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OREGON LEGISLATION AFFECTING UNIONS AND UNION MEMBERS

The Annual Oregon Labor Law Conference
Friday, January 26, 2018

Margaret S. Olney

- I. Introduction – we are *still* in interesting times
 - A. Few new employment and labor laws, but significant.
 - B. Challenges from anti-union forces in Oregon and nationally
 - 1. Freedom Foundation
 - 2. Janus
 - 3. Ballot Measures
 - C. 2018 Elections
 - 1. State (Governor, state representatives/senators, local leaders)
 - 2. U.S. Representatives
 - 3. Ballot Measures

- II. Challenges
 - A. Freedom Foundation
 - 1. Targeting public sector unions primarily now
 - 2. Campaigns to “disenroll” union members
 - i. Membership lists/addresses
 - 3. Challenging “fair share” provision in contract

B. NLRB changes

C. U.S. Supreme Court -- *Janus v. AFSCME*

D. Anti-Union/Anti-government/anti-Progressive Measures

1. IP 1 -- No "public funding" for abortions – includes insurance coverage for public employees
2. IP 22 – Anti-immigrant initiatives
3. IP 31 – would require supermajority to increase any tax or fee
4. IP 33 – "Union transparency" – creates new mechanism for Secretary of State to collect, disclose and audit "government employee union" finances.
5. IP 34 -- Eliminates exclusive representation in public sector
6. IP 37 – No increased taxes, including corporate minimum, on "groceries"
7. BM 101 – Referendum on Health care

E. Pro-union/progressive ballot measures

1. IP 21 – Increases cigarette tax to fund public health programs
2. IP 25 – Corporate Disclosure Initiative

F. Changes in election/initiative process

1. IP 2 – Requires SOS to establish system for "digital signatures" on state initiatives
2. IP 5 -- anti-immigrant/registration requirement to provide "proof of citizenship" to register; all current registrations to expire 2020, with everyone being required to provide proof of citizenship.
3. IP 19 – Term limit for state positions, which applies retroactively
4. IP 28 – Amends Oregon Constitution to allow contribution limits, and implement previously adopted campaign finance scheme (Measure 47) which many non-profits and unions believed was ill-conceived

G. Local Initiatives

1. Sugar-Sweetened Beverage tax
2. Environmental initiatives

New Legislation in 2017

H. House Bill 2005 (Oregon Session 2017) – Pay Equity Law

1. Expands ORS 652.220 – employers cannot pay people less based on race, color, religion, sexual orientation, national origin, marital status, disability, age, or veteran status. This portion goes into effect January 1, 2019.
2. Now illegal to ask for salary history on job applications and cannot consider it when determining pay for new workers. This portion went into effect October 6, 2017.
3. Pay disparities can exist where there's a bona fide reason for them.
4. Bona fide reasons include seniority, merit, quality/quantity of production, workplace location, travel, education, training, experience.
5. Safe harbor for employers that conducted pay analysis within three years of a lawsuit and can show reasonable effort to reform pay disparities – can't cut other employees' pay to compensate.

I. House Bill 3458 (Oregon Session 2017) – Overtime Calculations for Manufacturing Employers

1. Amends ORS 652.020 and 653.265 to require manufacturing employers who owe daily and weekly overtime to calculate both amounts and pay the greater of the two to the employee.
2. Caps weekly manufacturing hours at 55 (or 80 for up to 21 weeks for manufacturers dealing with perishables if they file for undue hardship with BOLI; can raise to 84 hours for a 4-week period within those 21 weeks).
3. Took effect August 8, 2017.
4. Employees claiming they were forced to work more than 13 hours in a day or 55 hours in a week can recover \$3,000 per violation plus liquidated damages. New private right of action took effect on January 1, 2018.

- J. Senate Bill 828 (Oregon Session 2017) – Predictive Scheduling
 - 1. Retail, food service, and hospitality businesses with 500+ employees worldwide must post employee schedules at least 7 days in advance beginning January 1, 2019, and 14 days in advance beginning January 1, 2020.
 - 2. Must provide a written, good faith estimate of worker’s schedule upon hire.
 - 3. Cannot schedule employees within 10 hours of last shift.
 - 4. Cannot require employees to work shifts that were not on their written schedules.
 - 5. Employers can create voluntary standby lists to account for unexpected scheduling issues.
 - 6. Employers with CBAs are not exempt.

- K. House Bill 3008 (Oregon Session 2017) – False Employment Records
 - 1. Employers prohibited from compelling, coercing, or otherwise inducing employee to create, file, or sign documents the employer knows falsely report hours worked or compensation received.
 - 2. Effective as of January 1, 2018.

- L. House Bill 2162 (Oregon Session 2017) - Apprenticeship Utilization Mandate
 - 1. State contracts worth over \$5 million (excluding ODOT contracts) must have a certain amount of the work in apprenticeship trades actually done by apprentices.
 - 2. Creates labor/management advisory committee in BOLI to monitor compliance
 - 3. Effective January 1, 2018

- M. House Bill 3060 (Oregon Session 2017) -- Public Contracting Sexual Harassment and Discrimination Policies
 - 1. Contractors receiving public contracts with the state worth more than \$150,000 must have policies to prevent sexual harassment, sexual assault and discrimination.

- N. Senate Bill 299 (Oregon Session 2017) – Sick Leave Accrual
1. Amends ORS 653.606 to expressly permit cap on accrual of paid and unpaid sick leave at 40 hours per year starting January 1, 2018.
 2. Can have a maximum sick leave bank of 80 hours but only if 40 is carried over from previous year.
 3. Effective as of August 8, 2017.
- O. Senate Bill 398 (Oregon Session 2017) – Earned Income Tax Credit
1. Employers must provide written notice to employees if eligible to receive both federal and state Earned Income Tax Credits.
 2. In English and the language used by employer to employees, sent annually with W-2s, with links to IRS and Dep of Revenue sites with more information.
 3. Effective as of October 2017.
- P. Senate Bill 416 (Oregon Session 2017) – Regulating Prevailing Wage Rate
1. Amends ORS 279C.827 to now prohibit anyone from dividing public works projects into more than one contract to avoid prevailing wage rates.
 2. Adds to ORS 279C.836 to require disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses owned by service-disabled veterans, and emerging small businesses to post bond if fail to pay prevailing wage rate.
 3. Effective as of June 14, 2017.
- Q. Senate Bill 949 (Oregon Session 2017) – NCAs for Home Care Workers
1. Noncompetition and non-solicitation agreements in employment contracts for home care workers are voidable by the worker and unenforceable in Oregon court.
 2. Effective as of January 1, 2018.

- R. Senate Bill 1040 (Oregon Session 2017) – Union Security Agreements
 - 1. Statewide policy permitting employers & labor organizations to require union membership as condition of employment.
 - 2. Effective June 14, 2017.

- S. House Bill 3170 (Oregon Session 2017) – Collective Bargaining Rights for Public University Faculty Members
 - 1. Public university faculty whose duties are academic (rather than administrative) now have collective bargaining rights.
 - 2. Effective as of January 1, 2018.

- T. Senate Bill 214 (Oregon Session 2017) – PERS Eligibility
 - 1. Post-doctoral scholars for public universities and OHSU exempt from PERS.
 - 2. Effective as of January 1, 2018.

III. Legislation during 2018 Session ??? Not much.

Resources:

<http://gov.oregonlive.com/> -- Oregonian cite that tracks bills; relatively user friendly

https://www.oregonlegislature.gov/bills_laws -- Oregon Legislature website

http://egov.sos.state.or.us/elec/web_irr_search.search_form -- Secretary of State Database of Initiatives and Referrals

http://www.oregon.gov/boli/TA/Pages/T_FAQ_Tafaq.aspx -- Oregon Bureau of Labor Technical Assistance Pages