

**Executive Summary of Human Resource Related Legislation
74th Regular Session of the State of Oregon Legislature**

**Prepared by the Department of Administrative Services
Human Resources Services Division
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Introduction:

While the 74th Regular Session was shorter in duration than any since 1995, a relatively large number of human resource-related bills were introduced. The Human Resource Services Division (HRSD) analyzed and/or tracked a total of 294 bills from January through June 2007. This is an amount only slightly lower than last session's 316 bills. The past two sessions saw a significant increase in the volume of HR-related bills as compared to the 136 bills tracked and/or analyzed in the '01-'03 session.

Of the 294 HR-related bills introduced this session only 40 were passed. A summary of each bill, by topic area, is provided below. A brief description of the legislation that was passed, its impacts and, HRSD's preliminary implementation plans is included. For more information regarding the bills summarized in this report, go to: <http://www.leg.state.or.us/searchmeas.html> and search for the bill by number or contact the Human Resource Services Division if you have any questions.

A partial listing of some significant bills that were introduced but not passed is included at the end of this summary. Un-passed bills may reflect future legislative efforts and are, therefore, issues state leadership, particularly HR leadership, should pay attention to.

Compensation & Benefits:

HB 2255 -- Makes discrimination against an employee for taking wage related action an unlawful employment practice. The bill allows employees to file complaints with BOLI. HRSD may make a minor revision to State Policy 20.005.20 "Fair Labor Standards Act."

HB 2256 -- Allows employer and employee to agree that an employer may pay wages through electronic transfer if employee may make initial withdrawal of entire amount of net pay without cost to the employee or employee may choose other means of payment that so long as such methods do not require a service fee. This is an option that the state already offers through state payroll.

HB 2258 -- Requires that an employer, if employer has notice that employee has not been paid in full amount that employee is owed on regular payday, to pay the employee the unpaid amount within specified number of days after employer has notice of underpayment. HRSD will coordinate with Statewide Payroll to implement changes to statewide payroll policies.

HB 2282 -- Changes terminology in PERS statute (ORS 238.450) from the word "disputes" to the word "contests." This wording change is simply to clarify existing statutory provisions.

HB 2286 -- Provides that deferred compensation plan payment of all or any part of deferred compensation to an alternate payee who is a child or dependent of the employee shall be reported for state and federal income tax purposes as payment to an eligible employee. Any amount required to be withheld for state or federal income tax purposes shall be withheld from the payment to the alternate payee. (b) Payment of all or any part of deferred compensation to an alternate payee who is the spouse or former spouse of the employee shall be reported for state and federal income tax purposes as payment to the alternate payee. Any amount required to be withheld for state or federal income tax purposes shall be withheld from the payment to the alternate payee.

HB 2401 -- Changes the normal and earliest retirement age under PERS statute for telecommunicators (Dispatchers). Under the PERS 238 program – normal retirement age would be 55 years of age. They can retire (at a reduced benefit) with 25 years of service without reaching 55 years of age. Under the OPSRP program the normal retirement age would remain 65 years of age. The earliest retirement age would be 55 or 25 years or more of service, whichever occurs first. This would provide them with a reduced benefit.

SB 303 -- Provides that wages owing by garnishee to debtor for specific pay period are not garnishable property under certain circumstances in which garnishee uses Oregon Department of Administrative Services or independent contractor as payroll administrator.

Criminal Background Checks:

HB 2252 -- Authorizes the Department of Consumer & Business Services, Commission for the Blind, Office of Private Health Partnerships, Real Estate Agency, Board of Radiologic Technology and Department of Housing and Community Services to require fingerprinting for purposes of criminal background checks related to employment.

Employment Relations, generally:

HB 2022 -- This bill requires health care employers to address assaults of employees and establishes requirements for employers to conduct security and safety assessments. It establishes the right of a health care employee to refuse to treat a patient (while alone) if patient is a danger to the employee. Primarily affects Department of Human Services. DHS is already performing most if not all of the required activities.

HB 2260 -- Expands Oregon law to allow for compensatory and punitive damages and other relief for unlawful employment practices based on race, religion, color, sex, national origin, marital status or age.

HB 2372 -- Requires employers to provide rest periods for mothers to express milk. There is currently a Governor's Executive Order in Place. HRSD will create a new policy to expand upon the existing Executive Order in order to ensure statutory compliance.

SB 2 -- Prohibits discrimination against persons based on sexual orientation and disability and allows for civil action and punitive damages. Because the definition includes "bisexuality" and "gender identity," this may subsequently cause privacy concerns potentially necessitating the construction or designation of additional facilities

for lockers or restrooms. HRSD will be seeking clarification and interpretation from the Attorney General's Office.

SB 72 -- Accountability for public funds. This bill expands the definition of persons who may be held accountable for loss of public funds or property in amounts of \$100 or more. Agencies must report discovery of loss within 30 days. Audits division must determine whether to investigate the loss within 30 days of receipt of report.

SB 77 -- Requires that appointed officers submit resignations in writing to an appointing authority. While this statute appears to apply directly to elected, versus appointed public officials, there are existing personnel action requirements that resignations from state employees be in writing. HRSD will send a reminder out via electronic mail about obtaining an employee's written notice when they resign.

SB 248 -- Makes non-competition agreements between employers and employees void under certain conditions.

SB 380 -- Directs education providers to disclose to any person upon request, disciplinary records of former school employee who is convicted of specified crimes.

SB 671 -- Redefines the information that may be released under public records law. A condensed version of factual information may be released without jeopardizing the attorney-client privilege. HRSD recommends agencies contact their legal counsel at the Department of Justice on any case specific issues.

SB 822 -- Amends Veteran's preference points system in ORS 225-235 for scored and un-scored civil service examinations. Requires public employers to develop and apply methods of providing preference in un-scored application examinations. The bill requires public employers to give the reasons, upon request, for a decision not to appoint a veteran applicant. It allows Veterans to use preference points multiple times for promotional purposes. Requires the Bureau of Labor & Industries to enforce these statutes and treat violations as unlawful employment practices. HRSD is in the process of promulgating temporary administrative rules to define methods of providing veterans preference.

Personnel Records:

HB 2254 -- Imposes a timeline in which employers are required to provide copies or allow inspection of an employee's personnel file; allows for an extension to be requested by the employer with agreement of the employee; allows BOLI to impose a civil penalty for the violation of this statute. HRSD will revise OAR 105-010-0011 to include new provision.

SB 554 -- Requires public body to respond to written public request as soon as practicable and have a written procedure for making such requests. Requires response from public body contain certain elements. May require procedural changes for HRSD and agencies.

Leave Laws:

HB 2265 -- Allows the transfer of unused sick leave between the Department of education and a school district or education district upon employee transfer. HRSD will revise state policy 60.000.01 "Sick Leave with Pay" to include new provision.

HB 2460 -- Redefines family leave in relation to workers' compensation – does not count as Oregon Family and Medical Leave (OFLA). HRSD will review state policy 60.000.20, "Family & Medical Leave Act" (FMLA) for needed changes.

HB 2485 -- Clarifies that employees absent from work due to family leave purposes for may use accrued vacation and sick leave. State policies and collective bargaining agreements already allow for sick leave usage described in the bill.

HB 2635 -- Redefines "Family Member" as used in the Oregon Family Leave Act to allow eligible employee to take family leave from work to care for grandparent or grandchild; makes retaliatory acts against an employee who has inquired about or requested family leave unlawful employment practices. HRSD will amend state policy 60.000.20 "Family & Medical Leave Act (FMLA) for needed changes.

SB 946 -- Adds the requirement for employers to allow eligible employees to take leave to address personal issues related to domestic violence, sexual assault or stalking. HRSD will revise HRSD State Policy 60.000.12 "Statutorily Required Leaves with and without Pay" to include this new provision.

Labor/Management Relations, Collective Bargaining:

HB 2070 -- Increases fee from \$100 to \$250 to file an answer with Employment Relations Board in unfair labor practice proceedings under public employee's collective bargaining law. Establishes a fee of \$250 to file charges or answer with board in other unfair labor practice proceedings. The bill establishes a fee of \$250 to intervene in unfair labor practice proceedings. Establishes Employment Relations Board Administrative Account to consist of moneys received by Employment Relations Board other than moneys appropriated by Legislative Assembly. Continuously appropriates moneys in account for payment of expenses incurred by board. The bill transfers moneys from Oregon Department of Administrative Services Operating Fund and from P.E. Relations Administrative Account to Employment Relations Board Administrative Account.

HB 2175 -- Authorizes Department of Human Services to use abuse and neglect reports to determine fitness of employees, providers and volunteers to provide care through department. Directs DHS, for screening purposes, to convene a committee to develop recommendations to department for use of abuse and neglect reports.

HB 2370 -- Creates Office of Emergency Management in Oregon Military Department. Abolishes Office of Emergency Management in Department of State Police and transfers functions to office in Oregon Military Department. The bill also prohibits unit of government from seizing firearms from individuals in lawful possession of firearms during declared emergency.

HB 2622 -- Prohibits certain employees of Oregon Youth Authority from striking. Applies only to collective bargaining agreements that involve OYA employees who have custody, control or supervision of youth offenders and that are entered into or extended on or after the effective date of the Act.

HB 2891 -- Requires Employment Relations Board, unless a petition for representation election is filed, to certify a labor organization as the exclusive representative of employees if board finds that the majority of the employees in unit appropriate for bargaining have signed authorizations designating labor organization specified in petition as employees' bargaining representative and that no other labor organization is currently certified or recognized as the representative of employees. The bill requires the Board to develop guidelines and procedures for designation by employees of bargaining representative. The bill requires that a petition for representation election must be supported by 30 percent of the affected employees. The bill further requires the Board to develop guidelines and procedures to effect election and to resolve disputes and that an election must be held not later than 45 days after a petition is filed.

HB 3362 -- Requires Home Care Commission to elect workers' compensation coverage for certain home care workers and allows termination of temporary total disability benefits of home care workers who refuse modified employment in certain circumstances.

SB 157 -- Specifies authority of Home Care Commission and commission's relationship with Department of Human Services. Specifies that members of commission are officers of state and that commission is state commission.

SB 400 -- Expands the criteria for mandatory subjects of bargaining for public safety employees over safety and staffing issues. The current standard requires that staffing and safety issues have a direct and substantial effect on the employees' on-the-job safety before they become mandatory subjects of bargaining; the new standard modifies the definition of 'employment relations' to include safety issues that have impact on on-the-job safety of strike-prohibited employees and staffing levels that have significant impact on on-the-job safety of these employees.

SB 788 -- Gives family child care providers the right to collectively bargain with State of Oregon.

SB 858 -- Gives adult foster care home providers right to collectively bargain with State of Oregon. Specifies that adult foster care home provider is a person who receives payments from state for providing adult foster care home services. The bill requires that the state of Oregon recognize a specific labor organization as the exclusive representative of adult foster care home providers.

Miscellaneous Legislation:

HB 2121 -- Requires that person requesting notice of proposed rule indicate manner in which they wish to receive information (electronic or paper). The bill allows an agency to correct rule references, addresses and phone numbers in administrative rules without completing a formal rulemaking process.

HB 2184 -- The Department of Human Services (DHS) Deputy Director and any Assistant Directors are in the Unclassified Service of the state and notwithstanding 240.205, deputies and principle assistants appointed by an assistant director in the unclassified service of the state and serve at the pleasure of the director. It provides an exception, if approved by the Governor, to enable retirees from a position of deputy director or assistant director of DHS to work in excess of 1040 hours per calendar year without losing retiree status. HRSD will revise Policy 40.025.01 to include this exception regarding retiree work limitations.

HB 2185 -- Authorizes Director of DHS to appoint Public Health Director. The bill defines the duties and establishes the authority of the Public Health Director.

HB 2595 -- Establishes new standards concerning nepotism, increases fees for violations. Changes name of Government Standards and Practices Commission to Government Ethics Commission. HRSD will consider a statewide policy for nepotism and consider promulgating an administrative rule to implement the Oregon Ethics Commission regulations.

SB 77 -- Requires appointed officers to submit resignations in writing to appointing authority. This bill was appears to be intended to address elected and politically appointed officials and may not be directly applicable to state employees. However, the process of obtaining written documentation with the employee's signature before processing a resignation is consistent with the procedures in the Personnel Action Manual.

SB 83 -- Modifies terminology describing persons in dozens of statutes. For example, "the disabled" was changed to "persons with disabilities" throughout the Oregon Revised Statutes. HRMC will review language in statewide policies to ensure general consistency with statutory language.

Major Bills Failing to Pass:

HB 2575 was introduced to provide that employees absent for certain Oregon Family Leave (OFLA) qualifying events would receive a weekly benefit amount of \$250 for a period of up to six weeks. This bill would have created an income replacement program in Oregon similar to those in operation in California and the state of Washington. This bill progressed through the House and the Senate but was not successful in Ways and Means.

HB 3357 was filed on behalf of the American Federation of State County & Municipal Employees (AFSCME) due to the union's concerns about the state's actions taken with respect to certain injured workers. The original version of the bill would have created extended reemployment rights for state of Oregon injured workers in the event of a compensable worsening or an injury to the same body part and establishment of an employer-based training program to assist injured workers in qualifying for additional positions with the state. The bill was eventually amended to create a interim task force to review the state's injured worker policies and to make recommendations for statutory changes to the appropriate legislative committee prior to the '09-'11 session. We expect interest in state agency administration of injured worker policies and practices to continue to be high through the interim.

Several bills were introduced to address medicinal marijuana use in the workplace. SB 294 and SB 465 would have established that employers need not accommodate off-duty marijuana uses and allow employers to enforce their drug free workplace program. SB 690 would have allowed employers to adopt a comprehensive drug free workplace program and not be required to accommodate medical marijuana. An off-setting bill, SB 423, was introduced that would prohibit an employer from discriminating against a person who engages in medical use of marijuana outside of the workplace. Despite these attempts to change the law, it may be left up to the courts to sort out the validity of Oregon's medicinal marijuana act when it comes in conflict with federal drug free workplace programs. While it is not possible to reconcile these issues through administrative actions, HRSD is in the process of updating the existing rule and policy framework for the state drug free workplace and drug testing programs.

SB 1035 would have made "workplace bullying" and other forms of intimidation an unlawful employment practice. The bill defined such conduct to include derogatory remarks, insults or epithets, physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the gratuitous sabotage or undermining of an employee's work performance." Inappropriate conduct of the nature described in this bill is being generally addressed through establishment of the HRSD Statewide Policy "Maintaining a Professional Workplace."

SB 1039 would have established a legislative committee on Performance Excellence. The committee's mission would have been to assist state agencies in "reaching performance excellence" by engaging in performance excellence initiatives with individual agencies. The main focus was on (list from bill): customer & market focus; human resources management; leadership; measurement, analysis and, knowledge management; process management; results; and strategic planning.