



Legal Lighting Round:

Protecting Your Organization from Every Angle

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Workers' Compensation

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WC: Standard for Preexisting Conditions

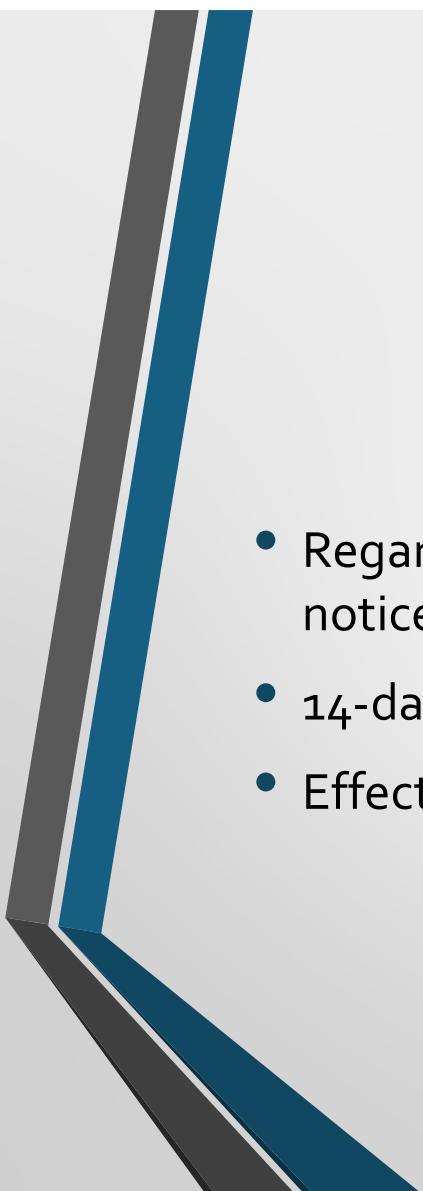
- *Barnes v Cache Valley Electric* (Sept 2025)
 - Dispute over acceptance of preexisting condition itself (vs combined condition)
 - Claimant argued he had an acute injury, so needed only prove that the injury made his spondylosis symptomatic and require treatment.
 - No evidence the injury caused the spondylosis or caused a worsening of the spondylosis.
 - Preexisting condition exacerbated by an injury is compensable “only if the work injury is the major contributing cause of a pathological worsening of the preexisting condition.”
 - ORS 656.255; ORS 656.802; *Schleiss v. SAIF*; *SAIF v Sprague*.

Medical Billing - OAR 436-009

- Required response to provider payment questions in 2 days **during regular Oregon business hours.** (436-009-0030)
- Payment allowance for a Worker Requested Medical Examination for an **addendum** in response to IME addendum. (436-009-0060)
- Interpreters can bill worker on denied claim **only when selected by worker.** (436-009-0110)
- Effective 4/1/26

Medically Stationary Notice - 436-010

- Notification due within 7 days
- Sent to AP **and all “actively treating ancillary care providers”**. To qualify, the ancillary providers must have submitted a current treatment plan.
- Requires response to medical provider inquiry about claim status, accepted conditions or MCO within two days **during regular Oregon business hours**.



MCO Changes – OAR 436-015-0037

- Regarding allowance to continue treatment with current providers after notice of enrollment in MCO
- 14-day timeline stretched to 30
- Effective 4/1/26

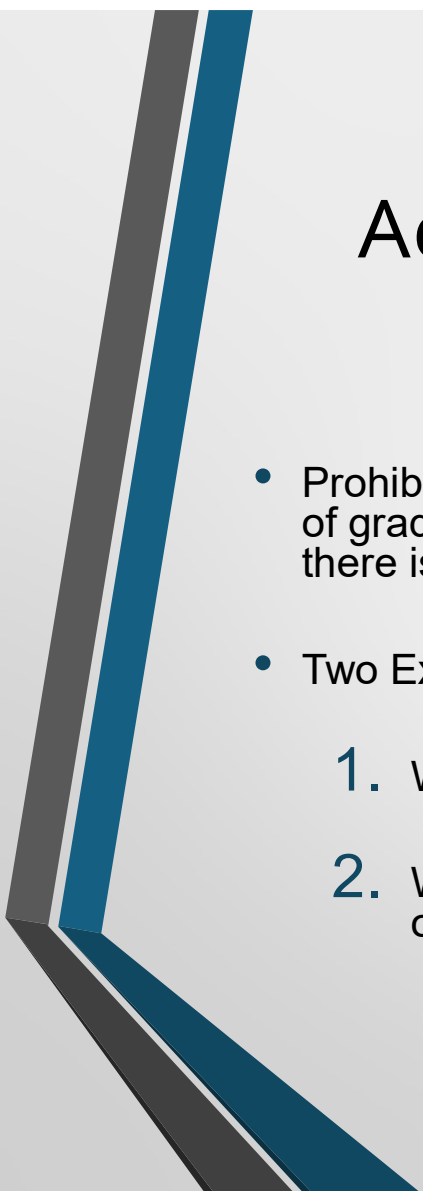


Work Comp: what didn't move forward?

- Pre-authorizations for more procedures

Employment Law

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Additional Restrictions on Job Applicants' Demographics – Effective 9/26/25

- Prohibits employers from requesting or requiring an applicant's age, date of birth, or date of graduation from any educational institution prior to completing an initial interview or, if there is no initial interview, prior to making a conditional offer of employment.
- Two Exceptions:
 1. When the employer needs the information to comply with an applicable law; or,
 2. When the information is required to affirm the applicant meets bona fide occupational qualifications.

Pay Disclosure Requirements - ORS 652.610

- Time of hire **written disclosures** about pay
 - Regular pay period
 - Potential pay rates (salary, OT, commissions, shift differentials)
 - Benefit deductions/contributions
 - Other deductions from pay
 - Allowances claimed as part of minimum wage
 - Payroll codes
- Hardcopy/posting/email/website
- ERs must update every Jan 1
- Civil penalty of \$500

Model guidance from BOLI coming

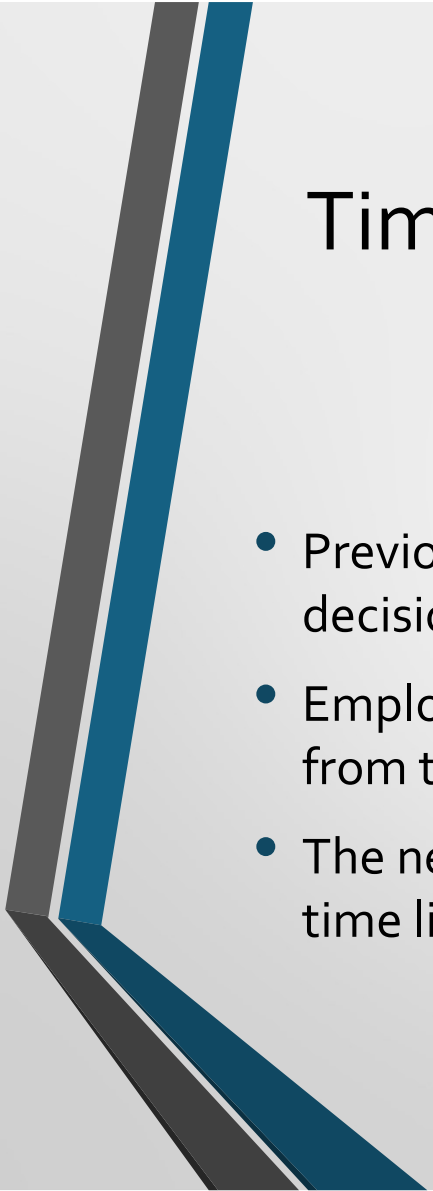


Paid Sick Time - ORS 653.616

- Expanded permissible uses for Oregon Sick Time
- New reason: blood donation
- Program must be approved or accredited by American Red Cross or American Association of Blood Banks
- Employer can't realistically ask for documentation

Pay for Short Meal Periods

- Court decision interpreting ORS 653.055; OAR 839-020-0050
- *Athena v. Pelican Brewing Company* (Nov 2025)
 - Servers at Pelican Brewing filed class action contending they did not receive full 30 minute lunch breaks
 - Held:
 1. A short meal period makes the entire meal period paid work time
 2. A private right of action for shortened meal periods exists because this is a loss of wages
 3. The failure to pay for shortened meal periods equates to failure to pay all wages due and allows for penalties under ORS 653.055
 4. The applicable statute of limitations is six years



Time Limits for Filing Complaints – Effective 6/24/25

- Previously, after an employee filed a complaint with BOLI and BOLI issued a decision, the employee had 90 days to commence a lawsuit.
- Employees now have the greater of 90 days from BOLI's decision or 5 years from the date of the alleged harassment
- The new law also makes it illegal for an employer to try to shorten the BOLI time limits by agreement.

Health Care Employees - ORS 654.182

- Changes to workplace violence prevention law
 1. Expands health care employees to include home health agencies and home hospice programs.
 2. Part of required safety committee duties now include making process for “investigating, collecting and reporting” incidents of workplace violence.
 3. Other changes:
 1. No last names on ID badges
 2. Visual flags of patients who are disruptive/violent
 3. Bullet proof intake windows
 4. Home health intake procedures & training
 4. **Excludes Oregon State Hospital**

Wage Liability -SB 426

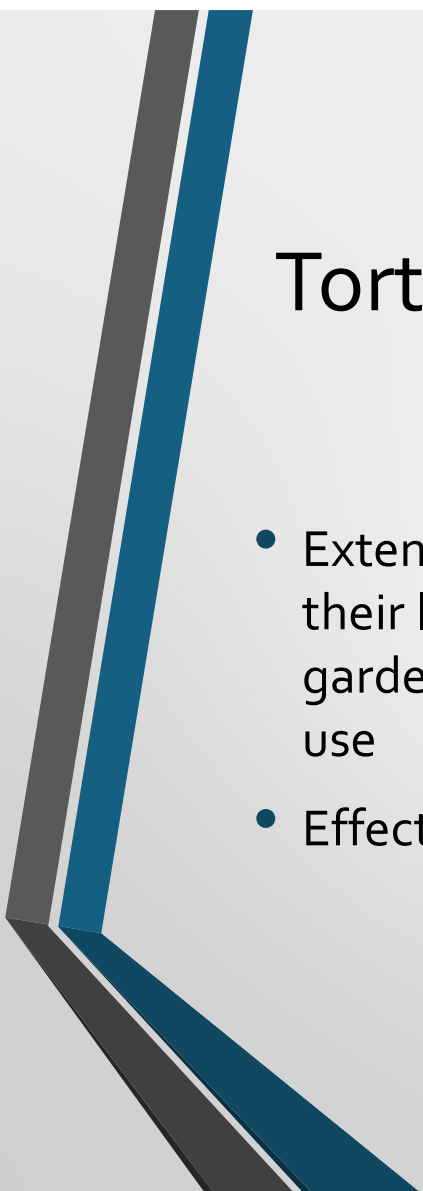
- Related to “construction contracts”
- Expands liability for unpaid wages to contractor and owner
- Creates right to personal civil action against the above
- Invalidates any agreement to waive/release the above or any indemnification of the above
- *Not applicable to principal residence*
- *Public agencies are not an “owner” but could be contractor*
- Effective Jan 1, 2026

Unemployment for strikes – SB 916

- Individuals on strike get up to 10 weeks of unemployment
- Benefits must be repaid if employee gets back pay.
- Lockout = immediate benefits
- Strike = after week-long disqualification period
- No carve out for public entities
- School district/ESD count benefits towards total compensation under the CBA
- Effective Jan 1, 2026

Tort Liability

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Tort Liability: Recreational Immunity – SB 179

- Extends recreational immunity to landowners who allow the public to use their land for recreational purposes such as walking, running, bicycling, gardening, woodcutting, or harvesting forest products without charging for use
- Effective January 1, 2026

Tort Liability – Liability Waivers – SB1517

- Once signed by the Governor, liability waivers will be enforceable in limited circumstances
 - May be used by an “Operator,” which is an entity that provides others the opportunity to participate in a sport, fitness, or recreational opportunity
 - Effective for adults and minors
 - Excludes claims for “intentional torts”
 - Excludes claims related to maintenance or inspection of safety equipment supplied by the Operator
 - Excludes claims for “negligence per se”
 - Excludes claims for negligent hiring, credentialing, supervision or retention of employees whose conduct constitutes gross negligence, reckless conduct or an intentional tort.
 - Includes claims of “failure to warn.
 - Includes all claims, not just those sustained during performance of the sport
 - Excludes claims of abuse
 - Excludes claims related to operation of any vehicle

Tort Liability: OTCA + Exclusive Remedy

- *Crandall v State of Oregon* (2026)

- Firefighter sued state forest department for injuries in the course of employment. ODF supervised the efforts via two individual supervisors. Did not inform firefighter of employees in the road, he veered to avoid hitting them, and his bulldozer tumbled down a cliff.
- At issue: immunity under Oregon Tort Claims Act that indicates the state and its employees have immunity for any injury covered by wc.
- Violates Article I of Oregon Constitution (Remedy Clause) as applied to negligent state employees.

"The limited remedy that ORS 30.265(6)(a) leaves for individuals injured by negligent public employees during the course of their work for a private employer substantially departs from the common-law remedy that remained available to those same individuals under Oregon's workers' compensation law."



Lessons Learned from the Front Lines

- More trials
- Larger verdicts
- Characteristics of a defense verdict
- Strategies to be prepared to tell the story as effectively as possible