



## 2017 Oregon Legislative Session - New Laws and Potential Issues Effecting Human Resources

*The following list includes a number of new laws passed during the 2017 session of the Oregon Legislature that may affect construction industry businesses. It should not be viewed as a complete list of every HR related law passed. A link to the final version of the bill is included. We also list a couple issues at the end that will be worked on by the Legislature in future sessions. Please note this document is not intended to provide legal advice, if you have further legal questions we would suggest you consult with your attorney.*

### New Laws Passed in 2017

#### [SB 299](#)- Paid Sick Days Fix

**Status:** Passed

- Effective immediately

**Summary:** There were some unintended issues with the Paid Sick time legislation passed in 2015. SB 299 was introduced to address the technical problems. **The bill left in place the exemption for building and construction trade employees represented by a collective bargaining agreement.** The following are the clarifications made:

1. Employer may limit employee to accruing 40 hours of sick time per year.
2. Employer may adopt policy limiting employee to accruing no more than 80 hours sick time in total and using no more than 40 hours in a year.
3. Excludes certain individuals from count of employees.
4. Modifies rate of pay for accrued sick leave for employees paid on piece-rate or commission basis.
5. Provides that employer's time off policy need not comply with sick time requirements beyond first 40 hours that employer's policy provides per year.

6. Clarifies that an employer who maintains only a seasonal farm stand **or a temporary construction trailer within Portland is not a Portland employer.**
7. Applies to hours worked and sick time accrued or used after January 1, 2018.

## **HB 2597- Distracted Driving and Electronic Devices**

**Status:** Passed

- Effective Oct. 1, 2017

**Summary:** In an effort to crack down on the use of mobile devices while driving, a number of bills were introduced. While there is already a ban on texting and talking while driving in Oregon, a recent court case ruled that there wasn't a prohibition on other activities such as using the device for social media or internet. That made it difficult for law enforcement to enforce the law. House Bill 2597-B was the product to address these issues. The measure renames and expands the offense to cover driving a motor vehicle while using a mobile electronic device. It also defines mobile electronic device, driving and other key terms. HB 2597-B eliminates several exceptions contained in existing law, such as use of a mobile electronic device for farming or agricultural operations, but does provide limited exceptions, such as the use of a two-way radio device while operating a school bus within the scope of a person's employment. The measure creates several affirmative defenses, such as using a mobile communication device to summon or provide medical or other emergency help, if no other person in the vehicle is capable of summoning help.

Importantly, HB 2597-B increases the penalty for a first offense from the current Class C traffic violation to a Class B traffic violation. It further increases the penalty to a Class A traffic violation for a subsequent offense within 10 years or if the first offense contributes to an accident. A third offense within ten years is increased to a Class B misdemeanor with a mandatory \$2,000 fine. Finally, HB 2597-B allows the court to suspend a fine imposed on a first offense if a person completes a distracted driving avoidance course established by the Oregon Department of Transportation.

**We worked with the Legislature to clarify/define what driving is vs operating a vehicle to make sure that the use of hand held devices was allowable in the operation of bucket/boom trucks while parked in a public roadway.**

## **HB 3060- Public Contracting Sexual Harassment and Discrimination Policies**

**Status:** Passed

- Effective October 8th, Policies need to be in place Jan. 1, 2018

**Summary:** Contracting with the State of Oregon did not previously require contractor's to have policies to prevent certain types of harassment and assault in the workplace. HB 3060 now prohibits state public contracting agencies from entering into a contract worth \$150,000 or more unless the contractor certifies in writing that the contractor has a policy and practice to prevent sexual harassment, sexual assault and discrimination against members of protected classes. **Contractors have until January 1, 2018 to draft policies if they do not currently have one to continue to be eligible for state contracts.**

## **HB 2005 Equal Pay Act of 2017**

**Status:** Passed

- Prohibition on seeking salary history becomes effective October 8<sup>th</sup>.
- Screening and compensation discrimination provisions become effective January 1, 2019.
- Allows actions alleging violations of salary history inquiry provision starting January 1, 2024.

**Summary:** The Equal Pay Act of 2017, House Bill 2005, prohibits employers from discriminating employees on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Employers may not pay protected workers for comparable work unless the pay difference is based on seniority or merit system, education, training, experience or factors specific to the job, such as workplace location and travel.

To disrupt long-standing patterns of unequal pay, employers are prohibited from seeking the salary history of a prospective employee. Employers, who have done an equal-pay analysis to determine if there are any inequalities and corrected compensation based on their findings, may be protected against civil actions alleging violation of the Equal Pay Act.

## [HB 3458- Overtime Fix](#)

**Status:** Passed

- Effective immediately

**Summary:** Prior to December 2016, BOLI's Wage and Hour Laws Handbook for Oregon Employers advised that employers should calculate overtime wages for hours worked on both a daily basis and a weekly basis, and then pay the greater amount of the two. BOLI's guidance changed after situations arose where employees exceeded both maximums for hours worked on one or more days and in the workweek. BOLI had advised employers to calculate overtime wages earned for hours worked on both a daily and a weekly basis, and then pay both amounts. In March 2017, the Multnomah County Circuit Court decided a case inconsistent with BOLI's guidance, denying a claim in Mazahua Reyes, et al. v. Portland Specialty Baking, LLC, that would have required an employer to pay both daily and weekly amounts for overtime.

House Bill 3458-B modifies daily overtime payment by employers in the manufacturing and food processing sectors to require calculation on both daily and weekly basis and payment of the larger of the two amounts. In addition, the measure prohibits employers from requiring employees to work more than 55 hours in a workweek, but an "undue hardship exemption" enables an employee to consent to work up to 84 hours for four workweeks, and up to 80 hours for 17 workweeks, in a calendar year. **This bill has an exemption for employees who are represented by a collective bargaining agreement as long as employer and labor organization have agreed to limits on required hours of work and overtime payment.**

## **Transportation Package** [HB 2017](#)

**Status:** Passed

- Payroll tax effective July 1, 2018

The 10 year, \$5.3 Billion transportation package includes many parts; one part in particular will have impact on all employers and employees. HB 2017 establishes the Statewide Transportation Improvement Fund by implementing a 0.1 percent payroll tax on employees. This fund will be used to provide resources to numerous transit projects, including a grant system that prioritizes safety improvement projects near schools. It will be implemented by the state employment department – similar to the TriMet tax in the Portland area.

## **HB 2162- Apprenticeship Utilization Mandate**

**Status:** Passed

- The bill goes into effect January 2018

**Summary:** The bill will only affect state of Oregon construction contracts over \$5 million. It does not include ODOT contracts, so the total number of contracts it should impact will be less than 20 in the biennium. It requires 10% of the overall work done on these State projects that is done by apprenticeable trades will be done by apprentices. If a subcontract either exceeds \$1 million or 25% of the total contract, 10% of that specific work has to be done by apprentices of that trade. There will be increased paperwork dealing with the reporting of hours worked by apprentices. There will be a labor/management advisory committee formed by BOLI that is to monitor the implementation and compliance with the act. In 2022 the contract threshold will decrease to \$3 million and the apprenticeship ratio will rise to 12%.

## **Potential Future Issues**

### **SB 828- Predictive Work Scheduling**

**Status:** Passed

**Key Players:** UFCW, AFL-CIO, AOI/OBA and BOLI

- Effective immediately

**Summary:** Senate Bill 828-B establishes scheduling standards for **retail, food service and hospitality employers** who have 500 or more employees worldwide to provide good faith estimates of employees' work schedules, seven-days advanced written notice of work schedules, predictability pay when schedules change, a right to rest between shifts, and extra compensation for hours worked when fewer than 10 hours separate shifts. In addition, the measure allows employers to maintain a standby list that includes employees who have agreed to work additional hours, provides criteria for employer use of the standby list, and prescribes penalties for violations of standby list requirements.

**This measure only applies to retail, food service and hospitality industry but likely there will be attempts to expand it in the future!**

## **Paid Family Leave**

While legislation for this issue did not move forward in 2017, this is a priority for a number of key members of the Senate and House Democratic Caucuses. Coming on the heels of paid sick days and flexible scheduling we are likely to see this coming up in 2018 or 2019 as a major priority for the Democrat controlled legislature.