CHAPTER 5:

MUNICIPAL EMPLOYEES & PERSONNEL MATTERS

League of Oregon Cities

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Municipal Employees and Personnel Matters

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The LOC sincerely thanks both Tamara and Diana for their expertise and contributions.

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Chapter 5: Municipal Employees and Personnel Matters

I. Introduction

Today's smart city manager or supervisor knows that failing to keep abreast of the many Oregon and federal labor and employment laws that regulate workplaces can have financial and other consequences in the form of claims, lawsuits and unwanted publicity. Complying with these laws, and engaging in "defensive management" whenever possible, should be a priority for all managers and supervisors working for Oregon's cities.

This chapter will touch on the basic requirements of employment and labor laws, including the criteria for which laws apply to city employers. The chapter also includes a discussion about the roles and responsibilities elected officials have over day-to-day personnel matters, and some "best practices" for ensuring that the elected official-employee relationship is a positive one. In sum, this chapter will be your city's personal guide to managing your personnel and minimizing your city's risk of liability under Oregon and federal employment and labor laws.

Because this chapter is meant to provide only an overview, LOC members with specific questions are encouraged to reach out to their city's attorney or labor/employment attorney. LOC members who are also members of CIS are also welcome to contact CIS' Employment Risk Services team members with questions at ERS@cisoregon.org or 503-763-3848. CIS members also have access to almost 100 on-demand video classes and podcasts addressing many of the employment law topics in this chapter – go to www.learn.cisoregon.org (registration required).

Resource

Citycounty Insurance Services Employment Risk Services Team

Email: ERS@cisoregon.org

Phone: 503-763-3848

LOC members are also encouraged to explore the web sites maintained by the Oregon Bureau of Labor and Industries (BOLI), the Employment Relations Board (ERB) and the U.S. Equal Employment Opportunity Commission (EEOC) for more information about the laws described in here.

II. The Pre-Hire Process

Before you advertise for an open position at your city, consider the following:

A. Are we required to post this job internally before we post externally?

This question can be answered by referring to the collective bargaining agreements (CBA) your organization has entered into with unions and associations, by referring to city policy (if any) and your city's past practice (if any).

B. Have we determined what benefits are available to the employee who is selected for the position?

In order to attract, retain, and motivate qualified employees, employers need to establish and maintain compensation and benefit levels that are: (1) competitive within their labor markets, (2) internally equitable, and (3) consistent with their philosophy. This requires the employer to periodically review data on salary and benefit rates for comparable positions from their labor market in order to stay competitive and pay fairly within the market and within the organization.

Resource

LOC has provided the following guides to recruiting a city attorney and city administrator:

- *A Guide to Recruiting a City Attorney*
- *A Guide to Recruiting a City Administrator*

Benefits include both voluntary and mandated programs. Mandated programs include workers' compensation, unemployment insurance, PERS (if applicable) and various leave of absence provisions. Examples of voluntary programs include additional types of retirement, vacation, holidays, health insurance, employee assistance programs, and educational reimbursement programs. Certain voluntary programs are mandated for police and fire personnel, e.g., retirement and life insurance.

With respect to health insurance, employers with 50 or more full-time/full-time equivalent employees are required under the federal Affordable Care Act to provide health insurance (minimum essential coverage) for their full-time employees (i.e., those employees who work 30 or more hours per week). Employers of all sizes may choose to provide some form of health insurance to its employees, either because doing so assists with recruiting and retention efforts, or because the employer is obligated to provide them because of a CBA or employment contract.

Benefits are important to employees and can be costly for the employer. Therefore, the cost of total compensation (including both salary and benefits) should be carefully reviewed before advertising for a position.

C. Have we properly assessed how much we can and should pay this employee?

There are several sources a city employer must consult in order to set a wage or salary for a new employee. First, if the position is represented, review the applicable CBA for a salary scale, band, or calculation method. Second, if the position is not represented, consider any city policies or history that establish a salary level.

Third, and most importantly, consider whether a proposed salary or wage might run afoul of Oregon's expansive Pay Equity Act. The Act requires Oregon employers to, among other things, provide equal pay for equal work unless the salary or wages are based on one or more

"bona fide" categories identified in the law. See BOLI's discussion on the Equal Pay Act here[1] and an in-depth article here.[2]

The Act prohibits discrimination between employees who perform work of comparable character, on a basis of a protected class in the payment of wages or other compensation. Thus, under the Oregon Equal Pay Act, "protected class" includes race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Finally, the Act also defines "compensation" to include wages, salary, bonuses, benefits, fringe benefits, and "equity-based compensation." For those employers without an established, verifiable "system" in place regarding pay practices, they should document the reasons for pay differentials during a hiring process if these changes are not based on existing pay scales, established policy, etc. Reviewing the compensation for newly-created positions and comparing them to other positions of comparable character will also be a good start.

Other laws that may impact a starting salary include laws dealing with minimum wages and overtime (i.e., the proper classification of an employee as "exempt" or "nonexempt"), form of payment, maximum time between payments, and allowable deductions from compensation. See BOLI's discussion of these laws here.[3]

D. Is the job description for this position current?

Before beginning the recruiting and hiring process, and before advertising a job opening, an employer should write a job description for the position needing to be filled.

From a non-legal perspective, a job description prepared before the job solicitation process begins gives an employer the opportunity to pinpoint the exact qualifications required for the position and will assist greatly in the hiring process. Other benefits to having job descriptions include providing employers and employees with a basis for performance evaluations (and discipline, if necessary), and a benchmark for wage and salary comparisons within an organization or among different job classifications.

Legal issues also dictate the preparation of a job description before the application/job advertising process begins. A thorough, thoughtful job description assists an employer with its obligations under the Americans with Disabilities Act (ADA) and corresponding Oregon disability accommodation law. Although disability law doesn't require job descriptions, job descriptions will assist an employer who defends against a disability discrimination claim, according to federal regulations: "[I]f an employer has prepared a written description before advertising or interviewing * * * this description shall be considered evidence of the essential functions of the job." Further, if the employer has identified the essential functions of a position

[1] https://www.oregon.gov/boli/workers/Pages/equal-pay.aspx (last accessed April 2026)
[2] https://law.lclark.edu/live/files/27124-jonespdf (last accessed April 2026).
[3] https://www.oregon.gov/boli/workers/Pages/your-rights-at-work.aspx (last accessed April 2026).

before advertising it, the employer may ask applicants about their ability to perform those essential functions, with or without a reasonable accommodation.

Finally, under the federal Family and Medical Leave Act, employers who wish to have employees returning from a personal "serious health condition" leave present return-to-work paperwork from a health care provider must inform the employee of this requirement and provide the employee with a job description at the beginning of the leave.

For more information about assessing whether a function is "essential" or "marginal," see the EEOC's publication available here.[4] Sample job descriptions are available by request by emailing H2R@cisoregon.org (be sure to mention what job you are seeking a sample of).

E. Is our application in compliance with the law?

Questions employers are prohibited from asking on a job application:

- Marital status
- Family background
- Race
- Religion
- Any protected class
- Criminal Convictions
- Disability
- Salary history

Both the EEOC and BOLI have noted that the equal employment opportunity laws they respectively enforce prohibit the use of pre-hire inquiries (including job applications) that screen out members based on protected status when the questions are not justified by some business purpose.

Thus, information obtained through pre-employment inquiries and on job applications should be aimed solely at determining qualifications; inquiries that reveal information bearing no relationship to the qualifications for the job sought (for example, year of graduation from high school, childcare arrangements, country of origin, etc.) should be avoided. If such protected information is provided by an applicant who is not selected for a particular position, the applicant may allege a claim of discrimination based on that protected information. Similarly, information about an applicant's marital status, family background, race, religion and any other protected class status should not be sought at any point during the screening or interviewing process.

Some other job application prohibitions:

- Instead of asking, "Are you a United States citizen?" on an application, ask, "Are you lawfully authorized to work in the United States?" Alternatively, let the applicant know that the city requires proof of an employee's eligibility to work in the United States, and ask, "Are you able to provide proof of your eligibility to work?" Then, if the applicant is hired, the employer can verify the applicant's eligibility to work by completing the I-9 process and/or using E-Verify, the Internet-based system operated by the federal government that allows participating employers to electronically verify the employment eligibility of their newly hired employees.

[4] https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act (last accessed April 2026).

- Oregon's "ban the box" law prohibits employers from asking about criminal convictions on applications. Exceptions: If the candidate is applying to work in law enforcement or in the "criminal justice system".

- Employers cannot ask an applicant if they are disabled. But, on an application or during an interview, they can ask, "Are you able to perform the essential functions of this job, with or without accommodation?" (This assumes the candidate is given a copy of the job description when the application is received.) Additionally, job candidates can be given information about the schedule the successful candidate must work, and then be asked, "Are you able to meet the attendance requirements of the position?"

- Under Oregon's Pay Equity Act, employers may not ask an applicant for salary history information either in an application or during an interview.

- It is recommended that applications include, in the area above the line where the applicant signs: (1) a verification that everything in the application is true to the best of their knowledge and that no material omissions were made; and (2) a statement indicating that if the employer discovers any discrepancies, material omissions or false statements in the application or during the interview process, the applicant may not be hired and if hired, may be subject to termination.

- Job candidates should be informed, either on the application or in job announcements, whether there are other pre-hire "tests" or reviews that must be passed. For example, if the position sought is considered "safety sensitive", let the applicant know that a drug and alcohol screen will be sought (if your organization does pre-hire drug testing). If the position sought will be undergoing a criminal background check or a credit check (limited under Oregon law), the applicant should be informed of that as well. Mass transit positions and positions requiring a Commercial Driver's License (CDL) also have pre-hire requirements.

- Employers may not require potential hires to have a valid driver's license unless the ability to legally drive is an essential function of the job or is related to a legitimate business purpose. Cities whose background checks of candidates incude a review of their driving histories without regard to whether the positions at issue include driving as an essential function should reconsider this practice.

F. Is our screening and interviewing process in compliance with the law?

In addition to determining the most effective manner of attracting sufficient numbers of qualified candidates to compete for job openings, the screening of those applicants and selection of the most qualified individual for the available position must be planned. It is essential that this process not discriminate against protected classes of persons, either by intent or impact. Therefore, a city must base selection decisions on job-related criteria that will measure

knowledge, skills, abilities and attributes that relate directly to successful job performance for the position at issue.

In addition, when filling vacancies through a competitive process, public entities must provide and document preference for qualified veterans. This preference only applies to those veterans who meet the minimum qualifications for the position sought, or have successfully completed an initial applicant screening or candidate examination. ORS 408.230. Oregon's Veterans Preference law also has these requirements:

- Public employers are required to interview all veterans who apply for a position who meet the minimum qualifications and whose military experience is directly transferable to the position applied for, subject to a few narrow exceptions. ORS 408.225 to 408.230.

- Disabled veterans, those who have been honorably discharged from the military and rated as disabled by U.S. Department of Veterans Affairs, are entitled to additional preference points when seeking employment with a public body. ORS 408.225.

- See BOLI's discussion of Veterans' Preference Law here.[5]

The 2025 Legislative session passed SB 808, which authorizes former and current Oregon National Guard members will also be entitled to a preference at each stage of the hiring process.[6] This law takes effect January 1, 2026. This means that public employers will need to provide preference in hiring and promotion to veterans and disabled veterans. These preferences include the **right to an interview** in most cases and a selection procedure that provides a preference to qualified veterans **at each stage of the hiring process** (5% to veterans and 10% to disabled veterans).

The job interview is a process of candidate screening that is necessary, but one that also is filled with potential legal pitfalls. The purpose of the interview should be to gain information that is essential to determining if the candidate meets the skill requirements of the position. Laws such as the ADA, the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act (Title VII) and corresponding Oregon laws prevent employers from considering certain information about an applicant during the screening process. To ensure compliance with these laws, employers should not ask any questions or seek information that might solicit information about an applicant's:

[5] https://www.oregon.gov/boli/workers/Pages/veterans-preference.aspx (last accessed April 2026).
[6] Amending ORS 408.225, 408.230 and 408.235; *see* https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/SB808; *see also* BOLI website accessible at https://www.oregon.gov/boli/employers/pages/legislative-updates.aspx (last accessed April 2026).

- Race or color
- National origin
- Religion
- Garnishments
- Family status, pregnancy, or childcare arrangements.
- Sexual orientation
- Age
- Union participation or history.
- Salary or earnings history (but it's okay to ask about salary/wage expectations).
- Credit references or indebtedness (Oregon law allows credit checks to be run only on particular positions and only after a conditional job offer is extended. See ORS 659A.320; OAR 839-005-0080.)
- Number of sick days at former job (or questions about sick leave use "philosophy").
- Workers' compensation history.

Avoid questions that might solicit information about an applicant's:

- Race or color
- National origin
- Religion
- Garnishments
- Family status, pregnancy, or childcare arrangements
- Sexual orientation
- Age
- Union participation or history.
- Salary or earnings history
- Credit references or indebtedness.
- Number of sick days at former job.
- Workers' compensation history

This is not a complete list; a candidate may fall into a protected class status for any number of reasons, and questions that might solicit information about any protected class should be avoided at all costs. If a candidate begins providing such unsolicited information, the interviewer needs to refocus the interview into job-related areas.

Additionally, in the 2025 Legislative Session, HB 3187 passed, which generally prohibits an employer, prospective employer, or employment agency from requesting or requiring an applicant to disclose the following information: (1) their age, or date of birth, or (2) when they attended or graduated from any educational institution. This prohibition applies until the completion of an interview or a conditional offer of employment (where there is no interview).[7] There is an exception applies if requesting age-related information is required to (1) affirm the applicant meets bona fide occupational qualifications; or (2) comply with any provision of federal, state or local law, rule or regulation.

[7] Amending ORS 654.062 and 659A.030; *see* https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB3187; *see also* https://www.oregon.gov/boli/employers/pages/legislative-updates.aspx (last accessed April 2026).

G. Pre-employment Drug/Alcohol Screens

Public sector employers may not do drug and alcohol screens on all applicants, or even all applicants who are given conditional offers of employment. Instead, due to federal Constitutional privacy rights, only those applicants who are being considered for "safety sensitive" jobs may be subject to a drug/alcohol screen, and then only after being given a conditional offer of employment. Because "safety sensitive" is defined by courts on a case-by-case basis, cities should consult with legal counsel before requiring a drug or alcohol screen of an applicant to determine whether such a screen is legal.

Some positions, like those requiring a CDL, require pre-employment drug and alcohol testing. A discussion about U.S. Department of Transportation drug/alcohol testing regulations applicable to CDL holders can be found here.[8]

H. Other Background Check Issues

Background checks are typically more involved than a simple reference check. Their importance, however, cannot be understated. Employees in public safety positions are required by law to undergo extensive background checks, including physical and psychological screenings. Smart city employers know, however, that even "regular" positions may need background checks, due to the fact that the employee would be working with "vulnerable" populations (such as the elderly or children), because driving is an essential function, or because the employee would be handling financial transactions on behalf of the city. Cities should consult with their legal counsel about what background checks are required by law for its applicants and what background checks would be recommended.

Note: If an employer uses an outside agency or otherwise pays an individual or entity to conduct a background check, the employer must follow the requirements of the Fair Credit Reporting Act (FCRA). FCRA has detailed written notice and authorization requirements that must be completed before the background check is completed. The Federal Trade Commission's in-depth discussion about FCRA can be found here[9]; sample FCRA forms can be provided upon request by emailing H2R@cisoregon.org.

I. Ethics and Nepotism in Hiring and Employment

Oregon has several laws impacting the ability of a manager or supervisor to hire a relative or close relation: ORS 244.179 (ethics – "Supervision of Relative or Member of Household") and ORS 659A.309 ("Discrimination solely because of employment of another family member prohibited").

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[8] https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/overview-drug-and-alcohol-rules (last accessed April 2026).

[9] https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf (last accessed April 2026).

ORS 244.179 prohibits a "public official" from "directly supervis[ing]" a relative. ORS 659A.309 makes it unlawful for an employer to refuse to hire someone who is a "member of an [employee's] family" unless the applicant/relative would be subject to a family member who is "in a position of exercising supervisory * * * authority" over that applicant/relative. Because of the complexity of these laws, cities are encouraged to consult with legal counsel about the legality of hiring a family member.

J. Extending a Conditional Offer of Employment

A written conditional offer letter advises a potential hire of any remaining steps that must be taken or any obligations that must be met before employment can begin (such as drug testing if allowed by law, criminal background checks, or other background checks). It is recommended that cities extend conditional offer letters of employment to a successful candidate before beginning background checks of any kind, and before conducting a drug/alcohol screen. This practice allows the employer to demonstrate that the conditional offer was extended before it learned about any potentially protected activity or class of the applicant, which can be used to defend against unlawful failure to hire claims.

III. Labor Relations at the Local Government Level

In 1973, the Oregon Legislative Assembly enacted the Public Employee Collective Bargaining Act (PECBA). With this law, the Legislature gave public employees the legal right to form, join and participate in the activities of labor organizations. Therefore, if city employees are in a recognized or certified bargaining unit, there is a legal obligation for the city to negotiate matters concerning "employment relations" with those employees' exclusive representative.

Noteworthy, in the 2025 Legislative Session, HB 2944 passed.[10] HB 2944 requires the Oregon Employment Relations Board (ERB) to impose specified civil penalties on a public employer for any repeat or subsequent violations of certain requirements of the PECBA. The bill requires a public employer to make the authorized deductions and to remit payment to the labor organization within a time period that aligns with a payroll processing schedule established by the employer, not to exceed 30 calendar days following the date of the deduction. The bill clarified the timeline for the public employer due remittance and fine structure for employers failing to comply.

The legislative policy statement embodied in the state's collective bargaining statute provides, in part:

> The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees…

[10] Amending ORS 243.676 and 243.806; *see* https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB2944.

> Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employee organizations can alleviate various forms of strife and unrest…
>
> It is the purpose of [the statute] to obligate public employers, public employees and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreement resulting from such negotiations.

ORS 243.656(1)-(3).

Common Local Government Unions

- American Federation of State, County and Municipal Employees
- Service Employees International Union
- International Association of Fire Fighters
- Oregon State Police Officers Association Inc.
- Laborers' International Union of North America

A. Bargaining Rights

Most public employees are guaranteed the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations. Collective bargaining includes the mutual obligation of public employees and their employers to meet at reasonable times and to bargain in good faith. However, this obligation does not compel either party to agree to a proposal or require making a concession.

B. Exclusive Employee Representation

Employees are free to select representation of their own choice. During the period in which employees are contemplating the options of union representation, the city is restricted in what it can and cannot do. An exclusive bargaining representative can be voluntarily recognized by the employer or certified through a petition filed with the ERB or through an election held by the ERB.

C. Unit Determination

Oregon law establishes the criteria to be considered in the formation of an appropriate bargaining unit: community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Questions of representation and appropriateness of bargaining units, and their composition, will ultimately be resolved by the ERB upon petition by the employer, employee group or labor organization. The content and description of the bargaining unit are very important matters. A poorly considered bargaining unit description may lead to future problems and litigation. Whether to include or exclude such groups as temporaries, seasonals, casuals, and part-timers,

the definition of each of those groups, and an agreement as to which employees are excluded as supervisors and confidential employees are of great importance.

D. Bargaining Impasse Procedures

In the event that parties to the public employment negotiations are unable to resolve their differences at the bargaining table, Oregon law provides for ERB supervision of mediation, binding interest arbitration, fact finding and strike activity. Under the present law, if negotiations fail to bring the parties to agreement, mediation is required. Mediation is followed by binding interest arbitration with any bargaining unit that includes one or more employees who are prohibited from striking. Employees prohibited from striking under present Oregon law are: emergency telephone worker, parole or probation officer who supervises adult offenders, police officer, firefighter, guard at a correctional institution or mental hospital, and deputy district attorneys. In addition, employees of a mass transit district, transportation district or municipal bus system are also prohibited from striking. Fact-finding is an additional voluntary dispute resolution process that can be used by mutual agreement of the city and the employees' exclusive representative.

E. Strike Policy

Many public employees who are represented by certified bargaining agents are granted a qualified right to strike. Statutory provisions and administrative rulings by the ERB define the conditions that must be satisfied before a bargaining unit is allowed to strike.

Noteworthy, in 2025 Legislative session, SB 916 passed, which provides that an individual who is otherwise eligible for unemployment insurance (UI) benefits from the Oregon Employment Department (OED) is not disqualified for UI benefits or waiting week credit for any week that the individual is unemployed because of a lockout. It specifies that an individual is disqualified for UI benefits for the first week that OED finds that unemployment of the individual is due to a strike.[11] The measure establishes a process to allow an otherwise eligible individual to not be disqualified for UI benefits or waiting week credit for any week following the first week that OED finds the individual is unemployed because of a strike. This bill takes effect January 1, 2026. This is the first of its kind in the country to allow public employees to receive unemployment benefits while on strike.

F. Scope of Bargaining

Employment relations matters over which cities must bargain are frequently referred to as scope of bargaining or mandatory subjects of bargaining. These matters include, but are not limited to: monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment. Current Oregon law specifies that these matters do not include: (1) subjects determined to be non-mandatory by the ERB prior to June 6, 1995; (b) subjects the ERB

[11] Amending ORS 657.010, 657.153, 657.176, 657.200, 657.202, 657.310, 657.317 and 657.400; *see* https://olis.oregonlegislature.gov/liz/2025r1/Measures/Overview/SB916.

determines to have a greater impact on city management's prerogative than on employee wages, hours, or other terms and conditions of employment; (3) subjects that have an insubstantial or de minimis effect on public employee wages, hours, and other conditions of employment; and (4) some staffing levels and safety issues, scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work. When the city and the employees' exclusive representative disagree about whether a particular proposal is a mandatory or non-mandatory subject of bargaining, the dispute is submitted to the ERB for resolution.

G. Unfair Labor Practices

Certain actions on the part of an employer, employee group or labor organization are prohibited in order to protect the rights of the other party and to promote cooperation and harmonious relations. For example, it is an unfair labor practice for an employer to interfere with, restrain or coerce employees in, or because of, the exercise of the guaranteed rights of public employees to form, join or participate in labor organizations. Another example would be for a union, or an employer, to engage in bad faith bargaining. Unfair labor practices can be committed by either the union or the employer.

The ERB has the authority to order an employer, employee group or labor organization to stop committing unfair labor practice and to penalize parties found to have committed such acts.

H. Union Security

State and federal law currently provide that an employee whose position is part of a bargaining unit, need not be a member of the union even though they are still covered by the applicable CBA. An employee may, therefore, opt out of union membership. The laws surrounding the administration of such an election are currently evolving, so a city is well advised to consult with their management labor counsel regarding such matters.

IV. Other Employment Law Issues (During Employment)

A. Workplace Safety

The Oregon Safe Employment Act (OSEA) requires all cities, as employers, to provide a "safe and healthful" workplace for its employees and comply with various recordkeeping obligations. The law and its corresponding regulations provide a broad range of mandates covering the use of workplace safety devices, the condition of workplace equipment, safety training for employees and other topics dealing with work procedures, the work facility and the work environment. The OSEA also gives the Oregon Occupational Safety & Health Administration (OR-OSHA) the authority to inspect Oregon workplaces for safety or health hazards.

LOC Members who are also CIS members should consult with their assigned Risk Management Consultant for more information about workplace safety laws, including Oregon OSHA. Additional information can be found at Oregon OSHA's website, located here.[12]

Sample Employer Unfair Labor Practices

- Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.
- Dominate, interfere with or assist in the formation, existence or administration of any employee organization.
- Attempt to influence an employee to resign from or decline to obtain membership in a labor organization.

Sample Employee Unfair Labor Practices

- Refuse to bargain collectively in good faith with the public employee if the labor organization is an exclusive representative.
- Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.
- Picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business.

See ORS 243.672 for more unfair labor practices.

B. Employee Handbooks

Every city with employees should have an employee handbook or policy manual. Although no state or federal law requires an employer to issue a handbook or manual to its employees, some individual laws require "written' policies, and the benefits of doing so strongly favor the practice.

In a non-union environment, for example, employees often do not have one definitive source of information about the terms and conditions of employment, such as work rules, disciplinary procedures, or other employer expectations of employee conduct. Handbooks and manuals, however, allow employers to provide a consistent, uniform statement about such issues. They can help maintain consistency among departments, locations, and employee classifications because everyone operates from the same set of expectations. Employers use handbooks and

[12] https://osha.oregon.gov/essentials/toolkit/Pages/why-here.aspx

manuals to communicate values and visions. In sum, everyone benefits from an environment where the expectations, rules, and policies are predictable, clear, and published.

Well-written and widely distributed handbooks also serve a legal purpose. Consistency and uniformity in applying policies, for example, reduces the risk of a discrimination or "disparate treatment" claim. Further, jurors like to see policies in writing. Even if an employer has a well-established practice, a typical juror tends to favor and believe the written policy versus the intangible "practice." For jurors who believe the other "F" word – fairness – is the benchmark for analyzing and valuing an employment law claim, a well-written and publicized policy known to the plaintiff-employee, yet not followed by the plaintiff-employee, could make the difference between a costly plaintiff's verdict and a verdict for the defendant-employer.

Handbooks and manuals are not, however, without risk or responsibilities. If, for example, a city issues a handbook but does not update it, or neglects to follow the policies as written, that city could find itself facing claims of discrimination or other types of employment-related claims. Even a well-written handbook serves little value if it is left on a shelf to collect dust.

Employers who use handbooks also must be mindful to ensure that the handbook does not use any language stating or implying that a contractual basis for any benefit (including continued employment) exists. An employee's at-will status of employment can be voided if language in the handbook implies a promise or creates an expectation of a benefit or continued employment.

Finally, in organizations where employees are represented by unions, it is important to note in the handbook that any inconsistencies between the policies in the handbook and the policies in a CBA will be resolved in favor of the CBA (for represented employees only). In addition, if you have unionized employees you will be required to bargain, in most circumstances, regarding inclusion of mandatory subjects of bargaining that are included in the handbook, even if not covered by the applicable CBA.

Resource

CIS issues a sample employee handbook each year for its members.

Go to: www.cisoregon.org/Member/RiskManagement/H2RToolbox for latest edition (account registration required).

C. Performance Appraisals

While required by some CBAs, there is no law requiring employers to provide performance reviews. It is simply a good management practice, and most employers conduct periodic performance reviews of their employees. Employers should adopt a policy advising employees how often they will be reviewed, and on what basis/bases. An effective review tells an employee whether they are meeting or exceeding performance goals, identifies any performance problems, and encourages employees to improve their performance. A performance review should not be the only feedback that an employee receives, however – it is simply one tool that an employer has to manage its employees. Finally, accurate and thoughtful

documentation regarding an individual employee's performance is invaluable in litigation, whether defending against claims based upon discrimination, wrongful termination, or any other disparate treatment theory.

The employer should attempt to consistently follow the procedures outlined in its performance review policy. Employees should be required to date and sign the evaluation form - not to indicate agreement with its contents, but rather to acknowledge that they have received and reviewed the contents of the evaluation form. Employees should also be encouraged to present a response (or rebuttal) to the evaluation, which will be included in the employee's personnel file. If the employee does not respond to the evaluation form in writing, a court or jury may consider this decision an acquiescence or agreement to the contents of the review.

Performance reviews must accurately document not only an employee's strengths and skills, but also any unsatisfactory work performance or disciplinary problems. An inaccurate review is worse than no review in many circumstances. A court or jury may not believe that an employee's poor performance led to a termination decision when the performance reviews rate the employee as an "average" or "meets expectations" performer. Finally, all performance reviews should be reviewed by Human Resources for consistency and any legal issues prior to being communicated to the employee. Each employer should decide on whether additional approvals of the performance evaluations are appropriate (for example, what managers or department heads should sign off on the reviews).

Resource

CIS provides sample performance evaluations for its members.

Go to: www.cisoregon.org/Member/RiskManagement/H2RToolbox (account registration required).

D. Leave of Absence Laws and Issues

i. Vacation

Employers are not required by federal or state law to provide vacation benefits to their employees. There are no laws that require an employer to give an employee a specific amount of vacation time, and there are no laws that specify how vacation time is accrued. But if your organization offers vacation benefits, ensure that your handbook clearly states the employee's eligibility for vacations and vacation pay, and note any inconsistencies with vacation provisions in an applicable CBA.

Under Oregon law, an employer is required to honor any established policy or agreement relating to the payment of accrued vacation upon termination. If an employee qualifies for payment of vacation pay under the employer's policy, the employee should be paid for these upon termination. Oregon law also recognizes, however, an employer's right to specify when vacation pay will not be paid upon termination, such as when an employee is terminated for gross misconduct or if an employee fails to provide notice before resigning.

ii. Sick Leave

Under Oregon's Sick Leave law, employers of all sizes are required to provide sick leave to their employees. Employers with 10 or more employees must provide paid sick leave; employers with nine or fewer employees must provide unpaid sick leave. The law includes requirements for accrual (no less than one hour of sick leave for every 30 hours worked, starting on day one of employment), use (available starting the 91st day of employment), accrual caps (40 hours per year) and carry-over. The law also requires the issuance of a policy and periodic information to employees about sick leave accrual.

An employee can take sick leave for the following purposes:

- To care for the employee or employee's eligible family member (defined in the law) with an illness, injury or health condition or for treatment;
- To care for an infant or newly adopted or foster child under the age of 18, or to care for a child over the age of 18 if incapable of self-care because of a mental of physical disability;
- Absence associated with the death of an eligible family member (defined in the law);
- Absence related to domestic violence, harassment sexual assault or stalking for employee or a minor child or dependent;
- In the event of a public health emergency.

- BOLI has provided detailed information about the sick leave law here.[13]

Note that the law provides a "floor" in terms of the basic minimums of what an employer must provide its employees. Employers can be more generous with their sick leave benefits than what is provided here, *e.g.,* providing paid leave when only unpaid leave is required or making the accrual cap 80 hours per year instead of 40. Finally, nothing in the law requires an employer to pay a departing employee accrued but unused sick leave.

iii. Paid Time Off (PTO)

In lieu of offering separate vacation and sick leave benefits, some employers choose to provide a fixed sum of paid time off or PTO. Cities offering PTO must ensure that their benefits are the same or more generous than what Oregon law requires for sick time (but they are not obligated to give employees additional leave for paid or unpaid sick time if they meet the legal minimums for sick time through their combined PTO policy).

[13] https://www.oregon.gov/boli/workers/pages/sick-time.aspx (last accessed April 2026).

iv. FMLA and OFLA Protected Leaves of Absence

All public agencies are covered employers under the Family Medical Leave Act (FMLA) regardless of the number of employees they employ. For a public employee to be eligible for FMLA, the public employer must have at least 50 employees within 75 miles of an employee's work site. Eligible employees must be employed for at least 12 months (which may be based on separate stints of employment) and have worked at least 1,250 hours during the 12 months preceding the date leave is to begin. Under FMLA, an eligible employee may take up to 12 weeks of unpaid leave within a 12-month period in a leave year for the following purposes:

- To care for a newborn, newly adopted, or newly fostered child;
- To care for a spouse, child, or parent with a serious health condition;
- To care for the employee's own serious health condition, including an illness, injury or condition related to pregnancy or childbirth that disables the employee;
- Because the employee's spouse, son, daughter or parent is on active duty or was called to active duty status in the Armed Services, National Guard or Reserves in support of a contingency operation to address certain "qualifying exigencies"; or
- To care for a "covered servicemember" with a serious injury or illness incurred in the line of duty on active duty (up to 26 weeks).

FMLA is fraught with extensive regulations regarding an employer's obligations under the law, which include providing notice to employees regarding the law and notices regarding eligibility and an employee's "rights and responsibilities", requirements for seeking medical certification in support of certain types of leave, discussions with health care providers certifying the leave in question, and designating FMLA leave, and many more. The U.S. Department of Labor has devoted part of its website to FMLA, and provides sample forms/notices, which can be found here.[14]

An employee may take FMLA leave for the following reasons:

- To care for a newborn, newly adopted, or newly fostered child;
- To care for a spouse, child, or parent with a serious health condition;
- To care for the employee's own serious health condition, including an illness, injury or condition related to pregnancy or childbirth that disables the employee;
- Because the employee's spouse, son, daughter or parent is on active duty or was called to active duty status in the Armed Services, National Guard or Reserves in support of a contingency operation to address certain "qualifying exigencies"; or
- To care for a "covered servicemember" with a serious injury or illness incurred in the line of duty on active duty (up to 26 weeks).

[14] https://www.dol.gov/agencies/whd/fmla (last accessed April 2026).

Cities must also be aware of their responsibilities under the Oregon Family Leave Act (OFLA), which applies to employers with 25 or more employees. When it was enacted, OFLA mirrored many of FMLA's provisions and a leave under one law often ran concurrently with a leave under the other. All of that changed in 2024 due to significant cutbacks to OFLA that went into effect and because of Paid Leave Oregon (discussed below).

Effective July 1, 2024, an eligible employee may take up to 12 weeks of unpaid OFLA leave in a 52-week period (starting from the Sunday before leave begins) and sometimes more, under certain circumstances, for the following purposes:

- **Pregnancy disability leave** (before or after birth of child or for prenatal care). *The employee can take up to 12 weeks of this in addition to 12 weeks for any other OFLA reason listed here.
- **Sick child leave** (for the employee's child with a serious or non-serious health condition).
- **School closure leave** – If the employee's child's school or childcare provider is closed due to a public health emergency.
- **Military family leave** (up to 14 days if the employee's spouse/same-sex registered domestic partner is a service member who has been called to active duty or is on leave from active duty).
- **Bereavement leave** (up to two weeks of leave after the death of a "family member", defined in the law) with a maximum of four weeks in any given leave year.
- **To facilitate the placement of a foster child or to handle adoption-related issues** (effective July 1, 2024, until December 31, 2024).

Employees are eligible to take OFLA-protected leave if they have been employed for 180 calendar days preceding the date a leave is to begin and worked an average of at least 25 hours per week. However, an employee taking Oregon Military Family Leave Act leave need have only worked 20 hours per week (no minimum length of employment required).

An employee may take OFLA Leave for the following:

- Pregnancy disability leave
- Sick child leave
- School closure Leave
- Military family leave
- Bereavement leave

Like FMLA, OFLA is a regulation-heavy law that imposes significant requirements on employers, including notification requirements, tracking requirements, and other administrative tasks. BOLI's website, located here,[15] has extensive information on the law.

[15] https://www.oregon.gov/boli/workers/Pages/oregon-family-leave.aspx (last accessed April 2026).

Paid Leave Oregon

Employers of all sizes must also comply with Paid Leave Oregon (PLO). PLO provides employees with up to 12 weeks of paid leave in a 52-week period (starting the Sunday before leave begins) for three distinct categories of life events:

Family Leave – includes the birth of a child and what has traditionally been known as "parental leave" (to bond with a child in their first year, whether it be after birth, through adoption, or when the child is placed in the employee's home for foster care).

Medical Leave – For the "serious health condition" of an employee or the employee's "family member" (defined in the law).

Safe Leave – For survivors of sexual assault, domestic violence, harassment, bias crimes or stalking.

In addition, an employee may be able to take up to two additional weeks (up to 14 total weeks in a 52-week period) if the employee experiences illness or injury for a pregnancy- or childbirth-related reason (typically known as "pregnancy disability leave").

Because PLO is administered by the State of Oregon Employment Department or a third-party provider, an employer has almost no control over whether an employee is eligible for or may take leave (or when that leave may be taken). Instead, the employer is obligated to hold open the employee's job when on a PLO leave and refrain from taking any adverse employment action against an employee who asks about, applies for or uses PLO.

Because PLO is a new and complicated law, employers continue to struggle to learn to administer leaves under this law. Cities are encouraged to consult with legal counsel or an HR professional about both employees' and employers' rights and responsibilities under PLO, notification requirements, when leaves under PLO run concurrently with leaves under FMLA and how an employee's accrued paid leave (e.g., vacation, sick, PTO) may be used during a period of PLO. More information about PLO can be found at the State of Oregon Employment Department's Paid Leave Oregon web site (https://paidleave.oregon.gov/employers-overview/). CIS' Sample Employee Handbook has sample policies for PLO, FMLA and OFLAs, and a sample statement for those cities who do not have 25 or more employees. The handbook can be found in CIS' HR Toolbox, located here[16] (registration required).

v. Paid Holidays

There is no obligation under either federal or Oregon law to pay employees extra for working on holidays or to pay them premiums for work performed on holidays. Nor does the law require an employer to recognize one holiday versus another. If the employer does choose to provide the benefit to employees, or if it agrees to do so pursuant to a CBA or employment

[16] https://cisoregon.org/Account?returnUrl=%2FMember%2FRiskManagement%2FH2RToolbox.

contract, it makes good practical sense to put the policy in writing to avoid confusion and enhance employee morale.

E. Disability Law

Cities with six or more employees are subject to Oregon's disability discrimination and accommodation law. Cities with 15 or more employees are also subject to federal disability and discrimination law, known as the ADA.

Under both Oregon and federal disability law, with respect to employment (Title I of the ADA), cities are required to provide "qualified" individuals with "disabilities" equal employment opportunities. This includes providing reasonable accommodations to help employees perform the essential functions of their job and ensuring that employees with "disabilities" are not discriminated against in all areas of the employment relationship, from hiring to retiring (or firing).

Both laws define "disability" as a "physical or mental impairment that substantially limits one or more major life activities." To receive protection under the law, the employee must be a "qualified individual with a disability." Among other obligations, an employer must engage in an "interactive process" with an employee with a disability in an effort to come to an agreement about accommodations the employer can provide to assist the employee perform their essential job functions. Nothing under the ADA or Oregon law requires an employer to remove essential job functions, however.

For more information about what constitutes a "disability", or information about an employer's obligations under these laws, please refer to the EEOC's website here,[17] or BOLI's web site here.[18] CIS' Sample Employee Handbook also includes a sample Disability Accommodation Policy, found in the HR Toolbox (here[19]– registration required).

F. Whistleblower Law

Various federal and Oregon laws protect employees who report, in good faith, their employer's violation of the law or other issues. The Oregon laws apply to public sector employers of all sizes; the federal laws most germane to public sector employers apply to those with 15 or more employees. Here are some examples:

- Opposing discrimination or retaliation in violation of Oregon or federal civil rights law (ORS 659A.030; Title VII);

[17] https://www.eeoc.gov/publications/ada-your-responsibilities-employer (last accessed April 2026).
[18] https://www.oregon.gov/boli/civil-rights/Pages/disability-rights.aspx?utm_source=BOLI&utm_medium=FAQ%20Typeahead&utm_campaign=Disability%20Rights (last accessed April 2026).
[19] https://cisoregon.org/Account?returnUrl=%2FMember%2FRiskManagement%2FH2RToolbox.

- Disclosing information that the employee believes is evidence of: (1) a violation of any federal, state or local law, rule or regulation by the public employer; or (2) mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the public employer (ORS 659A.199 and 659A.200 et seq.);

- Reporting criminal activity, has caused a complaint to be filed, has cooperated with law enforcement, has brought a civil action against an employer, or has testified at a civil proceeding or criminal trial (ORS 659A.230); and

- Many more!

Oregon law requires that public sector employers publish a policy on Oregon's whistleblower laws; a sample copy is available on request by emailing H2R@cisoregon.org.

For more information, see BOLI's publication about these whistleblower laws in its "Uniform Standards and Procedures Manual", which can be found here.[20] EEOC staff also wrote an article[21] on federal retaliation claims that provides a thorough discussion about retaliation claims and how to avoid them.

G. Drug and Alcohol Issues

When Oregon voters decided to legalize recreational marijuana sales and use in Oregon (effective July 1, 2015), Oregon employers were required to think about how they viewed employee marijuana use. One big factor: Oregon's recreational and medical marijuana laws have no impact on federal laws that classify marijuana as an illegal drug listed in Schedule I of the Controlled Substances Act. That means that while marijuana use is legal under Oregon law (with some restrictions), it is illegal under federal law.

With this contrast in mind, employers need to think about whether: (1) They want to institute a drug and alcohol testing program; and (2) if so, whether they want to be a "zero tolerance" employer or a "no impairment" employer (defined below). For cities with represented employees, the choice about whether to provide drug/alcohol testing and what the standard for that testing will be is made only through mandatory bargaining. For unrepresented employees, however, the employer is free to choose.

Federal law imposes some restrictions:

- If a city receives federal funds through a grant, the city will need to scrutinize the grant's terms for information about drug testing expectations (if any). Note: The federal Drug Free Workplace Act does not require drug or alcohol testing.

[20] https://www.oregon.gov/boli/civil-rights/Documents/whistleblower-protections.pdf (last accessed April 2026).
[21] https://www.eeoc.gov/retaliation-making-it-personal (last accessed April 2026).

- If a city employs employees who are CDL holders, U.S. Department of Transportation (DOT) drug testing regulations prohibit the CDL holder from using marijuana, even if such use is otherwise allowed under Oregon law or the employer's "no impairment" policy. Currently, the DOT does not allow for the use of marijuana by employees in safety sensitive positions subject to federal testing guidelines. See discussion here[22].

- Employees subject to the drug testing regulations issued by the Federal Aviation Administration or any other federal agency must continue to be complied with as well.

A **"zero tolerance"** policy is just that: It tells employees that not only are they prohibited from reporting to work under the influence of any intoxicating substance (regardless of whether the substance is legal under Oregon law), employees can't show up to work with any marijuana metabolites in their system, regardless of whether they are impaired at the time of testing. Under this kind of a policy, the definition of "reasonable suspicion" testing can be broader. This is because whether an employee shows signs of intoxication or impairment is only one basis for an employer to demonstrate "reasonable suspicion"; an employee's admission of marijuana use (or any other drug) could trigger the employer's right to conduct a drug/alcohol test as well.

A **"no impairment"** policy tells employees that as long as they don't show up for work under the influence of drugs or alcohol, the employee will not be disciplined if marijuana metabolites show up in their drug/alcohol test. Under this kind of policy, an employer is typically allowed to require a drug and alcohol screen when the employee shows the typical signs of impairment while in the workplace, such as glassy eyes, slurred speech, stumbling, etc. Although an employer can include employee admission of drug/alcohol use in a "no impairment" policy, the likelihood of "catching" an employee who admits to weekend drug use is low, particularly because there is no recognized test for marijuana impairment.

CIS provides sample drug and alcohol testing policies in its Sample Employee Handbook, found here[23] (registration required).

H. Harassment in the Workplace

Employers of all sizes are required by Oregon and federal law to ensure that employees are not subject to harassment on the basis of sex, age, gender identity, race, color, religion, national origin, marital status, disability, veterans status, sexual orientation, and any other protected class recognized by Oregon or federal law. This obligation includes a responsibility to ensure that complaints of harassment are promptly investigated and acted upon (where warranted).

Sexual harassment is defined as unwelcome, or unwanted conduct of sexual nature, whether it is verbal or physical when: (1) submission to or rejection of the individual's conduct is used as a factor in decisions affecting the hiring, promotion, transfer, evaluation, financial status,

[22] https://www.transportation.gov/odapc (last accessed April 2026).
[23] https://cisoregon.org/Account?returnUrl=%2FMember%2FRiskManagement%2FH2RToolbox

or other aspects of employment; or (2) the conduct interferes with an individual's employment or creates an intimidating, hostile, or offensive work environment.

Harassment on the basis of a protected class or protected activity may include verbal, written or physical conduct that denigrates, makes fun of, or shows hostility towards an individual because of that individual's protected class or protected activity, and can include:

- Jokes, pictures (including drawings), epithets, or slurs;
- Negative stereotyping;
- Displaying racist symbols anywhere on an employer's property;
- "Teasing" or mimicking the characteristics of someone with a physical or mental disability;
- Criticizing or making fun of another person's religious beliefs, or "pushing" religious beliefs on someone who doesn't have them;
- Threatening, intimidating, or hostile acts that relate to a protected class or protected activity; or
- Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of the protected status.

An employer can be liable for any harassment caused by a nonsupervisory or non-managerial employee, or non-employees, only if the employer knew or had reason to know of the harassment and failed to remedy it. In one case, the court stated that an employer is liable for a co-worker's sexual harassment only if, after learning of the alleged conduct, the employer "fails to take adequate remedial measures." These measures must include immediate and corrective action reasonably calculated to end the current harassment and to deter future harassment from the same offender or others.

If an employee alleges that a supervisor/managerial employee caused the harassment, the employer may be liable (regardless of whether anyone other than the alleged harasser knew about the conduct) unless it can prove what is called an affirmative defense. If there is no evidence of a tangible adverse employment action resulting from the alleged hostile environment, the employer must prove two things: (1) that the employer exercised reasonable care to prevent and correct promptly any harassing behavior prohibited under the law; and (2) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Whether the employer has an anti-harassment policy is relevant to the first element of the defense. And an employee's failure to use a complaint procedure provided by the employer will normally be enough to satisfy the employer's burden under the second element of the defense.

The Civil Rights Act of 1991 and Oregon law have exposed employers to punitive and compensatory damages and jury trials for unlawful harassment. Additionally, courts have found that when sexual harassment has a physical component, the employer may be liable for not only statutory civil rights claims but also for physical torts such as battery. Therefore, it is imperative that employers identify and eliminate acts of harassment in the workplace.

A written harassment policy staunchly condemning sexual and other forms of harassment is a necessary first step. It should also contain a clear statement that the employer will not retaliate or tolerate retaliation against any employee making a good-faith claim of harassment or for cooperating with any harassment investigation. Oregon law, in fact, requires employers to have a published harassment policy that includes specific provisions identified in the law. For more information about Oregon's law and the Oregon legal requirements for a policy, see BOLI's web site here[24]. CIS also has a sample harassment policy written to conform with the law's requirements, available in the HR Toolbox (here[25] - registration required).

When facing specific complaints of harassment, employers must consider each claim with the utmost seriousness. Complaints should be investigated and resolved promptly, thoroughly and, to the greatest extent possible, confidentially. Obviously, confidentiality may be difficult if not impossible to maintain in many situations. If the employer concludes that improper conduct has occurred, then the alleged harasser should be disciplined accordingly or fired.

The EEOC also has helpful information available on federal harassment laws, found at https://www.eeoc.gov/harassment.

I. Discipline and Discharge

All employers must deal with employee discipline and terminations. Unfortunately, and despite the fact that a poorly-handled termination can result in expensive litigation or claim settlement, employers continue to make some avoidable mistakes in handling the discipline and termination processes.

i. Use a Thoughtful (not a Rushed) Process for the Termination.

In this litigious era, when few gatekeepers exist to screen out the frivolous lawsuits, and few tools exist to deter underemployed lawyers from filing marginally credible (or simply frivolous) lawsuits against employers, employers should expect that any termination could result in a lawsuit or a claim for damages. If the employer hasn't thoroughly planned that termination, which includes demonstrating a history of attempting to work with the employee on their shortcomings and articulating a reason for the termination, the employer may be left without an

[24] https://www.oregon.gov/boli/workers/Pages/sexual-harassment.aspx?utm_source=BOLI&utm_medium=FAQ%20Typeahead&utm_campaign=Sexual%20harassment (last accessed April 2026).
[25] https://cisoregon.org/Account?returnUrl=%2FMember%2FRiskManagement%2FH2RToolbox.

adequate defense or left with an undesirable defense against a claim of discrimination or retaliation. In sum, an employer's best defense to a claim of discrimination or retaliation is a well-documented, thoughtful and legal basis for a termination, one that is clearly expressed and explained to the departing employee.

ii. Avoid Unfortunate Timing

Employers should avoid incidents of unfortunate timing such as terminating an employee after they return from OFLA-protected leave for an event that occurred prior to the employee's leave of absence. Oregon and federal law say that timing alone is insufficient to prove a discriminatory motivation. Prudent employers understand, however, that incidents of unfortunate timing may be sufficient to raise an inference of discrimination and get the employee past a couple of hurdles and possibly even in front of a jury. It is not always possible to avoid incidents of unfortunate timing. It is, however, possible to avoid delay. If an offense is sufficient grounds for discipline or termination, then employers should act promptly. Failure to do so always creates a question in the mind of a jury: if this offense was so bad, why did the employer wait six weeks to terminate for it?

iii. Make sure there is a record of progressive discipline, in writing

Reminders about creating a written record are nothing new. A written record of progressive discipline for offenses is particularly important in defending claims that termination was in retaliation for taking protected leave, or in violation of the ADA (among other reasons). By its very nature, terminations for "just cause" pursuant to a CBA require progressive discipline except for very limited circumstances.

For public sector employers, employees who are represented by unions are in most situations required to receive progressive discipline before a termination can occur – this establishes a "just cause" basis for termination. Your city's labor counsel can address this requirement with you.

iv. Is Due Process Required Before Termination?

Under Due Process principles, a public sector employee is entitled to "notice and a meaningful opportunity to be heard" before their employer can fire them (or before receiving discipline that has an economic consequence, like a suspension without pay). Employees represented by a union must receive Due Process (also known as a "Loudermill" hearing). Other employees must receive due process because the city's policies require it, or because their employment contract with the city specifies that due process must be provided. In some cases, providing due process to those employees who are not legally entitled to it can be helpful to an employer facing a potential claim from that employee.

v. Consult with Your City's Trusted Legal Counsel

There are no such things as "slam-dunk" terminations. In this "day and age" of litigation, every termination decision could be subject to a claim or a lawsuit. For that reason, conferring with the city's trusted legal counsel about a proposed termination before issuing a notice of potential (or actual) termination is a wise use of funds and time. Why would your city terminate someone's employment if that termination wasn't as defensible as it could be? This is why "defensive management" should be a part of your city's day-to-day personnel administration.

CIS members also have access to free employment law advice through the CIS Employment Risk Services program. Under the terms of the General & Auto Liability Coverage Agreement each CIS member has with CIS, the member must consult with and follow the "reasonable advice" of a CIS Employment Risk Services Attorney with respect to any suspension or termination. Doing so results in the waiver of a $15,000 deductible on any claim arising out of that suspension or termination. CIS members can reach a CIS Employment Risk Services Team Attorney by calling 503-763-3848 or by emailing ERS@cisoregon.org.

vi. Other Termination-Related Matters

a. COBRA

With any termination, the employer (or its health insurance carrier) needs to be sure to notify the employee and/or their qualified beneficiaries of their rights to continued health insurance coverage under COBRA. For more information about COBRA, including sample COBRA forms, visit the U.S. Department of Labor's website here.[26]

b. Timing of Final Paychecks

It is required by Oregon law to pay a departing employee's final paycheck on time. Failure to do so can result in an employer paying the employee "penalty wages" in addition to the employee's final wages and attorney fees if the employee hires an attorney. Under Oregon law, the following "final paycheck" deadlines apply:

- If an employee quits with less than 48 hours' notice, excluding weekends and holidays, the paycheck is due within five days, excluding weekends and holidays, or on the next regular payday, whichever comes first.

- If an employee quits with notice of at least 48 hours, the final check is due on the final day worked, unless the last day falls on a weekend or holiday (in that case, the check is due on the next business day).

[26] https://www.dol.gov/general/topic/health-plans/cobra (last accessed April 2026).

- If an employee is discharged, the final paycheck is due not later than the end of the next business day.

- When an employer and employee mutually agree to terminate the relationship, the check is due by the end of the following business day, as in the case of discharge.

J. Posting Requirements

Numerous Oregon and federal laws require employers to post notices in the workplace in a location where they are accessible to employees (and easily visible). Failure to post such notices is itself can be a violation of the particular law.

BOLI has published an extensive list of the posters employers must use in their workplaces. The posters are also available for downloading: here.[27]

K. Personnel Recordkeeping Obligations

i. Oregon's Public Records Law

Because cities are subject to Oregon's public records laws, questions about the impact of those laws on a city's personnel recordkeeping obligations and practices should be directed to the city's attorney. More information about Oregon's public record (and meeting) laws can be found here.[28]

ii. Secretary of State Record Retention Schedules

The Oregon Secretary of State has published record retention schedules instructing cities as to how long they should keep records, including records relating to employees. Per the Secretary of State's website, the schedules provide "state and local agencies with the lawful authority to destroy or otherwise dispose of commonly occurring public records."

The record retention schedules for cities are found here.[29]

iii. Personnel Records (ORS 652.750)

Oregon law defines "personnel records" to include records that are used to determine an employee's "qualifications for employment, promotion, additional compensation, termination or other disciplinary actions", as well as "time and pay records."

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[27] https://www.oregon.gov/boli/employers/Pages/required-worksite-postings.aspx (last accessed April 2026).
[28] https://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-and-meetings-law/ (last accessed April 2026).
[29] https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=590 (last accessed April 2026).

According to BOLI, examples of "personnel records" include:

- Job announcements;
- Applications;
- Resumes;
- Records of promotion;
- Pay increase documentation;
- Performance reviews;
- Supervisor notes pertaining to named personnel actions;
- Disciplinary actions; records of verbal and written warnings; and
- Notices of termination.

Oregon law requires employers to provide an employee with the opportunity, upon request, to view or receive a copy of their personnel records within 45 days of receiving an employee's request. Failure to do so could result in penalties or other fines. Personnel records should be kept for a period of no less than three years, although six years is desirable (or longer, if ordered in the secretary of state's record retention schedules).

Employers are strongly advised to protect the confidential nature of an employee's personnel records by limiting access to those individuals with a need to know (such as a supervisor or manager), and by keeping the personnel records in a safe place with limited access (such as a locked filing cabinet).

A Note About Form I-9s: Form I-9s should not be kept in an employee's personnel file. If your city is audited, and the U.S. Citizenship and Immigration Services asks to see your I-9 forms, you will be preserving the confidentiality of your employee's personnel records if you keep the Form I-9s separate from the personnel files.

V. Council Roles and Responsibilities Over Personnel

While most city councilors consider the formulation of city policy to be their primary responsibility, they may also be concerned with the way in which policy is administered. The extent of an individual councilor's involvement in administration depends on the city's size and form of government.

Most cities in Oregon follow the council-manager form of government. Under this form, the city council directs the policy of the city while an appointed city manager or administrator oversees the daily supervision of the city's operations and personnel. The city council typically only oversees the city manager or administrator and seldom retains any significant involvement in the day-to-day supervision of city employees and departments. Larger cities may have numerous fulltime employees and departments. In contrast, some of the smallest cities have no full-time employees and rely on contracted legal and engineering services and volunteer and/or

part-time help. In these smaller cities, city councilors may be deeply involved in personnel administration.

Regardless the size of the city, communication between a council and city employees must be made with the following understanding:

- City employees are responsible to their immediate supervisor and cannot "take orders" from a city councilor; and

- Each councilor has authority in administrative matters only to the extent delegated by the council as a whole. This delegation is often formally contained in an ordinance or charter provision.

Misunderstandings may arise when a councilor intends only to ask for information. The employee receiving the request directly from a councilor can easily jump to the erroneous conclusion or misinterpret the councilor's intent. In turn, a councilor who acts outside of their authority may be at risk for a legal claim brought by the impacted employee. The best way for councilors to get information about administrative matters is to request it through the city manager or administrator, or if appropriate, make the request during a regular council meeting.