COMPLIANCE ALERT

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OREGON PASSES NATION'S MOST GENEROUS PAID FAMILY LEAVE LAW

July 11, 2019

While many Oregonians were enjoying a leisurely holiday break last week, Oregon lawmakers were busy enacting the nation's most generous paid leave program. Governor Kate Brown signed a law into effect on July 1 that will provide 12 weeks of paid leave to just about every employee in the state (yes, even if you only have one employee), to be funded by a new payroll tax paid by both workers and employers with 25 or more employees. While the law doesn't kick in until 2023, it's never too early to learn about what's around the corner and start to prepare. What do Oregon employers need to know about this groundbreaking new law?

The Basics

While Oregon is the eighth state in the country to pass a paid family leave law, employers in the state will not be surprised to learn that the law is the most progressive in the nation's history, in several respects. First, it will not only provide 12 weeks of paid time off for new parents and those who need to care for an ill family member who has a serious health condition or for the employee's own serious health condition, it will also provide paid leave for victims of domestic violence, harassment, stalking, or sexual assault. Oregon will be only the second state after New Jersey to include victims of domestic violence in its paid family leave law.

The second facet that makes this law unique is the broad coverage it provides. Almost all workers in the state, including part-time workers, will receive paid leave once the law goes into effect. The only requirement to be eligible for leave is that the employee has earned at least $1,000 in wages during the previous year. This broad coverage means that essentially all employers will have some compliance obligations under this new law. Further, the law defines family broadly to include spouses, domestic partners, children, parents, siblings, grandparents, grandchildren, and "any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship."

Additionally, the amount of the benefit is more than many other states provide. Under Oregon's new law, many workers will receive full wage replacement during their absence. Weekly benefits will be capped at the generous rate of $1,215, which means that many lower-income workers will see no financial impact on their livelihoods if they miss work for qualifying reasons. Higher-income employees will receive a percentage of their ordinary pay.

Moreover, the new state law will provide a job guarantee for workers taking leave. It will be a violation of the law for an employer to permanently replace the worker during their absence, as they must be restored to their position upon their return. Employers will be required to restore the employee to the same former position if it exists, even if they filled it with another employee during the absence.

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Employers with fewer than 25 employees can provide a returning employee with a different position with similar job duties and pay. If, for large employers, the position no longer exists, the large employer will be required to restore the returning worker to any available equivalent position with equivalent levels of pay, benefits, and other terms and conditions of employment.

Who Pays?

The big question most employers have: Who pays for all of this new leave? The law will be funded through a payroll tax that cannot exceed 1% of employee wages, up to a maximum of $132,900 in wages, with employees paying 60% of the total rate and employers covering 40%. There is a silver lining for smaller businesses with fewer than 25 employees; they will be exempt from paying the tax.

Miscellaneous Provisions

There is also a small favor to all employers embedded in the law: It must be taken concurrently with Oregon Family Leave Act (OFLA) and federal Family and Medical Leave Act (FMLA) leave, meaning that workers cannot stack their paid and unpaid leave periods one after the other. That said, the leave is in addition to paid sick leave, workers' compensation benefits, and any PTO or vacation benefits provided by the employer.

What's Next?

As noted above, the law will become effective in January 2023, so you have some time to prepare. Before then, the state's Bureau of Labor and Industries will no doubt issue implementing regulations to assist with compliance obligations.

Stay Tuned For More

We will continue to monitor further developments and provide updates on this issue affecting Oregon employers. If you have follow-up questions, please contact Terri Stewart at Fisher Phillips (tstewart@fisherphillips.com (404) 240-4247).

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