

EMPLOYMENT LAW BRIEFING

AUTUMN 2011

Minimum Wage Increases: On January 1, 2012, the inflation-indexed minimum wage rates for Washington and Oregon will increase. Washington's rate, which remains the highest in the nation, will go up by 37 cents to **\$9.04** per hour. The minimum hourly wage for Oregon will increase by 30 cents, to **\$8.80**. The federal minimum of \$7.25 per hour, set in July of 2009, is not scheduled to change.

2011 Legislation: Several laws affecting employment relationships were changed by the Oregon legislature this year. Former employees, or their lawyers, must now specify the amount of compensation in question, or sufficient facts to allow an accurate estimation, as part of the written notice that they were not paid all compensation due upon separation. Failure to include such information will generally limit any "penalty wages" to the amounts due, but unpaid. Employers may no longer suspend insurance benefits or require the use of accrued paid leave when an employee serves on a jury. Employees who are victims of criminal harassment now have the same rights to accommodation and protected leave previously extended to victims of stalking, sexual assault and domestic violence. Other changes included reducing the standard for "substantially limiting a major life activity," under Oregon disability law, to correspond with the federal ADAAA and expanding the definition of "uniformed service," for purposes of Oregon discrimination prohibitions, to correspond with the federal USSERA. All of these changes will be effective as of January 1, 2012.

Washington Medical Marijuana Decision: An employee, hired as a customer service representative - contingent upon passing a drug test - disclosed her authorized use of medical marijuana and was then fired when she tested positive for marijuana. Pointing to language in the law indicating that there is no requirement to accommodate "any on-site use of marijuana in any place of employment," she argued that lawful *off-site* use must be accommodated and claimed that she had been wrongfully discharged. The Washington Supreme Court, in Roe v. TeleTech Customer Care Management (Colorado) LLC (June 2011), rejected the claim, concluding that there was no implicit obligation to accommodate off-site usage and ruling that the State's medical marijuana law does "not regulate the conduct of a private employer or protect an employee from being discharged because of authorized medical marijuana use." Employers in both Oregon and Washington are now free to adopt and enforce policies prohibiting even the otherwise authorized use of medical marijuana.

New Posting Requirement: Beginning on January 31, 2012, nearly all private sector employers will be required to post a notice outlining employees' rights under the National Labor Relations Act. The Act protects the right to engage in, or to *refrain from engaging in*, "concerted" activities such as joining a union, bargaining collectively, discussing wages and benefits and striking or picketing. The notice also describes unlawful union and employer conduct and includes information on how to contact the National Labor Relations Board ("NLRB"). Copies of the required notice may be obtained from our office or the NLRB.

Please contact our office if you have questions about the material in this newsletter, or other employment law compliance concerns.

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