

Oregon's Workplace Fairness Act Fact Sheet

Oregon's Workplace Fairness Act requires employers to adopt and publish specific policies outlining how to report unlawful conduct; expands the timeline employees have to file claims of discrimination, including sexual assault; and makes it unlawful for employers to enter into agreements containing nondisclosure, non-disparagement or similar confidentiality provisions.

Written Policy Provision

All Oregon employers, regardless of size, must adopt a written policy containing:

- ❖ A process for reporting prohibited conduct;
- ❖ The name of an individual and the name of an alternative who are designated by the employer to receive reports of prohibited conduct;
- ❖ The five-year statute of limitations period applicable to an employee's right of action to file a claim;
- ❖ A statement that an employer may not require or coerce an employee to enter into a nondisclosure or non-disparagement agreement and a description of the meaning of those terms;
- ❖ An explanation that an employee claiming to be aggrieved by conduct described of this section may voluntarily request to enter into an agreement and that the employee has at least seven days to revoke the agreement;
- ❖ A statement that advises employers and employees to document any incidents involving prohibited discrimination, including sexual assault.

Employers must make this policy available to all employees, all new employees at the time of hire and to any employee who makes a complaint regarding prohibited conduct.

Five Year Statute of Limitations

Employees have five years to file a complaint with the Bureau of Labor and Industries (BOLI) or in a court of law for discrimination claims, including harassment and retaliation.

Restrictions on Agreements Containing Confidentiality Provisions

It is unlawful for employers to enter into agreements that contain non-disclosure, non-disparagement, confidentiality, or other provisions that prevent employees from disclosing or discussing conduct that constitutes unlawful discrimination, including sexual assault that occurred at work, at a work-related event, or between employees offsite. The Workplace Fairness Act also prohibits employers from including provisions in agreements that would prevent the disclosure of the amount or fact of a settlement unless an employee requests that provision. This applies to agreements with former employees as well as agreements with current and prospective employees.

Employees making a claim can voluntarily request to enter into such an agreement, but they must be provided at least 7 days to revoke the agreement.



If an employer enters into a separation or severance agreement with an employee who has not alleged a claim of discrimination, the employer is not restricted from including confidentiality, non-disparagement, and no-rehire provisions as stated under the Workplace Fairness Act. For example, employers and employees resolving a wage claim which does not allege discriminatory conduct can include the confidentiality, non-disparagement, and no-rehire provisions. However, other laws may also prohibit such language in these types of agreements.

Settlement or Separation Agreement

When entering into a settlement or separation agreement with an employee, the employer must provide the employee with a copy of the employer's anti-discrimination policy.

Mediation

When an employer mediates claims or allegations covered by the Workplace Fairness Act with an employee not represented by an attorney, the mediator must provide the unrepresented employee with a copy of the model procedures and policies made available by BOLI.

Violations

An employee can recover a civil penalty of up to \$5,000 in a private action claiming a violation of Oregon's Workplace Fairness Act, as well as other relief, including lost wages and emotional distress damages.



Sample Policy Language

This is a sample policy. Prior to implementation, it should be amended to reflect your organization's practices and legal obligations.

Sample Harassment Policy

All employees are expected and required to treat one another, as well as our customers, in a courteous and respectful manner at all times.

Harassment of any kind is prohibited. This specifically includes sexual harassment, sexual assault, and other harassment based upon race, color, religion, sex, sexual orientation, gender, gender identity, age, national origin, genetic information, marital status, veteran status, disability or other characteristics protected under local, state or federal law. This form of misconduct undermines morale and the integrity of the employment relationship, and interferes with productivity.

Sexual Harassment: Sexual harassment is a form of sex discrimination under state and federal law. Unwelcome sexual advances, requests for sexual favors or sexually suggestive conduct or statements are sexual harassment when:

- Submission to the advance is either an explicit or implicit term or condition of employment;
- Submission to or rejection of the advance affects the basis of employment decisions for the employee; or,
- Such conduct or statements have the purpose or effect of interfering with the employee's work performance or creating an intimidating, hostile or offensive working environment.

Sexual Assault: Sexual assault is a form of sex discrimination under state and federal law. Sexual Assault means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

Examples of harassment which may violate this policy also include:

- Verbal harassment such as epithets, derogatory comments or slurs, demeaning or sexually explicit jokes;
- Physical harassment such as assault, impeding or blocking movement, unauthorized touching or any physical interference with normal work or movement when directed at any individual;
- Visual forms of harassment such as derogatory, offensive or sexually suggestive emails, texts, memes or pictures displayed or viewed in the workplace; and,
- Behavioral forms of harassment such as suggestive facial expressions or noises, leering or obscene gestures.

Although sexual harassment is sometimes difficult to define, in general, all employees should be aware that sexual conduct and conversations are inappropriate in the workplace.

The Company will not tolerate harassment.



Reporting Procedures for Discrimination, Including Harassment and Sexual Assault

All employees are responsible for creating and maintaining a safe and positive work environment. If you believe you have experienced harassment, sexual harassment, discrimination, retaliation, sexual assault or if you have witnessed harassment, sexual harassment, sexual assault or discrimination by a co-worker, supervisor, vendor, visitor, customer or others that violates our policy, it is important that you take steps to address it immediately.

- First, if you are comfortable doing so, talk to the person whose behavior is bothering you and ask the person to stop.
- Next, if you are not comfortable speaking with that person, or if you asked them to stop and they have not, contact your supervisor or any member of management or human resources. **If you are uncomfortable speaking to your supervisor, please bring your concerns to any manager.**
- Be sure to document any incidents that you believe are in violation of this policy, including a description of the conduct, names of individuals involved, names of potential witnesses and dates.

A prompt, thorough and objective investigation of the complaint will be conducted by a qualified person. Documentation will be maintained to ensure reasonable progress. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge. Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation. Employees who have had a complaint should immediately make a further complaint should the harassment reoccur.

Appropriate corrective actions will be taken upon completion of our investigation. Employees found to be harassing other employees will be immediately and appropriately disciplined, up to and including immediate discharge.

Retaliation against employees who experience, witness or report a complaint regarding behaviors described above or other conduct addressed by this policy will not be tolerated.

Nondisclosure & Non-disparagement Agreements: The Company may not require or coerce you from entering into a nondisclosure or non-disparagement agreement, otherwise known as confidentiality agreements that prevents you from discussing discrimination including harassment. However, after a claim of discrimination, including harassment, you may voluntarily request to enter into an agreement containing a nondisclosure, non-disparagement, or no-rehire provision. This agreement must give you at least seven days to revoke after signature.

Statute of Limitations: Employees have five years since the date of offense to bring about a claim of sexual harassment or discrimination.



Definitions Under This Policy:

Nondisclosure Agreement: Any agreement by which one or more parties agree not to discuss or disclose information regarding any complaint of work-related harassment, discrimination, or sexual assault.

Nondisparagement Agreement: Any agreement by which one or more parties agree not to discredit or make negative or disparaging written or oral statements about any other party or the company.

No-rehire Provision: Any agreement prohibits an employee from seeking reemployment with the company and allows a company to not rehire that individual in the future.



