

# EMPLOYMENT LAW BRIEFING

SPRING 2010

**Anniversary Edition:** This is our nineteenth issue of **EMPLOYMENT LAW BRIEFING** and it has been five years since we first published, during the spring of 2004. We have appreciated the many words of support and encouragement from our readers. We welcome your comments and suggestions of topics to discuss in future issues.

**Medical Marijuana Revisited:** In a decision handed down on April 14, the Oregon Supreme Court upheld an Employer's right to discharge an employee disclosing, or testing positive for, the use of medical marijuana. An Administrative Law Judge ("ALJ") had concluded that an employee, who had a medical marijuana card and admitted using medical marijuana several times a week, was disabled. The ALJ determined that discharging the employee, without exploring possible accommodations, was a violation of Oregon employment laws. In *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Industries*, the Court ruled that since possession of marijuana, even when used for medical purposes, remains illegal under the federal Controlled Substances Act, Oregon law does not require Employers to accommodate employee use of medical marijuana to treat a disabling medical condition.

**Check Your Handbook:** Does your drug and alcohol policy specifically address standards for medical marijuana usage? Employers are free to allow or disallow such use. Ideally, even a "zero tolerance" approach should clearly state that medical marijuana usage is also prohibited. We recommend notifying your testing facility, and any medical review officer, if a positive drug test, due to medical marijuana usage, is considered a violation of your policy.

**Religious Practices Accommodation:** As of January 1 of this year, Oregon Employers are required to reasonably accommodate the religious *practices* of employees - unless accommodation would cause "undue hardship." Examples of such accommodations include authorizing the use paid time off for participation in religious observances, allowing employees to wear religious clothing at work and permitting time off for holy days. Oregon law is also now stricter, with respect to what constitutes an undue hardship, than federal law under Title VII. Employers must accommodate employees' religious practices unless to do so would involve "significant difficulty or expense." Please call us for help with accommodation requirements.

**New Restrictions on Employers' Use of Credit History:** A bill enacted by the Oregon Legislature, in special session this year, will make it an unlawful employment practice for an Employer to use information in the credit histories of applicants or employees for employment decisions. There are exceptions for certain financial institutions, Employers required by law to use credit histories and public safety officers. There is a further exception when "the information is substantially job-related and the Employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing." The bill has been signed by the Governor and becomes effective on July 1. We recommend reviewing your handbook and employment application form, for references to credit checks, before the law takes effect.

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

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