

Oregon Safe Employment Act Amended to Create Presumption of Retaliation Under Certain Circumstances

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An amendment to the Oregon Safe Employment Act signed by Governor Kate Brown creates a “rebuttable presumption” of discrimination or retaliation if an employer takes an adverse action against any employee or prospective employee who engaged in certain protected activities within 60 days.

The Oregon Safe Employment Act requires employers to furnish a safe place of employment and to follow certain enumerated health and safety regulations. The Act also protects employees who engage in certain protected activities from discrimination or retaliation. Employees are protected if they:

- Oppose any practice forbidden by the Oregon Safe Employment Act
- Make any complaint or initiate or testify in a proceeding under the Oregon Safe Employment Act
- Exercise, on behalf of the employee, prospective employee, or others, rights afforded under the Oregon Safe Employment Act
- Report in good faith an assault occurring on the premises of a healthcare employer or in the home of a patient receiving home healthcare services

Any employee subjected to unlawful retaliation or discrimination may file a complaint with the Commissioner of the Bureau of Labor and Industries within 90 days.

Previously, it was up to the employee to prove that unlawful discrimination occurred. The amendment, which went into effect on June 15, 2021, changes the legal framework applicable to Safe Employment Act discrimination or retaliation complaints. It creates a presumption of discrimination or retaliation when an adverse action is taken within 60 days of the individual engaging in protected activity. Further, the presumption can only be rebutted if the employer shows, by a preponderance of the evidence, that no unlawful discrimination has occurred.

The amendment further explains that, while no legal presumption arises when an alleged discriminatory act occurs more than 60 days after an individual engages in protected activity, existing case law relating to the proximity of time between a protected activity and an adverse action remains good law.

Employers may want to revise any existing anti-retaliation policies to cover safety complaints, train managers on the importance of investigating and resolving safety complaints, and thoroughly document the legitimate basis for adverse actions taken against any employee who engages in protected activity.

Please contact a Jackson Lewis attorney with any questions related to policies, training, and other preventive practices.

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