

# Local and State Law Updates: California and Oregon Issue New Posters

## Labor & Employment Law Update

on January 21, 2022



As of January 2022, the State of California and the State of Oregon have issued new workplace posters and updated certification forms related to various labor laws. The materials addressed below are mandatory postings for all employers, whether that be in the workplace or provided in employee handbooks. Businesses that fail to comply

may be subject to fines or sanctions.

### CALIFORNIA

The California Department of Fair Employment and Housing (DFEH) has issued multiple new posters and certification forms in connection with the expansion of the California Family Rights Act (CFRA) and its interplay with the Pregnancy Disability Leave (PDL) Law.

- *Family Care & Medical Leave & Pregnancy Disability Leave*

This poster details the rights of employees to take job-protected leave to care for themselves or a family member with a serious health condition, or to bond with a new child (via birth, adoption, or foster care). It also describes an employer's obligation to provide such leave and accommodations to employees disabled by pregnancy, childbirth, or a related medical condition. Finally, the poster provides the address and telephone number for filing a complaint, and confirms that taking a family care or pregnancy disability leave may impact employees' benefits and seniority date.

- *Your Rights and Obligations as a Pregnant Employee.*

This poster addresses CFRA leave and PDL in further detail and makes note of the following obligations, accommodations and leave requirements:

- Employers may require certification from health care providers before allowing PDL or leave for a serious health condition; however, the health-care provider may not disclose the underlying diagnosis without patient consent.
- PDL is available when an employee is *actually* disabled. This includes time off for prenatal or postnatal care, severe morning sickness, doctor-ordered bed rest, childbirth, recovery from childbirth, loss or end of pregnancy, or any other related medical condition.
- Employers may require an employee to use accrued sick leave during any unpaid portion of PDL. Employees may also choose to use vacation leave or other accrued paid leave to receive compensation for which the employee is eligible, but this may not be required by the employer.
- Employers must provide reasonable accommodation to those employees affected by pregnancy, childbirth, or related medical conditions that continue to work. For example, on the advice of a physician, an employee can request a transfer to a less strenuous or hazardous position or modified duties.
- *California Law Prohibits Workplace Discrimination & Harassment*

This new Equal Employment Opportunity (EEO) poster summarizes the legal prohibitions on workplace discrimination and harassment based on race, color, sex, national origin, religion, age, equal pay, disability or genetic information, pregnancy, childbirth, breastfeeding, and related medical conditions.

The poster lists 15 items that are either prohibited by or required of employers in California. The prohibited items deal with the characteristics above, and some of the required materials are noted below:

- All employers must provide information to each employee on the nature, illegality, and legal remedies that apply to sexual harassment. Employers may either develop their own publications, which must meet standards set forth in California Government Code section 12950, or use material from DFEH.
- Employers with five or more employees and all public entities must provide training for all employees regarding the prevention of sexual harassment, including harassment based on gender identity, gender expression, and sexual orientation.
- Employers, employment agencies, and unions must preserve applications, personnel records, and employment referral records for a minimum of four years.

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- Employers must provide leave of up to four months to employees disabled because of pregnancy, childbirth, or a related medical condition.

Finally, the poster discusses the remedies provided by law for individuals who experience prohibited discrimination, harassment, or retaliation in the workplace. These remedies include hiring, front pay, back pay, promotion, reinstatement, cease-and-desist orders, expert witness fees, reasonable attorney's fees and costs, punitive damages, and emotional distress damages. Complaints may be filed by job applicants, unpaid interns, and employees within three years of the last act of discrimination/harassment/retaliation.

- *Certification of Health Care Provider (for CFRA or FMLA).*

This form is an update to the Family and Medical Leave Act ("FMLA") Certification Form. It is the documentation that employers may require before allowing PDL or CFRA leave for a foreseeable event.

## OREGON

The new "Safety & Health Poster," is an OSHA poster issued by the Oregon Occupational Safety and Health Division ("Oregon OSHA"). The poster must be displayed in the workplace, in a conspicuous location, frequented by all employees.

The poster describes the rights that workers have to a safe workplace and the standards that employers must follow to ensure this right. It also advises employees of their right to (i) notify employers or Oregon OSHA about workplace hazards; (ii) request an Oregon OSHA inspection; (iii) report work-related injuries or illnesses, without being retaliated against; and (iv) file complaints with the Oregon Bureau of Labor and Industries, or with federal OSHA.

The standards that employers must practice are as follows:

- Post all OSHA citations in the workplace.
- Correct all workplace hazards by the date indicated on the citation and certify that the hazard has been reduced or eliminated.
- Provide the workplace injury and illness log to employees upon request.

Finally, the poster provides employees with the address and phone number of the OSHA Region responsible for handling complaints about the administration of the Oregon Safe Employment Act of 1973.

## CONCLUSION

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Employers in California and Oregon must be aware of these new posters and updated certification forms. It is also imperative that employers comply with all information and, when necessary, provide employees with such materials at the workplace—including, to the extent applicable, employees' remote workplaces. As always, questions regarding these matters should be directed to experienced labor and employment counsel.

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