



# Electronic Alert

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## **Restrictions on No-Rehire Provisions in Workers' Compensation Settlement Agreements**

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Though every workers' compensation claim is different, it is not uncommon for a claim to end with a settlement agreement, which is often accompanied by an additional agreement that includes an employment release. It used to be common practice for the employment release agreement to include a "no-rehire" provision. A no-rehire provision is a provision that prohibits a worker from seeking future employment, reemployment, or reinstatement with the employer.

When HB 3471 was made effective in the summer of 2023, this changed the rules around offering a worker an employment release that includes a no-rehire provision. The idea behind the rule change is that employees may want to maintain their workers' compensation reinstatement and reemployment rights even after the settlement of a workers' compensation claim. (Remember that a worker may retain their reinstatement and reemployment rights for up to three years from the date of injury unless their rights are extinguished by other means.)

Accordingly, now, under ORS 659A.390, it is an unlawful employment practice for an employer to make an offer to negotiate a settlement agreement conditional upon a worker also entering into an agreement that includes a no-rehire provision unless, prior to making the offer, the worker has provided the employer with written confirmation of their willingness to enter into an agreement that includes a no-rehire provision and the settlement offer affirmatively states that entering into the settlement agreement is conditional upon the worker also entering into an agreement that includes a no-rehire provision.

What does this mean for employers? If you are in the process of settling a workers' compensation claim with a worker, you can ask the worker whether they are also interested in entering into an employment release with or without a no-rehire provision, but you should clarify that settlement is not contingent on the no-rehire provision. If the worker confirms in writing that they are willing to enter into an agreement with a no-rehire provision, then you may make an offer that specifically states that entering into the settlement agreement is conditioned upon the worker agreeing to the no-rehire provision.

Because of the complexity of this new rule and the potential for penalties, employers should consult with an employment law attorney before offering an employment release in conjunction with a workers' compensation settlement agreement.

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