




No Major Renovations: 2020 Oregon Employment Law Update


2020 Employment Law Seminar
Day 2: 2020 Federal & State Law Update





Speaker Introductions



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Oregon Workplace Fairness Act

Oregon Workplace Fairness Act

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- Fully effective October 1, 2020
- Significant changes for employers, including:
 - New statutes of limitation
 - Restrictions on contents of employment agreements
 - Certain separation agreements voidable
 - Policy requirements

Oregon Workplace Fairness Act

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- Statute of limitations for discrimination and harassment claims:



Two years



Three years



Five years

Oregon Workplace Fairness Act

- Statute of limitations for discrimination and harassment claims:



Two years



Three years



Five years

Oregon Workplace Fairness Act

- Nondisclosure, nondisparagement, and no-rehire provisions:



Never allowed



Always allowed



Sometimes allowed
(with restrictions)

Oregon Workplace Fairness Act

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Oregon Workplace Fairness Act

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- Ensure that antidiscrimination and harassment policies comply with the Act
- Review employment agreements for compliance
- Ensure that document retention policies comply

Summerfield v. Oregon Liquor Control Commission

Summerfield v. Oregon Liquor Control Commission

- Claims: race discrimination, harassment, failure to reemploy under ORS 659A.046
- ORS 659A.046(1): "A worker who has sustained a **compensable injury** and is **disabled from performing the duties of the worker's former regular employment** shall, upon demand, be **reemployed by the worker's employer** at employment which is **available and suitable.**"

Summerfield v. Oregon Liquor Control Commission

- Who holds the obligation to identify suitable work?



Employer



Employee

Summerfield v. Oregon Liquor Control Commission

- Who holds the obligation to identify suitable work?



Employer



Employee

H.K. v. Spine Surgery Center of Eugene, LLC

H.K. v. Spine Surgery Center of Eugene, LLC

- Claims: sexual harassment (hostile work environment), intentional infliction of emotional distress, battery
- Asserted against employer and owner
- Employee used evidence of past BOLI complaints at trial

H.K. v. Spine Surgery Center of Eugene, LLC

- Documents from past BOLI complaint were:



Relevant and admissible



Not relevant, but admitting them was harmless error



Not relevant, and admitting them was not harmless error

H.K. v. Spine Surgery Center of Eugene, LLC

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Cilione v. Techfive, LLC

Cilione v. Techfive, LLC

- Claims: discrimination and harassment based on gender, retaliation for complaints about gender-based harassment

Cilione v. Techfive, LLC

- Allegations included:
 - Passed over for a special project
 - Supervisor assisted male colleagues more often
 - Supervisor did not respond to request for flexible schedule

Cilione v. Techfive, LLC

- Plaintiff's allegations:



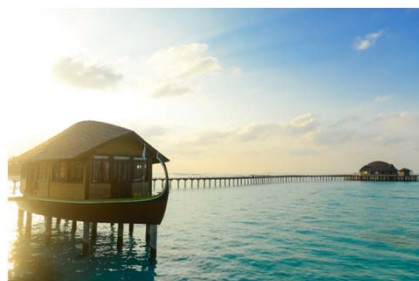
Constituted adverse employment actions



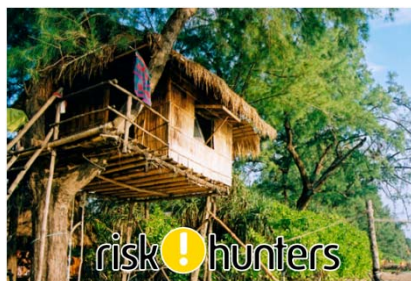
Did not constitute adverse employment actions

Cilione v. Techfive, LLC

- Plaintiff's allegations:



Constituted adverse employment actions



Did not constitute adverse employment actions

Vergara v. Patel

Vergara v. Patel

- Under Oregon Safe Employment Act (ORS 654.010 et seq.), employers must:
 - Maintain safe and healthful workplaces
 - Provide "such devices and safeguards" to protect employees

Vergara v. Patel

- The court determined:



All plaintiff's claims survive



Plaintiff's wrongful discharge claim dismissed



All plaintiff's claims dismissed

Vergara v. Patel

- The court determined:



All plaintiff's claims survive



Plaintiff's wrongful discharge claim dismissed



All plaintiff's claims dismissed

McLaughlin v. Wilson

McLaughlin v. Wilson

- Claims: defamation, intentional infliction of emotional distress, and retaliation
- Individual liability for retaliation claims

McLaughlin v. Wilson

- Can retaliation claims be asserted for post-employment actions?



Yes, against both employers and supervisors



Yes, but only against employers



No—retaliation is only for conduct that takes place in the workplace

McLaughlin v. Wilson

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Maza v. Waterford Operations

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- Failure to pay wages for meal periods under ORS 653.055 and OAR 839-020-0050
- "If an employee is not relieved of all duties for 30 continuous minutes during the meal period, the employer must pay the employee for the entire 30-minute meal period."

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Maza v. Waterford Operations

- The court determined:



Handbook policies sufficient to avoid all liability



Circumstances of each employee's shortened meal period matters



Employers must require employees to take duty-free meal breaks

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Maza v. Waterford Operations

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Circumstances of each employee's shortened meal period matters



Employers must require employees to take duty-free meal breaks

Tapley v. Cracker Barrel Old Country Store

Tapley v. Cracker Barrel Old Country Store

- Claims: harassment, discrimination, and retaliation
- Employee signed ADR agreement: "any legal dispute arising out of or related to [her] employment * * * must be resolved using informal conciliation and final and binding arbitration and not by a court or jury trial."

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Tapley v. Cracker Barrel Old Country Store

- The court determined:



**Arbitration
agreement valid
and enforceable**



**Arbitration
agreement not
valid and
enforceable**

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Tapley v. Cracker Barrel Old Country Store

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Robillard v. Opal Labs, Inc.

Robillard v. Opal Labs, Inc.

- Claims included failure to pay vacation time upon termination and age discrimination
- PTO policy "encouraged" employees to take three paid weeks off, but employer did not track PTO
- Offer letter: includes three weeks PTO

Robillard v. Opal Labs, Inc.

- The court determined:



No obligation to pay vacation time: "encouraged" doesn't mean "entitled"



Employer required to pay vacation time



Employer *may* be required to pay vacation time

Robillard v. Opal Labs, Inc.

- The court determined:



No obligation to pay vacation time: "encouraged" doesn't mean "entitled"



Employer required to pay vacation time



Employer *may* be required to pay vacation time

Robillard v. Opal Labs, Inc.

- The court determined:



"Dad" and "Old Greg" evidence of age discrimination



Failure to formally discuss/document concerns raised issue of fact



Employer entitled to summary judgment on age discrimination claims

Robillard v. Opal Labs, Inc.

- The court determined:



"Dad" and "Old Greg" evidence of age discrimination



Failure to formally discuss/document concerns raised issue of fact



Employer entitled to summary judgment on age discrimination claims

Thank You!



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