay within three days of notice, excluding Saturdays, Sundays, and holidays. These time mandates are conditioned on there being no dispute as to the amount of unpaid wages.

Timely Payment of Withheld Wages to Appropriate Recipient

If an employer deducts wages pursuant to a law or an agreement with its employee, HB 2674 requires the employer to pay the amount deducted either (1) within the required or agreed upon time or (2) within seven days of when the employee is due the remainder of the paycheck. Failure to do so may result in a civil penalty of up to $1000.

Agreements for Electronic Payment of Wages Between Employer and Employee

ORS 652.110 describes the medium permitted for paying employees. HB 2256 amends that law to provide for an expanded range of electronic payment to employees, such as direct deposit, automated teller machine cards, payroll cards, or any other means of electronic transfer. Wage payments through such media must be pursuant to a written agreement with the employee. Agreements to make and accept wage payments electronically must allow the employee to make an initial withdrawal of the entire amount without cost, or to choose another means of payment involving no costs.

Conditions for Garnishment of Wages

SB 303 provides that wages may not be garnished if the writ of garnishment is delivered within two days of the pay period and payment of the debtor's wages has already been set in motion. This law only applies if the employer uses direct deposit, or contracts with the Department of Administrative Services as a payroll administrator.

WORKPLACE SAFETY

Smoking Prohibition Extended to (Almost) All Workplaces

Of particular importance to food and beverage industries, SB 571 prohibits smoking in or near any place of employment. Employers are expressly required to provide a place of employment that is free of tobacco smoke for all employees. This includes a "10 foot rule" from all entrances, exits, windows that open, and ventilation intakes. The bill does contain some limited exceptions. Smoking will not be prohibited in smoke shops and cigar bars. Hotels may designate up to 25 percent of sleeping rooms as smoking rooms.

An employer's failure to follow this law is a Class A violation punishable by a fine of not more than $500 per day, not to exceed $2,000 for a single employer in a 30-day period. In addition, administrators or persons in charge of hospitals who permit a person to smoke in a prohibited area are subject to civil penalties of the same amount employers face in fines. This law takes effect January 1, 2009, giving bars and restaurants an extra year to develop outdoor areas for their customers who smoke.

Oregon Safe Employment Act – Necessity of a Workplace Safety Committee

Currently, every employer with more than 10 employees is required to have a safety committee to establish procedures for workplace safety inspections and to evaluate accident and illness prevention programs. With the passage of HB 2222, every employer – irrespective of size – is to establish and administer a safety committee and hold safety meetings in accordance with rules issued by the State of Oregon Department of Consumer and Business Services (DCBS).

Oregon Safe Employment Act –Health Care Employer's Responsibility to Prevent Assault

HB 2022 creates an entirely new health and safety statute. It requires proactive measures on the part of health care employers to prevent assaults against their employees. Employers are required to assess threats, implement safety programs, and maintain detailed records of assaults. The law allows employees to refuse to treat a patient who assaulted the employee in the past unless accompanied by a second employee. Employees who provide home health care may do the same if they have reason to believe the patient may assault the employee, and may also demand a communication device to alert others of any assault. Employers also may not sanction an employee for using self-defense that is justifiable under the terms of statute. This law took effect July 1, 2007.

ORGANIZED LABOR

Safety and Staffing Within Bounds of Collective Bargaining for Public Safety Personnel

In collective bargaining negotiations, certain public safety employees who are prohibited from striking currently cannot require their employers to address safety issues and staffing levels that impact the employees' job safety. SB 400 adds these issues to the definition of "employment relations" that are mandatory in collective bargaining with corrections workers, parole and probation officers, 9-1-1 workers, police, and firefighters.

Public Transit Worker Strike Prohibition

HB 2537 prohibits any employee of a mass transit district, transportation district, or municipal bus system from striking or recognizing another union's picket line in the performance of the employee's official duties. The law took effect June 26, 2007.

Adult Foster Care Home Providers May Collectively Bargain With the State

Under SB 858, those who provide foster care for adults in their own home and receive fees from the State may collectively bargain with the State. For the purposes of collective bargaining alone, such individuals are deemed employees of the state. The law expressly prohibits the providers from going on strike.

Unemployment Insurance Available During Lockout Due to Labor Dispute

Current law only allows an individual to collect benefits during a lockout in a limited situation where the employer is solely at fault for any further continuation of the dispute, or where the out-of-work employee is not a participant in the dispute. HB 3339 allows collection of unemployment benefits any time the employer refuses to permit employees to work because of an employment dispute.

"Card Check" Amendment for Organization of Public Sector Employees

The passage of HB 2891 significantly affects the ease with which labor organizations can organize public sector employees. The law, which took effect immediately upon signature by the Governor in June of this year, allows (requires) the Employment Relations Board (ERB) to certify a labor organization as the exclusive representative of employees if ERB finds that the majority of employees in the unit have signed authorizations designating the labor organization designated in a certification petition as the employees' bargaining representative. This only applies if no other labor organization is currently certified or recognized as the exclusive representative of the employees in the bargaining unit. This commonly is referred to as "card check." Essentially, this does away with the requirement of an election if no competitive labor organization is involved and a sufficient number (a majority) of prospective bargaining unit members simply sign a card authorizing the labor organization to serve as the employees' exclusive representative.

FAILED LEGISLATION OF INTEREST

Nothing requires a lawmaker to assess the political feasibility of an idea before proposing it for adoption. As a result, many bills barely see the light of day. Others receive extensive attention but fall just short of the needed support or collapse under their own weight. While there are too many bills to cover here, the following is a selection of notable labor and employment legislation which failed to become law.

Family Leave Benefits Insurance Program

HB 2575 would have created the Family Leave Benefits Insurance Program. The program would have paid up to $250 per week for six weeks to employees taking family leave to recover from a serious health condition or care for a family member or dependent. The program would have been funded by withholding one cent per hour from employee paychecks. The House passed the bill at the tail end of the session, but it failed by a narrow margin in the Senate.

Bullying in the Workplace

A bill to allow civil suits by employees for workplace bullying died in committee. SB 1035 outlawed "harassment, intimidation or bullying," which was broadly defined as:

> [A]ny persistent verbal or physical act of an employer or employee, unrelated to the employer's legitimate business interests, that a reasonable person would find threatening, intimidating, humiliating, hostile or offensive. "Harassment, intimidation or bullying" includes, but is not limited to, derogatory remarks, insults or epithets, physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the gratuitous sabotage or undermining of an employee's work performance.

While employers should voluntarily do what they can to prevent workplace bullying, the failure of this bill likely saved employers a great deal of frivolous litigation expenses.

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Our firm's Employment Alerts are intended to provide general information regarding recent changes and developments in the labor and employment area. These publications do not constitute legal advice, and the reader should consult legal counsel to determine how information may apply to any specific situation.

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