

The changing employment law rulebook

Oregon employers face new regulations, and it's not just about COVID-19

BY PETER S. HICKS

ALTHOUGH IT MAY NOT seem like it, not everything over the past year was related to COVID-19. In 2021, the Oregon legislature and state agencies were also busy focusing on employee rights and workplace protections, enacting significant legislation and regulations directly impacting employers.

As we move into 2022, employers need to also be aware of the new requirements and regulations, and take the steps necessary to avoid potential liability.

Significant legislation

Presumption of retaliation — Senate Bill 483 creates a presumption that any action taken against an employee or prospective employee within 60 days of the employee reporting or opposing an OSHA-Oregon violation is retaliatory or discriminatory. Although the presumption is rebuttable, the employer must

now prove that there was legitimate non-discriminatory or non-retaliatory reason for the employment action. Employers must therefore be careful to document employment actions and interactions with employees to successfully rebut the presumption and establish the underlying basis for employment decisions.

Accommodation of child care needs — Under ORS 653.450, employees, at either the time of hire or at any time during employment, may identify any limitations or changes in their availability for work schedules and request not to be scheduled for shifts during certain times or at certain locations. Senate Bill 716 amends ORS 653.450 to specifically include child care needs as a limitation of change that may require consideration by the employer. Although ORS 653.450(2) provides that there is no obligation to grant the request, employers need to give requests careful consideration and avoid any conduct that could be



construed as retaliatory.

Family leave eligibility during a public health emergency — House Bill 2474 expands eligibility for the Oregon Family Leave Act (OFLA) leave during a public health emergency to employees working 30 days or more. This significantly shortens the eligibility requirements under normal circumstances which provide that OFLA leave is generally available only when an employee has worked for the employer for at least 180 days.

Driver's license requirements — Senate Bill 569 makes it an unlawful employment practice to require a valid driver's license as a condition of employment. Employers may require a driver's license if driving is an essential function of the job. However, as of January 1, 2022, employers must accept forms of identification other than a driver's license to verify

identity or for hiring purposes.

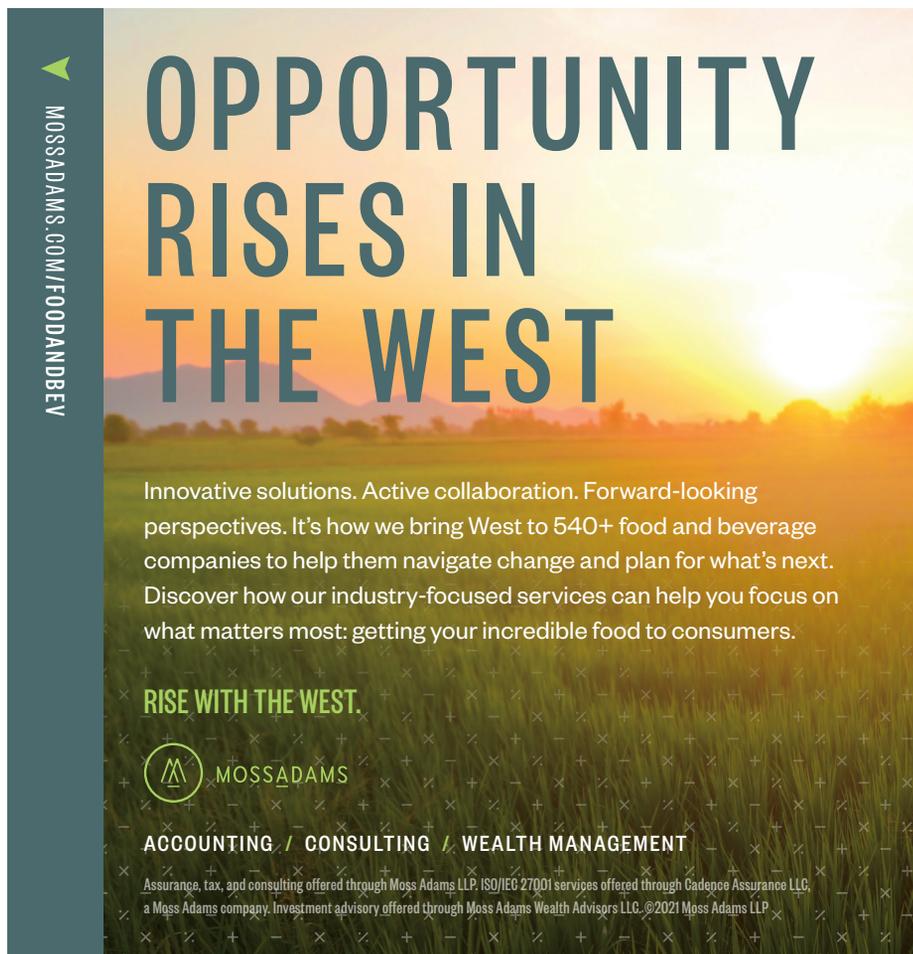
CROWN Act — House Bill 2935 clarifies that racial discrimination includes discrimination based on physical characteristics associated with race such as hairstyles, hair texture, hair type, and natural hair. Employers must also take care to be sure that a dress code or policy does not have a disproportionate impact on members of a protected class.

OSHA-Oregon heat rules

On July 8, 2021, OSHA-Oregon passed temporary rules addressing exposure to high ambient temperatures (OAR 437-002-0155 and OAR 437-004-1130). The current rules are in effect for 180 days from enactment, and OSHA-Oregon is currently working on permanent rules likely to be in place before the temporary rules expire.

Under the rules, employers are now required to take certain action when the worksite ambient heat index temperature equals or exceeds 80 F, including establishing shade areas, providing ample opportunities to drink water, and ensuring an adequate water supply (32 ounces per hour) for each employee. When the heat index exceeds 90 F, employees must take a minimum 10-minute preventative cool down rest period in the shade at least every two hours. Breaks may be provided with required meal or rest periods, but must be compensated.

Employers are also required to observe and communicate with employees working alone, create a mandatory buddy system, or implement other means of observation or communication. One or more employees must also be designated and equipped at each worksite to call for



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emergency medical services (EMS) and allow other employees to call for EMS.

Finally, employees reasonably expected to be exposed to high heat conditions must be trained on heat-related illness and prevention. New employees must be trained and acclimatized before beginning work. An effective emergency medical plan must also be established for when the ambient heat index exceeds 90 F, including how to respond to heat-related illness, how to implement first aid measures, and how emergency medical services will be provided.

OSHA-Oregon wildfire smoke rules

OSHA-Oregon has also established rules regarding wildfire smoke and air quality issues. These rules apply when the worksite Air Quality Index (AQI) is at or above 101, but do not apply to workplaces and operations in enclosed structures

where air is filtered by a mechanical ventilation system or enclosed vehicles where air is filtered by a cabin air filter.

When the AQI is at or above 101, employers are required to notify employees and make N95 or KN95 masks available for use upon request. When the AQI is at 201 or above, all employees are required to wear N95 or KN95 masks. Employees may also be moved to enclosed buildings or vehicles where the air can be adequately filtered, relocated to another outdoor location, or moved to another work schedule. When the AQI is 501 or over, all employees are required to wear N95 masks.

Employees that may be exposed to an AQI of 101 or higher must be trained regarding the potential health effects of wildfire smoke and how to identify the symptoms of exposure. Training must also include

how to get the current and forecasted AQI level and emergency response procedures.

Employers should review their current handbooks, policies, and procedures to ensure compliance with the newly enacted legislation. Given that we are also moving into the cooler fall and winter season, employers should use this time to put adequate procedures and training in place for 2022 to satisfy the OSHA-Oregon smoke and heat requirements.

Jordan Ramis continuously monitors legislation impacting businesses and is prepared to provide assistance, interpretation, and guidance that may be helpful for implementation of the rules. ©

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