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OREGON PASSES PREDICTABLE SCHEDULING LAW; HOW TO ENSURE YOUR BUSINESS COMPLIES

Aug 24, 2017

Oregon has become the first state to enact a predictable scheduling law, S.B. 828, which regulates employer scheduling practices in the food service, hospitality, and retail industries. As we previously reported, cities such as New York, Seattle, and San Francisco have passed similar measures. Oregon is likely the first of many states to pass such legislation. The new law will take effect on July 1, 2018.

The law applies to retail establishments that operate in Oregon and employ at least 500 employees worldwide. Separate entities may be considered an "integrated enterprise" for purposes of determining whether an employer employs at least 500 employees. The legislation tasks the Commissioner of the Bureau of Labor and Industries to adopt rules to assist employers to determine whether separate entities are an integrated enterprise.

The law applies to non-exempt employees of covered employers, and does not apply to salaried, exempt employees, workers supplied by a worker leasing company, or employees of businesses that provide services to or on behalf of an employer.

The stated purpose of the law is to enhance the predictability of work schedules for non-exempt employees, and to ensure at least 10 hours of rest between shifts. Below are some key highlights of the law:

- An employer must provide a new employee with a written good faith estimate of the employee's work schedule at the time of hire, which should include the median number of working hours per month, and an explanation of whether the employee can be on the voluntary standby list.

- An employer must maintain a standby list of employees whom the employer will request to work additional hours to address unanticipated customer needs or employee absences. The list is voluntary, and the employee may request to be removed from the list at any time.

- An employer must provide an employee with a work schedule in writing at least seven calendar days before the first day of work, and must post the written work schedule in a conspicuous

and accessible location. The advance notice requirement increases to 14 days on July 1, 2020.

- If an employer changes the written work schedule, it must notify affected employees in a timely manner. An employer cannot require an employee to work any shift not included in the employee's written work schedule.

- An employer cannot schedule or require an employee to work during the first 10 hours following the end of the previous calendar day's work shift or on-call shift, unless the employee requests or consents to work such hours. If an employee does work within the first 10 hours, the employer must pay one and one-half times the employee's regular rate of pay.

The law further prohibits employers from discriminating or retaliating against employees who exercise their rights under the statute. The statute authorizes employees to file a complaint with the Bureau of Labor and Industries based on an employer's violation. The statute also allows employees to pursue a civil action for discrimination or retaliation.

Before the new law takes effect, affected employers should revise their policies and procedures to develop a comprehensive plan for managing scheduling practices.

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