

Oregon Aims to Prevent Harassment with the Workplace Protection Act

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Employees in Oregon have greater protections against workplace harassment thanks to the recently-passed Workplace Protection Act (the “Act”), which would prohibit requiring nondisclosure agreements for employees or applicants that prohibits them from revealing sexual assault, harassment or discrimination. The new law also requires employers to implement a written anti-harassment policy and it extends the statute of limitations for filing complaints of harassment from one year to five years.

Nondisclosure Agreements

Under the new law, it will be an unlawful employment practice for an employer to enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision, or any other provision that has the “purpose or effect of preventing the employee from disclosing or discussing conduct” related to discrimination and harassment on the basis of any protected category under state law, including sex, race, religion, national origin, age, and sexual orientation.

Employers may, however, enter into such agreements if it is the complainant’s preference and the complainant is provided at least 7 days to revoke the agreement after signing. Notably, the Act also provides that, if after a good faith investigation, an employer has determined that someone with hiring and firing authority (or the discretion to exercise control over employees) committed harassment or discrimination, it may void a previously agreed upon contractual severance or separation provision, provided that such violations were a substantial contributing factor in causing separation from employment.

Policy Requirements

All employers must also adopt a written policy preventing discrimination and harassment in the workplace, provided that such policies meet certain minimum standards. Such policies must address the following:

- Provide a process for an employee to report prohibited conduct;
- Identify the individual designated by the employer who is responsible for receiving reports of prohibited conduct, including an individual designated as an alternate to receive such reports;
- Include the statute of limitations period applicable to an employee's right of action for alleging unlawful conduct;
- Include a statement that an employer may not require or coerce an employee to enter into a nondisclosure or nondisparagement agreement, including a description of the meaning of those terms;
- Include an explanation that an employee may voluntarily request to enter into a nondisclosure or nondisparagement agreement, including a statement that explains that the employee has at least 7 days to revoke the agreement; and
- Include a statement that advises employers and employees to document any incidents involving discrimination and harassment.

The policy must be provided to all current employees and to all new employees upon hire. Any individual who is designated by the employer to receive complaints must also provide a copy of the policy to an employee at the time such employee discloses information regarding discrimination or harassment. The state's Bureau of Labor and Industries will make available model procedures or policies that employers may use as guidelines.

While the law will generally take effect 91 days after the Legislative Assembly adjourns (anticipated to be on June 30, 2019), the limitations on nondisclosure and nondisparagement agreements will take effect on October 1, 2020. In the interim, employers in Oregon should begin taking steps to ensure compliance by revising their existing agreements and policies to comply with the new law.

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