

## Pacific Northwest Employer Workplace News - August 2015

By Michael A. Griffin, Bryan P. O'Connor and Sarah J. Ryan

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### Employee's Discrimination Claim for Depression, Stress Barred for His Violent Threats

A metal casting company lawfully terminated an employee for his threats of violence to other employees, despite a claim that his depression/stress made him do it, the federal appeals court covering Oregon and Washington has ruled, upholding the dismissal of the employee's disability discrimination lawsuit. [\*Mayo v. PCC Structuralts, Inc.\*](#)

The employee made five specific threats to kill supervisors. These threats made him unqualified for his job as a welder, regardless of his disability, the U.S. Court of Appeals for the Ninth Circuit held. The decision is a victory for common sense. The same court on three prior occasions has ruled *against* employers in similar disability-caused misconduct cases. However, the *Mayo* court said those cases were different, and gave employers a helpful rationale for future cases: "An essential function of almost every job is the ability to appropriately handle stress and interact with others."

Employers, nonetheless, must tread lightly when disciplining an employee who claims a disability caused bad behavior or lack of performance. Every situation presents unique challenges. Jackson Lewis lawyers are available to help your company examine its options.

### Oregon Bans the Box

As of January 1, 2016, most Oregon employers no longer will be permitted to include a question about criminal convictions on their employment applications. But nothing in the new law will prevent employers from asking applicants about criminal convictions during a subsequent employment interview.

The bill signed into law by Governor Kate Brown is a weakened version of the bill first proposed. It would have prevented employers from conducting a criminal background check until after a conditional offer of employment is made. For details of the new law, see [Oregon Governor Signs 'Ban the Box' Legislation](#).

### Oregon Paid Sick Leave

Under Oregon's new sick leave law, beginning January 1, 2016, private employers throughout the state are required to implement sick leave policies granting all employees either paid or unpaid sick leave.

The new law mandates that employees receive at least one hour of sick leave for every 30 hours worked. Eligible employees are entitled to use up to 40 hours of leave per year, and carry over up to 40 hours from year to year. Leave must be paid at the employee's regular rate if the employer has at least 10 employees working in Oregon or has operations in Portland and employs at least six employees anywhere in the state. While existing policies that provide substantially equivalent benefits may satisfy the law's minimum requirements, employers also will be limited in how they administer their sick leave plans. Among other things, the law restricts when an employer may ask for notice and what type of notice may be required from employees taking sick leave. Employers failing to comply with the sick leave obligations are subject to civil penalties and private lawsuits. For details of the new law, see [Oregon Enacts Paid Sick Leave](#).

### September 30, Seattle

Registration is now open for the *Annual Pacific Northwest Employer Legal Update 2015: Best Strategies to Manage the Modern Employee Life Cycle*. [Click here](#) for more event details.

If you have questions about these or other workplace developments, please contact a Jackson Lewis attorney in the [Portland](#) or [Seattle](#) office.

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