

## Oregon Shortens Notice Period, Imposes New Requirements on Employment-Related Binding Arbitration

By Scott Osborne

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Since January 1, 2008, Oregon employers electing to use binding arbitration agreements with new employees have been required to give two weeks' written notice of the arbitration requirement before hiring a new employee. For current employees, employers have been required to obtain an employee's signature at the time of a "subsequent bona fide advancement."

On June 23, 2011, Governor Kitzhaber signed into law HB 3450, a measure changing the requirements for arbitration agreements between employers and employees. Effective January 1, 2012, employers must give 72 hours' written notice of the arbitration requirement before the new employee's start date. ORS § 36.620(5)(a). HB 3450 does not affect the timing for current employees.

### Required Language

Also effective January 1, 2012, employees must be provided with the employer-required arbitration agreement, subject to the same 72-hour notice requirement, and the agreement must include the following language in boldface type:

I acknowledge that I have received and read or have had the opportunity to read this arbitration agreement. I understand that this arbitration agreement requires that disputes that involve the matters subject to the agreement be submitted to mediation or arbitration pursuant to the arbitration agreement rather than to a judge or jury in court.

Failure to comply with the notice requirements renders the agreement voidable and employees can choose to take their case to court. The changes apply to arbitration agreements entered into on or after January 1, 2012.

### Uncertainties

In 2010, an Oregon federal court declined to enforce Oregon's requirements for employment arbitration agreements between an employer and promoted employees. In *Bettencourt v. Brookdale Senior Living Communities, Inc.*, 2010 WL 274331 (D. Or. 2010), the court concluded that the Oregon notice requirements for employment-related arbitration agreements improperly imposed conditions above and beyond those of the Federal Arbitration Act ("FAA") and those required of other types of contracts in Oregon. Because the agreement was subject to the FAA, the court concluded that the requirements of Oregon law (ORS § 36.620) could not be the basis to invalidate the arbitration agreement.

With the uncertainties created by changes to the statutory scheme and the ever-changing judicial authority on arbitration agreements, employers should work with employment counsel to assess both the advisability of implementing a binding arbitration program and the ways a carefully drafted agreement can reduce costly litigation and exposure.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

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### Meet the Author



Scott Osborne

Principal  
Portland  
503-345-4151  
Email

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