

Crash Course in Employment Law

(To BOLI or not BOLI? That is the Question)

Harrang Long Gary Rudnick P.C.
Shari Lane, Shareholder
503.242.0000/Shari.Lane@Harrang.com

Copyright/All Rights Reserved

Disclaimers

- Summary
- Not legal advice
- No confidentiality in the seminar, no attorney-client relationship, no attorney-client privilege

Copyright/All Rights Reserved

Discrimination and Harassment

"Protected Classes"

- Employment decisions may not be based on any characteristic protected by state or federal law: **race; color; gender; pregnancy; sexual orientation; gender identity; national origin; age; religion; disability; use of family or medical leave, sick leave, or workers compensation system; military service; veteran status; whistleblowing/complaining about unlawful activity; employment status; credit history; family relationship; marital status.**

Copyright/All Rights Reserved

Disability Laws

Accommodation Tips

- Accommodation may be required in the application process, too
- **Potential accommodations include purchasing or retrofitting equipment, delegating non-essential tasks, unpaid time off, or even transfer to another open position.**
- Accommodation is not "reasonable" if it causes "**undue hardship**" on operations

Copyright/All Rights Reserved

Family and Medical Leave

- **Under the Oregon Family Leave Act (OFLA) and federal Family and Medical Leave act (FMLA), eligible employees may take unpaid, job-protected time off for:**
 - Serious health condition of employee or family member
 - Pregnancy disability/prenatal care
 - Parental leave (birth, adoption, foster placement)

Copyright/All Rights Reserved

Family and Medical Leave

FMLA also covers:

- **"Qualifying Exigency"**: Employee's family member in military duty is preparing for, on leave from, or recuperating from military duty.
- **Care for Ill or Injured service member** (member of employee's family)

OFLA also covers:

- **Bereavement Leave**
- **Oregon Military Family Leave**: Family member in military service is on leave or getting ready for deployment
- **Sick Child Care**

Copyright/All Rights Reserved

**Medical Leave, Disability Leave, Workers Compensation—
How Long?**

- ▶ **Medical Leave**
 - ▶ Federal: 12 weeks/year for all except caring for military service member (26 weeks)
 - ▶ Oregon: Up to 36 weeks/year for female employee, up to 24 weeks/year for male employee (pregnancy leave, parental leave, sick child leave)
- ▶ **Workers Compensation:** As long as required by the treating physician, with a right to reinstatement/re-employment for up to 3 years
- ▶ **Disability:** As long as it takes, until/unless the absence creates an "undue hardship/undue burden" on the employer

Copyright/All Rights Reserved

More Leave Laws: Crime Victims

- ▶ **Crime Victim Leave**
- ▶ **Domestic Violence/Stalking/Harassment/Sexual Assault Leave:**
 - ▶ Sick leave applies (then unpaid leave after sick leave runs out)
 - ▶ Must also provide, upon request, "reasonable safety accommodation"
 - ▶ For either type of leave, leave may be terminated if leave causes "undue hardship" on operations.

Copyright/All Rights Reserved

OSHA

- ▶ EVERY employer in Oregon must have either Safety Meetings or a Safety Committee, and meet the requirements of whichever they choose. <https://osha.oregon.gov/OSHA/Pubs/0989.pdf>
- ▶ "Serious occupational injuries and illnesses" must be included on the OSHA 300 Log.
 - ▶ Information must be uploaded electronically through the Department of Labor's ITA system <https://www.osha.gov/injuryreporting/index.html>

Copyright/All Rights Reserved

Oregon Pay Equity Act

- As of October 2018, employers may not : ask about salary history; make compensation decisions based on salary history (even internally)
- As of January 2019, all pay differences for "comparable work" must be based on one or more of the following:
 - Seniority system;
 - Merit system;
 - System that measures earnings by quantity or quality of production;
 - Location of work (i.e. cost of living)
 - Required travel;
 - Education;
 - Training; and/or
 - Experience.

Copyright/All Rights Reserved

Oregon Pay Equity Act Continued

- "Comparable work" isn't just about position title. Look at whether work requires "substantially similar"
 - Knowledge
 - Skill
 - Effort
 - Responsibility and
 - Working conditions

Copyright/All Rights Reserved

Religion and Politics

- An employer may not take adverse employment action against an employee because the employee declines to attend an employer-sponsored meeting to discuss religious or political matters.
(Exception: Political/religious organizations.)

Copyright/All Rights Reserved

Termination

- If you have a good reason for termination, state it.
- Make sure final wages include all wages, commissions, bonuses, unused vacation (per your policies and agreements), and are paid on time:
 - Quit without notice: **5 business days** (excluding weekends & holidays)
 - Quit with at least 48 hours' notice: **Immediately** (on last day)
- Terminated or Mutual Agreement:
End of next business day
- (If you provide health insurance) make sure COBRA paperwork is timely sent
- Consider how you will respond to unemployment benefits claims, references.
- Consult with an attorney regarding severance agreements.

Copyright/All Rights Reserved

Resources

- Oregon Bureau of Labor & Industries (BOLI)
https://www.oregon.gov/boli/TA/Pages/T_FAQ_I_afaq.aspx
- Equal Employment Opportunity Commission (EEOC) <http://www.eeoc.gov/>
- Department of Labor (DOL)
<http://www.dol.gov/index.htm>
- Harang Long Gary Rudnick P.C. (HLGR)
www.harang.com; Shari.Lane@Harang.com

Copyright/All Rights Reserved
