

Electronic Alert

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Employer Policy Checklist for the New Year

By Nicole Elgin

Employers should plan ahead for the many legal changes in the new year that may require updating policies. This E-Alert is an overview of some of the legislative and regulatory changes employers with employees working in Oregon and Washington should prepare for come 2024:

Oregon:

- **Changes to OFLA Leave Year:** Senate Bill 999 made a variety of changes to Paid Leave Oregon and the Oregon Family Leave Act. This includes the requirement that by July 1, 2024, covered employers must ensure their “one-year period” for the Oregon Family Leave Act (OFLA) is the 52-week period starting the Sunday before the first day of covered leave. This is to align with Paid Leave Oregon’s calculation of the one-year period, so many employers are implementing this change sooner than the deadline. Covered employers under the Family and Medical Leave Act (FMLA) may also want to align their leave year with this calculation. If so, the FMLA requires employers to give employees 60 days’ notice of that change to the FMLA leave year calculation.
- **Protected Leave for Bias Crime Victims:** House Bill 3443 expands protections for victims of bias crimes. Victims of bias may take reasonable leave under ORS 659A.272. “Crime involving bias” means intimidation by display of a noose (a crime under ORS 163.191).
- **Protections for Employee Refusal to Perform Unsafe Work:** Senate Bill 907 prohibits employers from discriminating or retaliating against an employee who, in good faith, refuses to perform a task that the employee reasonably believes would result in serious injury or impairment to the health and safety of the employee or other employees.
- **Respectful Workplace Policy:** Senate Bill 851 requires the Bureau of Labor and Industries to create a model respectful workplace policy that employers may adopt and informational materials that identify the harms to employees and employers caused by workplace bullying.

Washington:

- **Anti-Discrimination for Cannabis Use:** Senate Bill 5123 makes it unlawful for an employer to discriminate against a person in the initial hiring for employment if the discrimination is based on: the person’s use of cannabis off-the-job and away from the workplace, or an employer-required drug screening test that found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

- **Updated Regulations for Paid Sick Leave:** While preparing the paid sick leave rules for temporary construction workers, the Department of Labor & Industries (L&I) also revised other paid sick leave regulations that apply to all covered employers. For example, added to WAC 296-128-630, is that an employee's right to take paid sick leave "means an employee has the choice about whether or not to use accrued, unused paid sick leave when a qualified purpose occurs and an employer may not require an employee to use accrued, unused paid sick leave if the employee does not choose to request to use paid sick leave." There are also clarifications on notice and tracking that employers must provide to employees if they use a Paid Time Off program to meet the paid sick leave requirements. This includes notifying employees that the PTO program is intended to satisfy paid sick leave requirements. The employer's PTO program that combines protected and unprotected leave can be more generous than the state paid sick leave requirements if: the compliant sick leave meets all requirements of Washington's paid sick leave law, the compliant paid sick leave is tracked separately, and there is no requirement or encouragement for the employee to use their protected leave for more generous purposes before accessing additional PTO. The final updated rules are available [here](#).
- **Sick Leave for Temporary Construction Workers:** [Senate Bill 5111](#) created paid sick leave payout requirements for certain commercial construction workers. Check out our prior E-Alert [here](#) for more information.
- **Access to PFMLI Claim Information:** [Senate Bill 5586](#) allows "interested parties" to access the following information from the state agency related to an employee's Washington paid family or medical leave claim: type of leave being taken, requested duration of leave including approved dates of leave, and whether the employee was approved for and paid benefits in any given week. The information may only be used to administer internal employer leave or benefit practices under established employer policies.

As always, the laws are frequently changing at both the federal and state level when it comes to labor, employment, and benefits. Employers should check in with their counsel to ensure their handbooks and policies are compliant.

For questions on labor and employment compliance changes in 2024, contact Nicole Elgin at nelgin@barran.com or (503) 276-2109.