

Oregon: New EEO Policy, Disclosure Requirements Take Effect October 1, 2020

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Two important provisions of the Workplace Fairness Act (WFA), which limits employers' use of nondisclosure and nondisparagement to prevent a current or prospective employee from discussing employment discrimination or sexual assault, requires all employers to have an anti-discrimination policy with certain disclosures in place, and increases the statute of limitations to file a discrimination complaint from one to five years, will take effect on October 1, 2020.

(For more on the Act, see our article, [New Oregon Law Restricts Nondisclosure, Nondisparagement Provisions in Workplace Agreements.](#))

New Equal Employment Opportunity (EEO) Policy Requirements

Section 3(3) of the legislation sets forth somewhat unique EEO policy disclosure requirements that will require policy updates.

As of October 1, 2020, all EEO policies must include the following specific elements:

- 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 discrimination, harassment, and retaliation;
- Include a statement that an employer may not require or coerce an employee to enter into certain types of nondisclosure or nondisparagement agreements, including a description of the meaning of those terms;
- Include an explanation that an employee claiming to be aggrieved by unlawful discrimination, harassment, or retaliation may voluntarily request to enter into a settlement/severance agreement, including a statement explaining that the employee has at least seven days to revoke the agreement if it contains certain terms; and
- Include a statement advising employers and employees to document any incidents involving alleged unlawful discrimination, harassment, or retaliation, including sexual assault.

In addition, under the new law, all new hires must receive "a copy of the policy" at the time of hire and the policy must be "available" to all employees within the workplace. Any employee who reports prohibited conduct also must receive a copy of the policy from the individual designated to receive EEO complaints.

The Oregon Bureau of Labor and Industries (BOLI) has published [a model policy](#).

Restrictions on Nondisclosure, Nondisparagement Provisions in Workplace Agreements

The prohibition on nondisclosure and nondisparagement agreements restricting an

employee from discussing employment discrimination or sexual assault also takes effect on October 1, 2020. The new prohibition applies to employment discrimination or sexual assault that occurs between employees or between an employer and an employee in the workplace, off-site, or at an off-site work-related event.

There are two exceptions to the restrictions on nondisclosure and nondisparagement agreements. First, settlement, separation, or severance agreements with an employee may contain nondisclosure, nondisparagement, or no-rehire provisions if requested by the employee, provided that the employee has seven days following execution to revoke the agreement. Second, employers may enter into a settlement, separation, or severance agreement that contains nondisclosure, nondisparagement, or no-rehire provisions with an employee if the employer makes a good faith determination that the employee has engaged in employment discrimination or sexual assault.

The new law allows an employer to void any existing agreement for severance or separation pay with a person who has authority to hire and fire employees if the employer, after conducting a good faith investigation, determined that the person has violated the anti-discrimination law of the employer's anti-discrimination policy and the violation was a contributing factor to the separation from employment.

Next Steps for Employers

Failure to comply with the new provisions of the WFA may result in liability. In addition, the new five-year statute of limitations applies to violation of the WFA. It is more important than ever for employers to be proactive and to keep good records.

All employers should consider taking the following steps:

- Revise the EEO policy to ensure compliance with the new requirements
- Circulate the new policy to all current employees and "make available" internally or by intranet
- Keep detailed records on all steps taken to circulate the policy to current employees
- Provide a copy of the policy to all employees who are on leave or furloughed upon the employee's return
- Secure signed acknowledgments (electronic or otherwise) from all employees who receive the new policy
- Notify all individuals designated to receive complaints of the obligation to provide a copy to any employee who makes a complaint of employment discrimination or sexual assault
- Review investigation policies and procedures for any confidentiality instructions with particular attention to whether they may prevent the employee from discussing discrimination, harassment, or sexual assault
- Retain records of complaints and investigations
- Review all existing employment agreements for overbroad nondisparagement or nondisclosure provisions
- Review all template severance or settlement agreements used with current or prospective employees

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work.

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