

New Employment Laws for 2012: Oregon, Washington, and California

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Oregon, Washington, and California recently passed legislation effective in 2012 that will directly affect employers with employees in those states. We've compiled a summary of the most significant changes.

OREGON

Minimum wage increase

Starting Jan. 1, 2012, Oregon's minimum wage increases to \$8.80 per hour, a \$0.30 increase per hour.

Criminal harassment victims – non-discrimination

Oregon currently prohibits discrimination against, and mandates leave for, employees who are victims of domestic violence, sexual assault or stalking. A new law adds victims of "criminal harassment" to the list of individuals entitled to protection. Victims of criminal harassment are individuals who were intentionally subjected to offensive physical contact or were publicly and severely insulted with abusive words or gestures. Employers should consider revising their policies and handbooks to address leave for criminal harassment victims and ensure that supervisors are aware of this leave right for employees.

Definition of "uniformed service" expanded in non-discrimination law

A new amendment clarifies and expands the categories of uniformed service against which discrimination by employers is unlawful. Previously, "uniformed service" was defined simply as "Army, Navy, Air Force Marine Corp, Coast Guard, National Guard or military reserve forces." Now the definition of "uniformed service" clarifies that inactive and active duty training for the National Guard duty is covered. The definition is also expanded to include the commissioned corps of the United States Public Health Service, and any other category of persons designated by the President of the United States in time of war or national emergency. Employers should consider revising their policies and handbooks to include this expanded definition and make sure that managers and supervisors are aware of the new law so that inadvertent violations don't occur.

Jury duty – continuation of insurance coverage and other employee benefits

Employers with 10 or more employees must allow employees to elect to continue insurance coverage while on jury service; in addition, employers cannot require employees to use vacation, sick or PTO for jury service. Policies requiring employees to use all accrued leave while on jury duty before taking any type of unpaid leave will need to be amended to account for this new law.

The employer may recoup the employee's insurance premiums contributions that the employer voluntarily elects to pay for the employee during the jury service. The employer is allowed to deduct up to 10 percent of an employee's gross pay in each pay period after he or she returns to work until the premiums have been recouped.

Oregon law already prohibits discrimination against employees who serve or are scheduled to serve as a juror but now the employee can file a lawsuit for penalties and other damages against employers for violations.

Arbitration agreements – notice period shortened and required language added

Under current law, for an employment arbitration agreement to be valid, it had to, among other things, be included in a written offer of employment and received by an employee at least two weeks prior to the employee's first day of work. Under a new amendment, this notice requirement is reduced to 72 hours and the notice must contain certain language for the agreement to be valid. [Click here to read more about this new law](#) in DWT's advisory from July 2011.

WASHINGTON

Minimum wage increase

Starting Jan. 1, 2012, Washington's minimum wage increases to \$9.04 per hour (currently it is \$8.67 per hour). Washington now has the highest state minimum wage in the nation.

Mandatory paid sick and safe leave – City of Seattle

Effective Sept. 1, 2012, a City of Seattle ordinance requires all employers with at least five full-time employees to provide paid sick and safe leave to employees who work at least 240 hours annually in the City of Seattle. The new law prohibits retaliation against employees who use their accrued leave.

Employees must be allowed to use paid sick leave for their own or a family member's physical or mental condition or for preventive care. Employees must be allowed paid safe leave when the employee's place of business is closed by a public official due to hazardous material, to care for a child whose school or daycare is closed by a public official for that reason, or for reasons related to domestic violence, sexual assault, or stalking.

Employers with at least five employees (tier 1 employers) must provide five days of accrued paid sick and safe leave annually; one hour of leave accrues for every 40 hours worked and employees must be allowed to carry up to 40 hours of accrued but unused leave to the next calendar year. These mandated accruals and carryovers increase with employer size. An employee must work in Seattle more than 240 hours in a calendar year to be eligible, but non-eligible employees are still counted in determining an employer's tier size.

Businesses less than two years old are exempt from the requirements.

This is an extremely complicated law and will impact employers who have existing sick leave or PTO policies as well as those that do not. [DWT published a detailed advisory](#) in September 2011 identifying the key provisions. We will also provide more updates and FAQs in 2012.

CALIFORNIA

California continues to pass new laws significantly affecting employers with employees working in California. Of particular note is California's new pay rate and payroll notice requirements.

Payroll information and pay rate notice mandated for new hires

In addition to lengthening the statute of limitations and strengthening the penalties for certain wage claims, the new Wage Theft Protection Act requires employers to provide a written notice as of Jan. 1, 2012, to every California newly hired non-exempt employee except those covered by union contracts that meet certain criteria. The notice must contain the following information:

- ❖ The employer's name, including any "doing business as" names, physical address of the main office or principal place of business and mailing address if different, and telephone number;

- ❖ The employee's rate or rates of pay, including overtime rates, and the basis of the employee's pay (that is, by the hour, shift, day, week, piece, commission, or otherwise);
- ❖ Any allowances claimed by the employer against the minimum wage, including meal or lodging allowances;
- ❖ The employer's regularly established payday;
- ❖ The name, address, and telephone number of the employer's workers' compensation insurance carrier; and
- ❖ Any other information the Labor Commissioner deems material and necessary.

The Labor Commissioner is instructed to prepare a template that complies with these notice requirements which promises to be available by mid-December on its website, <http://www.dir.ca.gov/DLSE/dlse.html>.

Employees who receive this notice must be notified of any changes to the information within seven calendar days, either in a separate writing or on the employee's paystub. Employers who fail to give this notice are facing penalties of \$5,000-25,000 for violations.

[Click here to read our comprehensive advisory](#) on other changes for 2012-13.

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