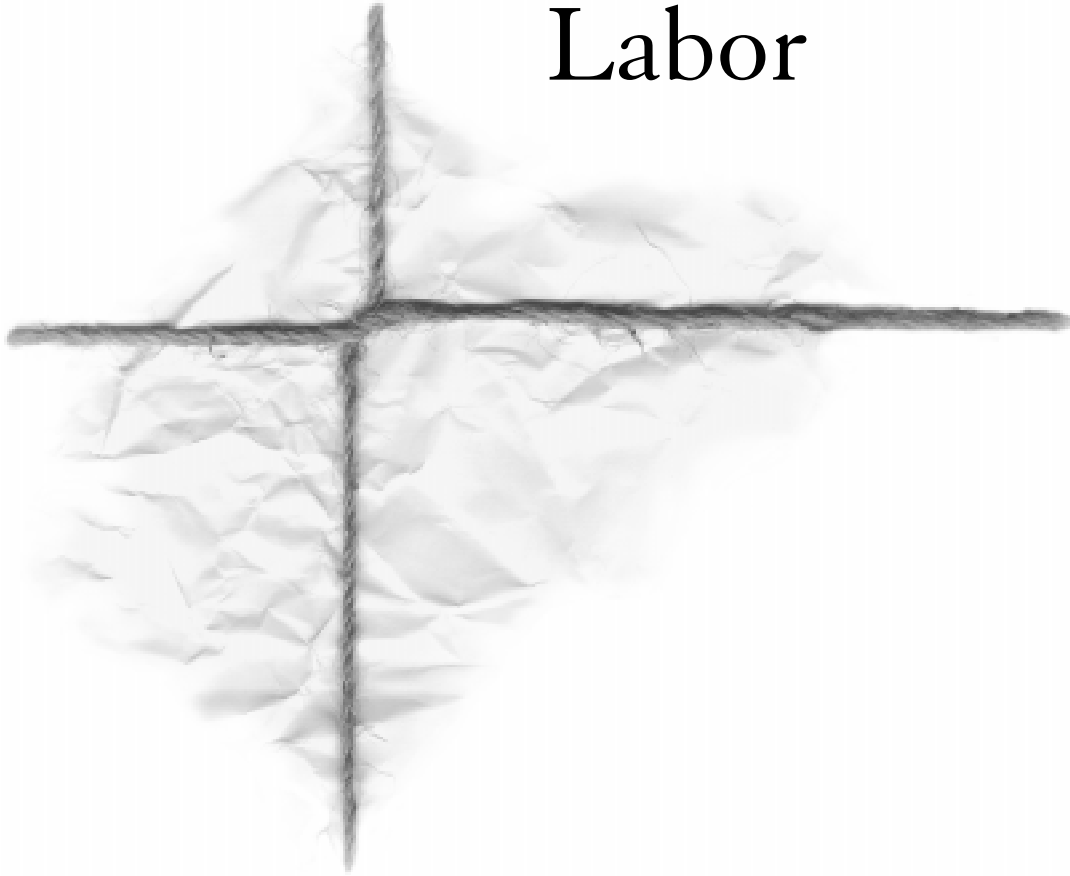


Labor



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Summary
of Major
Legislation

Senate Bill 43

Relating to definition of employer for certain civil rights laws.

SB 43 expands the definition of employer in certain civil rights statutes to include any public body that engages or uses employees. The Bureau of Labor and Industries (BOLI) has been unable to process complaints arising under certain civil rights statutes involving the state judicial and legislative branches. This measure expands the definition of employer to specifically include elected officials. The civil rights statutes to be applied to elected officials include enforcement of civil rights, civil rights of disabled persons, benefits for injured workers and covered dependents, family leave, and disclosures by public employees (whistleblowing).

SB 43 applies retroactively in certain cases. However, the expanded definition would not apply to claims for which a judgment has been entered by a trial court or for which BOLI has entered a final order before the effective date of the measure.

Effective Date: October 4, 1997

Senate Bill 44

Relating to discrimination in employment by reason of disability.

SB 44 prohibits discrimination against disabled persons in employment. The measure is intended to parallel the federal Americans with Disabilities Act and clarify employer responsibilities with respect to hiring practices and responsibilities. It defines prohibited discrimination and modifies the definition of disabled person. SB 44 requires an employer to make reasonable accommodations for disabled job applicants and employees. The measure provides that failure to make reasonable accommodation for person with disability based upon transsexualism is not prohibited discrimination. Established under SB 44 are the definitions and guidelines regarding qualifications for positions and undue hardship for employers in providing reasonable accommodation. SB 44 establishes standards for determining whether discrimination against illegal users of drugs is permissible and permits an employer to require drug testing for employees. It also permits an employer to enforce policies regarding drug and alcohol use. The measure specifies certain conditions which do not constitute impairments. SB 44 generally prohibits an employer from requiring medical examinations or making inquiries about medical condition of job applicants or

employees. The measure prescribes disposition of medical records of employees and applicants. It deletes provisions of ORS 433.045 stating that an employer need not provide reasonable accommodation for employee whose impairment consists of human immunodeficiency virus (HIV) infection unless the employee provides the employer with employee's HIV test information.

Effective Date: October 4, 1997

Senate Bill 143

Relating to public employment.

SB 143 deletes the mandatory requirement to pay time and a half pay for any and all labor performed on a Saturday or Sunday on a public service contract. The measure requires at least time and a half pay for all work performed in excess of 10 hours a day or in excess of 40 hours in a week on a public service contract. The bill further requires an employer to provide notice to employees regarding their work schedule at the time of hire or before work begins on a public service contract. Notice may be given either in writing or by posting in a location frequented by the affected employees. The measure applies only to public service contracts entered into on or after the effective date of the measure.

SB 143 also clarifies the exemption of certain public employees employed in fire protection and law enforcement activities to bring statutes into compliance with the federal Fair Labor Standards Act. The bill clarifies that members of the organized militia are not eligible to receive overtime pay from the state when on duty.

Effective Date: August 6, 1997

Senate Bill 234

Relating to hours of labor on public contracts.

SB 234 limits work on certain public contracts to ten hours in any one day, or 40 hours in any one week. The measure requires payment of at least time and a half for all work in excess of eight hours a day or 40 hours in any one week, when the work week is five days per week, Monday through Friday. The measure requires payment of at least time and a half for all work in excess of ten hours a day or 40 hours in any one week, when the work week is four consecutive days per week, Monday through Friday. SB 234 requires payment of a minimum of time and a half for all work performed on Saturday, Sunday, and legal holidays. The measure

requires employees be notified about their work schedule at the time of hire or before work begins on a contract, either in writing or by posting in a location frequented by employees.

The measure defines public contract as “...any purchase, lease, or sale by a public agency of personal property, public improvements, or services other than agreements which are for personal service.”

The measure also clarifies the penalty for willful falsification of payroll records by contractors and subcontractors. The measure applies only to contracts entered into on or after the effective date of the measure.

Effective Date: June 9, 1997

Senate Bill 283

Relating to the grounds for disqualification from receipt of unemployment compensation benefits.

SB 283 disqualifies an individual from receiving unemployment insurance benefits if the individual was suspended or discharged for being absent or tardy as a result of alcohol use or the unlawful use of any controlled substance. The measure clarifies the exceptions to unlawful use. SB 283 specifies the disqualification from receipt of benefits does not apply if the person was participating in a recognized alcohol or drug rehabilitation program at the time of the absence or tardiness, or was participating in a program within ten days of discharge or suspension. The measure clarifies that disqualification based on alcohol use can occur only if there were two or more incidents in a 12-month period. The measure requires that documentation of rehabilitation program participation be given to the Employment Department.

Effective Date: October 4, 1997

Senate Bill 390

Relating to public agency personal service contracts.

SB 390 reclassifies contracts entered into by state agencies for consulting services of registered professional engineers, registered architects or registered professional land surveyors as personal service contracts. The measure provides general guidelines for state agencies to develop their own screening and selection criteria for selecting these consultants. SB 390 prohibits a state agency from soliciting or using pricing policies and proposals or other pricing information to determine consultant compensation until after the agency has selected the candidate. However, consideration of price

and cost data from a candidate’s previous projects as part of past performance review of the candidate is permitted. The measure also requires the state agency and the selected candidate to mutually define the scope of services for the project and to negotiate conditions and compensation.

Prior to the measure, all public agencies, including state agencies, involved with the screening and selection of persons to perform architectural and engineering personal services contracts were required to use the Model Public Contract Rules developed by the Attorney General in 1995. On projects that involve federal funds, the Brooks Act (1972) requires the use of qualifications based selection (QBS), which does not allow compensation as a selection process criteria. The Attorney General’s model rules allow compensation requirements as a selection process criteria.

SB 390 also permits ownership status and employment practices regarding women, minorities, and emerging small businesses or historically underutilized businesses as a screening and selection process consideration. It also permits a state agency to directly appoint a consultant if value of a project does not exceed a threshold amount determined by the agency.

Effective Date: October 4, 1997

Senate Bill 484

Relating to workers’ compensation.

SB 484 revises the administration of workers’ compensation claims. The measure allows an injured worker, in limited circumstances, to release their workers’ compensation claim in exchange for the right to keep additional money available through a third-party case. The measure requires the settlement or judgment in a third-party case be at least \$1,000,000 for a worker to be allowed to release their claim.

SB 484 prohibits an injured elected public official, who continues to receive their full public salary during the period of their disability, from also receiving time loss workers’ compensation benefits. The time loss payment prohibition is limited to injuries incurred in the course and scope of the public office.

SB 484 also requires that a managed care organization provide a written explanation for denial of participation to any licensed health care provider that is denied participation in its managed care organization plan. The measure also requires that the Management-Labor Advisory Committee on Workers’ Compensation study the

income and expenditures of the Workers' Benefit Fund and recommend an optimal fund balance to the seventieth Legislative Assembly. The measure further authorizes the Director of the Department of Consumer and Business Services to maintain the Workers' Benefit Fund at a projected 12 month expenditure level until January 1, 2000.

Effective Date: July 25, 1997

Senate Bill 699

Relating to certain employees under workers' compensation law.

SB 699 clarifies that a limited duration temporary employee provided by a temporary service provider remains the employee of the provider in relation to workers' compensation laws. The measure prohibits a temporary employee provided by a temporary service provider from bringing a negligence suit against a client of that temporary service provider.

Effective Date: October 4, 1997

Senate Bill 711

Relating to public employees' retirement.

SB 711 allows a public employee who is a member of the Public Employees' Retirement System (PERS) to acquire retirement credit for up to four years of Armed Forces service that occurred prior to employment with a public employer. The provision requires the member to pay, in a lump sum, an amount determined by the PERS Board to represent the full cost of the retirement credit.

The measure prohibits use of a military service retirement credit if the retiree is eligible to receive other military retirement benefits. In order to retire, a PERS member must have at least 30 years of service. Current law allows a veteran to buy retirement credit for military service that occurred between periods of employment with a public employer. SB 711 allows a member to purchase retirement credit for military service that occurred after January 1, 1950, and prior to employment with a PERS employer. The military service retirement credit applies only to retirement commencing on or after the effective date of the measure.

SB 711 also permits members of the 69th Legislative Assembly who were publicly employed as a police officer or firefighter and participating in a non-PERS system to convert legislative employment PERS credits to the non-PERS system. The measure prohibits conver-

sion of the legislative employment credit if the legislator received credit in the non-PERS system for the same period of time.

Effective Date: October 4, 1997

Senate Bill 719

Relating to determination of the prevailing rate of wage.

SB 719 requires an independent wage survey be used to determine the prevailing wage for public works projects. It deletes statutory references to the use of prevailing wages determined by the U.S. Department of Labor. The Bureau of Labor and Industries (BOLI) is allowed to consider additional information, such as collective bargaining agreements and other wage surveys, if the data from the independent wage survey is not sufficient by itself.

The prevailing wage is the hourly wage, plus benefits, paid in the locality to the majority of workers employed on projects of similar character in the same trade or occupation. If there is not a majority in the same trade or occupation that are paid the same rate, the prevailing wage is the average hourly wage rate, plus benefits, paid in the locality to workers in the same trade or occupation.

For nearly 40 years, BOLI has used the prevailing wages determined by the U.S. Department of Labor. According to the Department of Labor, the union wage rate was the prevailing wage rate throughout most of Oregon. HB 2992 (1995) imposed a fee on public works contractors to fund independent wage surveys. Since passage of HB 2992, BOLI contracted with the Employment Department to conduct these surveys for occupations in 14 regions.

Effective Date: October 4, 1997

Senate Bill 781

Relating to employment rights of fire fighters performing service under Emergency Conflagration Act.

SB 781 protects certain employment rights of firefighters who perform service under the Emergency Conflagration Act. The Emergency Conflagration Act allows the Governor to assign and make available for use and duty in any county, city, or district any part of the fire fighting forces and equipment of any fire fighting organization in Oregon. The measure applies rights to volunteer firefighters of a rural fire protection district or firefighters employed by a city or a private

firefighting service. SB 781 allows an employer to grant a leave of absence to an employee who is a volunteer firefighter to respond to an emergency conflagration if the employer has given written approval for the leave of absence. The measure provides that the employee granted a leave of absence to respond to an emergency conflagration shall not be subject to removal or discharge from their former position as a consequence of the leave of absence. The measure does not require the employer to pay the employee on leave. Violation of the measure is defined as an unlawful employment practice and the Bureau of Labor and Industries is authorized to enforce the measure. In addition, the measure allows an employee to file a civil action against an employer for violation of the measure.

Effective date: October 4, 1997

House Bill 2071

Relating to private employment agencies.

HB 2071 repeals licensing requirements for all private employment agencies. The measure also eliminates Bureau of Labor and Industries (BOLI) regulation of private employment agencies whose fees are paid exclusively by persons other than the applicant for employment.

HB 2071 retains regulation of private employment agencies whose fees are paid solely or partially by the applicant for employment. This measure allows BOLI to continue assessment of a civil penalty of \$2,000 for violations of the remaining regulations against applicant-paid employment agencies. Private employment agencies are no longer allowed to reduce their surety bond amount and BOLI is no longer required to review an employment agency's schedule of charges and contract forms. The measure also modifies posting requirements for the employment agency's schedule of charges. The measure removes references to licensing and license throughout private employment agency-related statutes.

Effective Date: June 30, 1997

House Bill 2187

Relating to the State of Oregon deferred compensation program.

HB 2187 was enacted in response to passage of the federal Small Business Protection Act (1996). In response to the bankruptcy of Orange County, California, the federal legislation contained a provision to pro-

tect the assets in government deferred compensation plans. Prior to the passage of HB 2187, the assets of the state's deferred compensation program were the legal property of the employer (the state). The new federal law requires deferred compensation plans be structured as trust funds, meaning the assets of the fund are the property of the plan participants. HB 2187 establishes the Deferred Compensation Fund at the State Treasury in the form required by the federal legislation and specifically disallows any right for the state to reclaim payments made to the fund.

The measure specifies the fund structure and administration of the deferred compensation plan through the State Treasurer, the Oregon Investment Council (OIC), and the Public Employee Retirement Board (PERS Board). It sets procedures for terms of state employee participation, including a written contract between the eligible employee and the state. The measure also sets requirements for local governments to participate in the state deferred compensation plan.

The measure clarifies which portions of Oregon securities law (ORS chapter 59) apply to the deferred compensation fund and limits the civil liability of the state, State Treasurer, OIC, PERS Board, or the officers or employees of the fund for various reasons relating to administration of the plan. The measure makes technical changes to conform and clarify related statutes.

The measure requires funds from the current deferred compensation program be transferred to the Deferred Compensation Fund as soon as possible after the effective date of the measure.

Effective Date: May 30, 1997

House Bill 3098

Relating to substances of abuse on-site facility testing.

HB 3098 allows on-site drug testing of employees with on-site drug screening tests, if the test results are not used for diagnosing or preventing disease, and are not used by physicians or other licensed health care professionals. The measure requires that positive test results be confirmed by a clinical laboratory if adverse employment action will result. The entity using on-site tests pays filing fees and registers with the Health Division. Under HB 3098, employers must certify tests are being administered under certain criteria. The criteria include following custody chain procedures, following Federal Drug Administration and manufactur-

ers' instructions, and using testing operators trained by the manufacturer.

Effective Date: October 4, 1997

House Bill 3499

Relating to agricultural labor by children.

HB 3499 authorizes the Wage and Hour Commission to issue special permits for employment of children under 16 years of age who work in agriculture. The measure specifies the permit may allow work days longer than ten hours if the commission determines work will not be detrimental to the health and safety of children employed.

The measure was introduced in part to address the concern of grass seed farmers who have a short time frame each year in which to harvest their crop. Work hours spent harvesting these crops can extend beyond ten-hour days. The grass seed farmers testified that the current limits on employment of minors significantly reduces the number of young people they can hire to work during their harvest period.

Effective Date: June 30, 1997

Measures Vetoed by the Governor Senate Bill 1205

Relating to the policy for laws regulating certain labor matters.

SB 1205 prescribes policy stating that no part of ORS chapter 661 (organized labor) shall create a public policy or a cause of action independent of the chapter. It also prescribes that ORS 662.020 (policy on labor organization) shall not create a public policy or a cause of action independent of ORS chapter 662.

SB 1205 was developed in response to the Oregon Court of Appeals ruling on *Rauda v. Oregon Roses, Inc.*, 147 Or App 106 (1997). The court ruled that an employee who takes a concerted action because of a dispute over working conditions may not be dismissed from employment for that action. Oregon Roses appealed to the Oregon Supreme Court, but at the time that SB 1205 was passed the court had not yet decided to review the case. SB 1205 does not apply to lawsuits filed prior to January 1, 1997.

The employees of Oregon Roses who filed the suit are

agricultural workers. The National Labor Relations Act and Oregon's statutes on labor relations (ORS chapter 663) exempt all agricultural employees from coverage. The Court of Appeals disregarded the exemption for agricultural workers in ORS chapter 663 and based its decision on legislative policy stated in chapters ORS 661 and 662.

Governor's Veto Message: (August 8, 1997)

I am returning herewith SB 1205, unsigned and disapproved. Senate Bill 1205 seeks to overturn a court of appeals ruling which holds that at will employees cannot be fired for simply meeting collectively with their employer to discuss wages and working conditions.

While some interests are concerned that this ruling overturns the entire "at will employment" doctrine, I find no legal substantiation to this argument. It is clear that the court's decision is narrowly focused and only allows affected employees to discuss wages and working conditions. It does not allow these employees to conduct slow downs, strikes, or other more substantial job actions. I am vetoing SB 1205 because I believe that all employees should be able to collectively discuss their wages and working conditions without fear of being fired for doing so. If there are unforeseen consequences to this court decision, I will work with all of the interested parties to ensure a fair resolution of any problems that arise.

Major Legislation Not Enacted Senate Bill 42

Relating to Bureau of Labor and Industries.

SB 42 would have changed the Labor Commissioner's position from a statewide elected official to a Governor-appointed position.

Senate Bill 161

Relating to the composition of public employee bargaining units.

SB 161 would have directed the Employment Relations Board to separate mixed bargaining units when petitioned by the state or a county. A mixed bargaining unit is one that includes employees who can strike and those who are prohibited from striking. An arbitration

award for a mixed bargaining unit affects both classes of employees, and tends to set the salary benchmark for other represented employees.

Senate Bill 843

Relating to unemployment insurance tax rate reduction for educational training activities; appropriating money.

Had SB 843 been enacted, it would have authorized an unemployment insurance tax rate reduction to employers who provide educational training to eligible employees.

House Bill 2691

Relating to the determination of the minimum wage.

HB 2691 would have allowed an employer to pay a minor (under age 18) 50 cents less per hour than the current minimum wage for the first 60 calendar days of employment, known as an opportunity wage. The measure would have also allowed employers to include the value of tips received by employees in calculating the amount of minimum wage to be paid, known as a tip credit.

HB 3286/ SB 850 / SB 851

Relating to public employment.

HB 3286, SB 850, and SB 851 would have prohibited public employers from deducting labor organization dues from employee paychecks and would have prohibited collective bargaining agreements from requiring a public employee or applicant for a public job from being required to make payments or contribute to political committees.

HB 3590

Relating to family leave.

HB 3590 would have required employers to allow employees to use family leave for purposes of attending or participating in school activities of a child in the care of an employee. The measure would have allowed an additional 35 hours of leave in any one-year period for employees to attend children's school activities.

House Bill 3719

Relating to discrimination.

HB 3719 would have prohibited employment discrimination based on sexual orientation or perception of sexual orientation.

