



5 Reasons Business Owners Should Talk to an Employment Attorney Before Dec. 31

By: Iris Tilley, Partner, Barran Liebman

Calling an employment attorney when it has been a while can feel like an overdue call to the dentist. What trouble has been festering? How much is this going to cost? However, just like a good dentist, a good employment attorney can make you feel confident and ready to smile.

If you have been putting off a call to your attorney, we have five reasons to make it happen before the end of the year.

1. Your handbook probably needs a few updates.

On Jan. 1, 2016, Oregon's statewide sick leave law took effect, but that was not the end of the story. Rather, in the almost two years that have followed since the law's effective date, we have seen substantial clarifying information from the Oregon Bureau of Labor and Industries (BOLI), the agency that enforces Oregon's sick time law.

Most recently, BOLI addressed outstanding questions related to how employers should treat time an employee has left over at the end of the year when the employer front loads employee sick leave banks at the start of the year. In addition, BOLI provided helpful guidance as to an employer's ability to treat only the first 40 hours of time off as protected sick time where the employer offers a combined sick and vacation bank for all an employee's time away from work.

If your policies have not been updated recently, there is a good chance your sick leave language may not be up to date with the most current rules. Your employment attorney can help with these updates and answer those tricky leave coordination issues that often come up when administering Oregon's sick leave rules.

2. If you bid for public contracts in Oregon, the right policies can help your bottom line.

Starting on Jan. 1, 2018, only those employers with policies that comply with new sexual harassment and discrimination rules will be eligible for certain public contracts in Oregon. In particular, those contractors seeking a public contract of over \$150,000 will be required to certify to the state that they maintain a policy and practice of preventing sexual harassment, sexual assault, and discrimination against workers who are members of a protected class.

The new rule includes very specific definitions of what employees are members of a protected class, as well as notification requirements, so employers who intend to seek such contracts in 2018 should review policies with an attorney now to make the adjustments necessary to ensure appropriate procedures are in place for 2018.

3. Employers doing business in Washington have a new sick leave law.

As some employers may have noticed, sick leave laws have been popping up across the country. However, how and when these laws have been enacted has been far from consistent. In some



jurisdictions, the state has acted first, while in places like Oregon and Washington, we first saw city-specific laws enacted. A statewide Washington sick leave law takes effect on Jan. 1, 2018.

At this point, regulations are only in a proposed form, but we know that the Washington law will require that employees have the right to accrue at least 40 hours of paid sick leave in a year. The accrual rate is one hour for every 40 hours worked, which is a slower accrual rate than the rate required in Oregon. However, like in Oregon, the Washington law requires carryover and includes specific instances in which sick leave must be made available. If you do business in Washington, now is a good time to speak with your attorney about your existing policies to ensure that they are compliant as of Jan. 1, 2018.

4. Your employment applications and hiring practices might not comply with the Pay Equity Act.

Earlier this year, Gov. Kate Brown signed into law Oregon's Pay Equity Act. The law prohibits employers from screening job applicants based on current or past compensation, as well as determining compensation for a position based on a prospective employee's current or past compensation.

Employees cannot yet sue directly under the law, but part of the law took effect on Oct. 6, 2017. Employers who have not already done so should review job applications, policies, and procedures to ensure compliance. An employment attorney can help with the details, but the key takeaway points are that any requests for prior salary history should be removed from applications, and those employees conducting interviews should be advised not to ask about salary history. It is, however, okay to ask applicants about their pay expectations for a position. Your employment attorney can also help you prepare for and stay on top of the broader requirements of the Pay Equity Act that go into effect in 2019.

5. OregonSaves might matter to you now or be something you can ignore for years to come.

Oregon's state-run retirement program, OregonSaves started to roll out earlier this year with a pilot program involving a few employers. The program is designed to offer a savings vehicle for employees who do not have access to an employer-sponsored retirement program, like a 401(k) plan.

The program is rolling out over several years and requires that employers respond to a contact from the state by either enrolling in the program or, if the employer already sponsors a retirement plan, filing an exemption. Employers with 100 or more employees are required to comply starting Nov. 15, 2017, but they cannot take any step forward until they have received registration information from the state.

As an employer operating in today's climate, it can feel like you are under a constant barrage of information, and it can be difficult to determine where to focus your attention and resources. However, your employment attorney's job is to sort through the noise and identify those developments that matter most to your company. Even though making that first call can be nerve-racking, we promise that reaching out to your employment attorney will be worth the effort, as it will pay off in both peace of mind and positive employee relationships.



[Iris Tilley](#) advises employers in all aspects of employee benefits, including the design, administration, and termination of qualified retirement plans, non-qualified deferred compensation arrangements, and health and welfare plans. She is admitted to practice in Oregon and Washington and often speaks and writes about employee benefits topics, including health care reform.