



HARRANG LONG  
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# L&E ALERT

December 5, 2012

## Oregon State Minimum Wage Increase

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Effective January 1, 2013, Oregon's minimum wage will increase from \$8.80 per hour to \$8.95 per hour. Oregon employers are reminded to update their required State Minimum Wage workplace poster to reflect the increase. The 2013 Oregon State Minimum Wage poster is available at [http://www.oregon.gov/boli/whd/docs/oregonminimumwage\\_eng\\_2013.pdf](http://www.oregon.gov/boli/whd/docs/oregonminimumwage_eng_2013.pdf).

## Collective Bargaining: "Resort to Other Procedures" Clause in Grievance Article Found to be Unlawful

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In *Portland State AAUP v. Portland State Univ.*, (11/27/12), SC S059182 the Oregon Supreme Court affirmed an order of the Employment Relations Board (ERB) holding that a "Resort to Other Procedures" (ROP) clause in the grievance article of a collective bargaining agreement was illegal and unenforceable. The ROP clause provided that the employer had the right to disallow or discontinue a union grievance proceeding if an employee "seeks resolution of the matter" through an outside agency, such as the Oregon Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC) or the courts.

The Oregon Supreme Court concluded that the ROP clause was "facially discriminatory" under Title VII and Oregon anti-discrimination law (ORS 659A.030 (1) (f)). The Court held that the clause imposed a form of employer retaliation for protected conduct that "reasonably would impeded or deter an employee from pursuing his or her statutory rights" because, under the ROP clause, the employee lost the right to seek redress for a contractual violation if the employee elected to exercise his or her statutory right to file a claim with BOLI, the EEOC or the courts. The Court first affirmed that ERB has the authority to determine whether a provision of a collective bargaining agreement is contrary to law and to invalidate illegal provisions within a collective bargaining agreement. The Court then affirmed ERB's conclusion that the ROP clause at issue was illegal and unenforceable.

Oregon employers with unionized workforces should review their collective bargaining agreements for provisions similar to the ROP clause at issue in this case and contact legal counsel if they have concerns about the enforceability or legality of any portion of their collective bargaining agreements. The full text of the Court's opinion is available at: <http://www.publications.ojd.state.or.us/docs/S059182.pdf>.

### Please Note

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### For Questions, Contact:

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