



# Worker Resources

SEIU 503 Stewards' Conference 2024

# AGENDA

- ▶ CONTRACT LIMITATIONS
- ▶ SICK LEAVE LAW
- ▶ FMLA/OFLA IN THE WORKPLACE
- ▶ PAID LEAVE OREGON
- ▶ AMERICANS WITH DISABILITIES ACT(ADA)
- ▶ WORKPLACE DISCRIMINATION OR HARRASMENT
- ▶ WORKERS COMP/SAIF
- ▶ SHORT TERM/LONGTERM DISABILITIES

# Contract Limitations



- ▶ Recourse and support limited to contract language
- ▶ Leave Without Pay (LWOP) Authorized vs. Unauthorized
- ▶ Grievances and Human Resources (HR) complaints

# Other Supports

- ▶ Sick leave
- ▶ Family Medical Leave Act (FMLA)
- ▶ Oregon Family Leave Act (OFLA)
- ▶ Paid Leave Oregon (PLO)
- ▶ Americans with Disabilities Act (ADA)
- ▶ Workplace discrimination or harassment
- ▶ Workers' compensation
- ▶ Short-term/long-term disability



# Sick Leave - Oregon Law

- ▶ 1 hour for every 30 hours worked
- ▶ Available after 90 days
  - ▶ Uses?
- ▶ Oregon Bureau of Labor & Industry (BOLI) for more detailed info



# Sick Leave

- ▶ Collective Bargaining Agreements (CBAs)
- ▶ State contract provisions
  - ▶ Eligibility
  - ▶ Hardship leave
  - ▶ With/without pay



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# Family Medical Leave Act / Oregon Family Leave Act (NOTE--CHART)

- ▶ 12 weeks protected leave
  - ▶ Parental leave, sick child leave, pregnancy disability leave
- ▶ 12 month timeframes, employers' choice
- ▶ Insurance continues



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# Family Medical Leave Act / Oregon Family Leave Act

## ▶ FMLA eligibility

- ▶ 50+ employees
- ▶ Worked 12 months and at least 1250 hours in last 12 months

## ▶ OFLA Eligibility

- ▶ 25+ employees
- ▶ Worked 180 days and at least 25 hours/week





## Family Medical Leave Act / Oregon Family Leave Act

- ▶ Department of Administrative Services contract/policy
  - ▶ Accrued leave
  - ▶ Disability payments
  - ▶ Exhausted FMLA/OFLA
- ▶ Unable to return to work?
  - ▶ Discretionary leave types
  - ▶ ADA
  - ▶ Medical resignation - Unemployment Insurance



# Paid Leave Oregon

## ▶ Eligibility

- ▶ Employed in Oregon
- ▶ \$1,000 in previous year
- ▶ Workers' comp and unemployment insurance not eligible

ELIGIBILITY REQUIREMENTS	Paid Leave Oregon	OFLA	FMLA	Oregon Sick Leave
Covered Employers	All employers except federal or tribal governments	Employers with 25 or more employees	Employers with 50 or more employees and all public employers	All employees are eligible for protected unpaid time
Wages required to be eligible for leave	\$1,000 in wages the previous year	n/a	n/a	n/a
Required time worked for employer before taking leave and before job protection applies	No work time requirement for Paid Leave benefits, but must have worked 90 days to have job protection	180 days	12 months	90 days
Required hours worked for employer to be eligible for leave	n/a	25 hrs/week in past 180 days. <i>Does not apply to parental leave</i>	1,250 hours in previous 12 months	1 sick time hour earned for every 30 hours worked
Geographic requirement	n/a	n/a	Location with 50 employees within 75 miles	n/a
Eligibility requirement				
Not a requirement				

# Paid Leave Oregon

- ▶ Coverage pull from slides 11 and 15 from PowerPoint Paid Leave Oregon

<b>QUALIFYING PURPOSES</b>	<b>Paid Leave Oregon</b>	<b>OFLA</b>	<b>FMLA</b>	<b>Oregon Sick Leave</b>
<b>Family Leave</b>				
Birth, adoption or foster placement	Yes	Yes	Yes	Yes
Family member's serious health condition <i>(family member definitions vary)</i>	Yes	Yes	Yes	Yes
<b>Medical Leave</b>				
Individual's own serious health condition	Yes	Yes	Yes	Yes
<b>Safe Leave</b>				
Domestic violence, sexual assault, harassment or stalking	Yes	No <i>Serious health condition and reasonable safety accommodations under ORS 659A may include leave.</i>	No	Yes
<b>Other Leave Types</b>				
Extended leave for a pregnancy* <i>*In addition to leave for serious health condition</i>	Yes	Yes	No	No
Sick child leave	No	Yes	No	Yes
Military family leave	No	Yes	Yes	No
Bereavement leave	No	Yes	No	Yes
Public health emergency	No	Yes Active Public Health Emergency allows for sick child leave for school/child care closures	No	Yes
<b>Covered</b>				
<b>Not Covered</b>				



<b>LEAVE DURATION AND BENEFIT PAYMENTS</b>	<b>Paid Leave Oregon</b>	<b>OFLA</b>	<b>FMLA</b>	<b>Oregon Sick Leave</b>
Leave duration <i>(most cases)</i>	12 weeks in a one-year period	12 weeks in a one-year period	12 weeks in a one-year period	40 hours in a one-year period
Maximum leave duration <i>(for certain combinations of leave types)</i>	14 weeks in a one-year period	36 weeks in a one-year period	26 weeks in a one-year period	Employers may cap use at 40 hours per year
Payment	Paid Leave	Unpaid Leave	Unpaid Leave	Paid Leave for employers with 10 or more employees <i>(6 or more in Portland)</i>
Benefit amount	Varies based on employee's average weekly wage. Up to 100% for lower-income workers.	n/a	n/a	100% of regular wages



# Paid Leave Oregon

- ▶ How much?
  - ▶ Up to 100%
  - ▶ State Average Weekly Wage
- ▶ Use in combination with paid leaves
- ▶ PLO resources page
  - ▶ <https://paidleave.oregon.gov/resources/resources.html>
  - ▶ Video?

# Americans with Disabilities Act (ADA)

- ▶ **LETTER OF AGREEMENT 00.00-19-369 ADA Accommodations** This Agreement is entered into between the State of Oregon, acting through its Department of Administrative Services (DAS), and the SEIU Local 503, OPEU (Union). The Americans with Disabilities Act (ADA) is a federal civil rights statute in place to remove barriers that prevent qualified people with disabilities from enjoying the same employment opportunities available to people without disabilities. As the Employer and the Union are both committed to people receiving the accommodations they need to be a successful employee, the Employer agrees to ensure that information regarding the ADA and any Agency-specific procedures for requesting reasonable accommodations is readily accessible to employees via the Agency's bulletin boards and/or public or intranet website. If not already in place, Agencies agree to have the information accessible to employees by January 1, 2020. In addition, • Agencies will acknowledge in writing all written requests for accommodations made under policy 50.020.10 within seven (7) calendar days of receiving them. • At an employee's request, a steward may be present at the interactive meeting. • Once the Agency has received all of the necessary documentation relating to the ADA request, the Agency shall respond to the ADA request within thirty (30) calendar days. If an extension is needed, the Agency will notify the employee.

# Americans with Disabilities Act (ADA)

- ▶ Who qualifies?
- ▶ Major life activities
  - ▶ Federal law
  - ▶ Oregon has additional coverage
    - ▶ Socializing, sitting, reaching, and more





# Americans with Disabilities Act (ADA)

- ▶ Reasonable accommodations
- ▶ How to request
- ▶ Stewards' roles
- ▶ Discrimination
  - ▶ Equal Employment Opportunity Commission
- ▶ **All requests for reasonable accommodations and any related Medical information will be kept separate from the personnel file except when the supervisor must know to implement an approved accommodation(s). Under the ADA law.**



# Americans with Disabilities Act (ADA)

## ► Supports

- Job Accommodation Network: <https://askjan.org/>
- DHS Vocational Rehab can help with job searches:  
<https://www.oregon.gov/odhs/vr/Pages/default.aspx>
- Northwest ADA Center: <https://nwadacenter.org/>

# Workplace Discrimination or Harassment

- ▶ Contract language hard to enforce
- ▶ 2023 language added requiring tracking



# Workplace Discrimination or Harassment



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- ▶ BOLI and EEOC complaints
  - ▶ Workshare agreement
  - ▶ Violations are based on protected class
  - ▶ Connect offense and protected class
  - ▶ Thanks to Ibrahim Coulibaly for the next several slides

# Federal and Oregon Civil Rights Laws

## TITLE VII- CIVIL RIGHTS ACT OF 1964

- ▶ Race
- ▶ Color
- ▶ National Origin
- ▶ Religion
- ▶ Sex
- ▶ Retaliation
- ▶ Association

## OREGON REVISED STATUES 659A

- ▶ Race
- ▶ Color
- ▶ National Origin
- ▶ Religion
- ▶ Sex
- ▶ Retaliation
- ▶ Association

# Federal and Oregon Civil Rights Laws

## Federal

- ▶ Age (ADEA)
- ▶ The Uniformed Services Employment Reemployment Rights Act of 1994 (USERRA)
- ▶ Americans with Disabilities Act
- ▶ Family and Medical Leave Act
- ▶ Genetic Information Nondiscrimination Act (GINA)

## OREGON

- ▶ Age
- ▶ Leave to Serve in State-organized Militia
- ▶ Uniformed Service Leave and Status and Veteran Status
- ▶ Disability
- ▶ Oregon Family Leave Act/Paid Leave
- ▶ Prohibition on Genetic Screening/Discrimination and Brainwave Testing

# Additional Protections Under Oregon Law

- ▶ Injured worker status
- ▶ Whistleblowing
- ▶ Marital status
- ▶ Reporting health or safety hazards (OSHA)
- ▶ Use of Credit History
- ▶ Reporting health care violations
- ▶ Family relationship
- ▶ Veterans' preference in public employment
- ▶ Expunged juvenile record
- ▶ Oregon Sick Time
- ▶ Garnishment

# Additional Protections Under Oregon Law

- ▶ Safety accommodations and leave for victims of domestic violence, harassment, sexual assault, or stalking
- ▶ Prohibition on requiring a medical release unless employer pays out of pocket costs
- ▶ Testifying before the State Legislature
- ▶ Protection from certain tests, screenings, and examinations
- ▶ Lawful use of tobacco products during off duty hours
- ▶ Leave for spouses of service members called to active duty



# Workplace Discrimination or Harassment

- ▶ Writing the complaint
  - ▶ Requirements (Thanks Ibrahim! Next slide)
  - ▶ Amendments
  - ▶ Statute of limitations
    - ▶ BOLI one or five years, EEOC 300 days
  - ▶ Medical condition
  - ▶ File ASAP



# Writing the complaint

Must meet the following requirements:

- ▶ Gives the name and address of the aggrieved person and the respondent;
- ▶ Identifies the protected class basis of the complaint;
- ▶ Is signed by the aggrieved person;
- ▶ Describes the actions complained of, including:
  - ▶ The date(s) of occurrence;
  - ▶ What the action was and how it harmed the aggrieved person; and
  - ▶ The causal connection between the aggrieved person's protected class and the alleged harm.

OAR 839-003-0005(5)

# Workplace Discrimination or Harassment



- ▶ Investigation
  - ▶ Substantial evidence standard
  - ▶ Investigator
  - ▶ Time
  - ▶ Determination



## Workers' Compensation (On the Job)

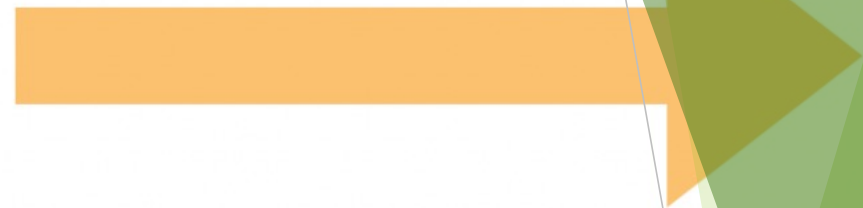
- ▶ Employer HR
  - ▶ State Accident Insurance Fund (SAIF)
    - ▶ Appeals
- ▶ Homecare workers
  - ▶ Steps
  - ▶ Oregon Home Care Commission phone: 888-365-0001
  - ▶ SAIF phone: 800-285-8525

# Workers' Compensation (On the Job)

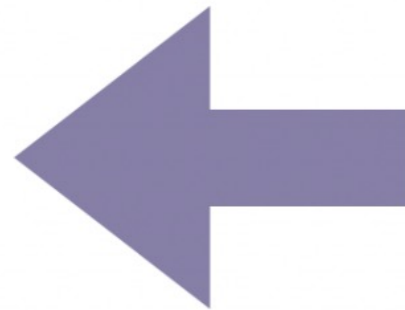
- ▶ 2/3 average weekly wage
- ▶ Contracts differ on use of sick leave
- ▶ Sick leave without pay
- ▶ Waiting period
- ▶ Medical bills
- ▶ Claims are closed after...
- ▶ Workers' comp counts against FMLA, but not OFLA

# Short-Term/Long-Term Disability Summary

- ▶ PEBB Example
  - ▶ Seasonal and intermittent employees
  - ▶ Short-term 60%
  - ▶ Long-term four options
  - ▶ Benefit payments untaxed
  - ▶ Waiting periods



**Long Term**



**Short Term**

# Short-Term Disability

- ▶ Claims start with agency HR
- ▶ 60%, max \$1,662 per week
- ▶ Duration limits four or 13 weeks
- ▶ Waiting periods
- ▶ Interaction with workers' compensation
- ▶ Paid weekly



# Long-Term Disability - State Example

- ▶ Claim ASAP (90 or 180 day absence)
  - ▶ HR can assist, call Standard Insurance ph. 800-242-1888 or <https://www.standard.com/individual/file-claim>
- ▶ Monthly benefit maximum options
  - ▶ Options one or two - 60%, \$7,200
  - ▶ Options three or four - 66%, \$8,000
- ▶ Pre-existing conditions not covered
- ▶ Paid monthly
- ▶ Interaction with workers' compensation



