

Employment Law Basics: Know Your Rights

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Nothing in this handout or presentation is meant to be legal advice. This is for informational purposes only and is not meant to create an attorney-client relationship.

I encourage you to consult an attorney if you have questions about how the law applies to your situation, including whether you are considered an employee or an independent contractor and whether a union collective bargaining agreement alters your rights.

The info is up-to-date as of May 2017.

Anti-Discrimination

TITLE VII, SECTION 1981, ADA, ADEA, ORS 659A

Intentional discrimination, hostile work environment, or “disparate impact” because of:

- Race or Color
- National Origin
- Religion
- Age
- Injury or Disability
- Worker’s Comp Claim
- Use of FMLA/OFLA
- Expunged Juvenile Record
- Sexual Orientation
- Gender Identity
- Marital/Family Affiliation
- Military Service
- Sex/Gender (incl. sexual harassment, pregnancy, & Lactation)
- Military Service

Non-Retaliation

“Whistleblower”

Employer can’t take adverse action that would deter reporting if:

- employee reports
- in good faith
- info that employee believes is evidence of violation of ANY law, rule, or regulation



Family Medical Leave

12 weeks of unpaid, job-protected leave for:

- Your own or family’s “serious health condition”
- Newborn/adopt/foster
- Armed forces

Employer may:

- require you to exhaust paid leave & use OR & federal leave at same time.
- Request medical certifications, if per rules.

Look at notice requirements!

FMLA - 29 USC 2601–2654

- 50+ employees w/in 75 miles & you worked 1,250 hours in last 12 mos.

OR Leave Law - ORS 659A

- Broader (e.g., covers DV, crime victims, “sick” kid)
- 25+ employees and you worked 180+ days for an average of 25 hrs/week
- Won’t “run” if worker’s compensation

Disability - ADA, ORS 659A

Employer required to:

- provide reasonable accommodations*
- for a “qualified individual with a disability”
- who can perform the “essential functions” of the job with the accommodation.

*Check out askjan.org.

Employer can:

- ask for certain medical documentation.
- try to show an undue hardship to deny the accommodation.

OR Sick Time - ORS 653

- If 10+ ee (6+ in PDx) = 40 hrs paid leave/year.
- If less, must still provide 40 hrs unpaid sick time.

Workers’ Compensation

ORS 656

- No-fault system to cover work-related injuries, both “accidental” and “occupational.”
- Must report injury within 90 days.
- 3 yr reinstatement rights

“Justice
requires that
we work to
restore those
who have
been injured.”

- Restorative
Justice Principle

Wage & Hour - ORS 652, ORS 653, FLSA

- ◇ **Minimum wage** (\$11.25 PDX, 7/1/17) & **Overtime** - ORS 653.020-.261
- ◇ **Regular pay periods**: at least every 35 days or as established.
- ◇ **Final Paycheck**: If you are terminated, must be by end of next business day. If you resign with 48 hours’ notice, must be on your last day.
- ◇ **Unlawful Deductions**: very limited categories for deductions without employee authorization. ORS 652.610
- ◇ No gender discrimination; **non-retaliation** for consulting attorney or wage inquiries
- ◇ Possible to get **attorney’s fees** and **penalties** on some of these claims.

Miscellaneous

- ◇ **Tort actions** (e.g., infliction of emotional distress, interference with economic relations, invasion of privacy, defamation, wrongful discharge)
- ◇ **Contract actions** (e.g., breach of employment contract)
- ◇ **NLRA/PECBA Protections**: unless excluded (e.g. supervisors), you must be allowed to talk to co-workers about unionizing, wages, & working conditions.

Tips

- ◇ Your **DEADLINES** may be running - consult a lawyer or file your claim ASAP! Many of these cases may be taken on **Contingency**, meaning you won’t have to pay attorney’s fees out-of-pocket until you see some money.
- ◇ Watch what you say to friends/family or post on social media—it’s likely discoverable!
- ◇ Document, document, document! If something’s fishy, write down dates, times, & names. But be **careful and very limited in** what you take from work—check policies for confidentiality provisions, talk to an attorney, redact unnecessary information, and only show to your attorney. Penalty could be that they have “cause” to fire you for taking the documents.
- ◇ File for **unemployment benefits** right away, even if you think that the employer will argue “for cause” and even if you resigned if you think you had “good cause.”
- ◇ Use ORS 652.750 to inspect your **personnel and time and pay records**.
- ◇ If a bad act is committed by a co-worker, **make a report** to the employer and give them the opportunity to correct. Read your employer’s policies on reports.
- ◇ You may also be protected if you are discriminated against for your **affiliation** with one of the protected categories or because you have been **perceived** to fall within one of the categories, regardless of whether you actually do.