

OREGON LEGISLATURE ADDS NEW REQUIREMENTS FOR EMPLOYERS

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U.S. Labor, Employment and Workplace Safety Alert

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As Oregon's 2019 legislative session drew to a close, the legislature added new requirements for employers related to noncompetition agreements, notice to employees of impending federal authorization to work inspections, and penalties for an employer's failure to register with Oregon's employee retirement program, which is known as "OregonSaves."

NONCOMPETITION AGREEMENTS – HOUSE BILL 2992

House Bill 2992 adds a new provision to Oregon's noncompetition statute (ORS 653.295). ORS 653.295 currently provides that a noncompetition agreement between employer and employee is voidable and may not be enforced unless all four of the following requirements are met:

1. the employee is informed in writing of the noncompetition agreement at least two weeks before the first day of employment or upon a subsequent bona fide advancement of employment;
2. the employee is exempt from overtime requirements;
3. the employer has a protectable interest, such as a trade secret or confidential information; and
4. the employee's annual gross salary and commissions exceeds the median family income for a four-person family.

The amendment adds a new requirement that "[w]ithin 30 days after the date of the termination of the employee's employment, the employer provide[] a signed, written copy of the terms of the noncompetition agreement to the employee." The amendment becomes effective on January 1, 2020, and applies only to noncompetition agreements executed on or after the effective date.

Employers should update their procedures to include providing separated employees with a copy of the noncompetition agreement within 30 days of the employee's separation, perhaps along with the employee's final paycheck.

FEDERAL IMMIGRATION INSPECTIONS NOTICE – SENATE BILL 370

Effective June 6, 2019, employers must give employees notice when a federal agency compels the employer to

provide access to records and other documentation used by the employer to verify the identity and employment eligibility of employees. For most employers, the document at issue will be Form I-9 from the U.S. Citizenship and Immigration Services. Employers must provide notice to employees within three business days after receiving a notice of inspection from a federal agency. The notice must be posted or individually distributed in English, or the employee's preferred language, and include a copy of the federal agency's notice, the date of the inspection, the extent of the inspection, and the telephone number of a hotline prescribed by the Bureau of Labor and Industries ("BOLI").

OREGONSAVES REQUIREMENTS – SENATE BILL 164

Under the Oregon Retirement Savings Plan (the "Plan"), the State of Oregon operates OregonSaves, which aims to help employees save for retirement. Since 2018, certain employers have been required to register with OregonSaves on a rolling basis, depending on the number of employees and if the employer does not otherwise offer an employer-sponsored retirement plan, such as a 401(k) plan. Under Senate Bill 164, an employer's failure to comply with the Plan's requirements is an unlawful practice, and employees may file a complaint with BOLI for violations. BOLI has the power to investigate complaints and assess penalties against an employer of up to \$100 for each employee who is eligible to participate in the Plan. The penalty amount may not exceed an aggregate amount of \$5,000 in a calendar year. Senate Bill 164 becomes effective on January 1, 2020.

Employers that do not offer an employer-sponsored retirement plan should check with OregonSaves to determine whether they are required to register with OregonSaves in order to avoid potential penalties.

Contact K&L Gates for more information on how to effectively plan for and comply with these new developments.

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