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10+ Things Every Business Owner Needs to Know About Labor and Employment Law

October 20, 2014

**Manufactured Housing Community of Oregon 2014
Annual Conference**

Presented by David J. Riewald

10+ Things Every Business Owner Needs to Know About

Labor and Employment Law

Pop Quiz

1. Severance pay

Federal age discrimination law requires an ER to pay a fired EE severance pay if the EE's combined age + years of service = 80 or more.

- True
- False

2. Access to personnel files (#1)

Under Oregon's personnel file statute, an EE is only entitled to see what is physically located in his personnel file.

- True
- False

3. Access to personnel files (#2)

An EE is allowed to inspect her personnel file as often as she wants.

- True
- False

4. Payroll Deductions

If an EE does something to cause her ER to lose money, the ER can deduct that loss from the EE's pay.

- True
- False

5. Confidentiality Rules

A private sector ER cannot prohibit its EEs from telling each other how much money they make.

- True
- False

Bonus Question

- True
- False

6. At-Will Employment Rule

If an EE is employed at-will, she cannot sue her ER for employment discrimination (e.g., gender discrimination).

- True
- False

7. Giving Reason for Firing

When an ER fires an at-will EE, the ER is not required to tell the EE why she is being fired.

- True
- False

8. Minimum Wage

Washington and Oregon are the states with the highest minimum wage rates in the nation.

- True
- False

9. Personal liability

An EE who is wrongfully denied overtime pay can sue not only the ER but also the individual supervisors or managers who made the decision.

- True
- False

10. Final Paychecks (#1)

When an Oregon EE is fired, he must receive his final paycheck by the end of the 1st business day after the firing.

- True
- False

11. Final Paychecks (#2)

An ER is not liable for violating the Oregon final paycheck deadlines if the EE's paycheck has to come from out of state.

- True
- False

Bonus Question

- True
- False

12. Separation Agreements

When an EE is 40 years old or older, it is illegal to ask him to release his right to sue for age discrimination.

- True
- False

13. Arbitration Agreements

A non-union ER can ask its job applicants, but not its existing EEs, to sign an arbitration agreement.

- True
- False

14. Cashing Out Accrued Vacation Time Upon Termination

An ER can have a policy that says EEs will not be cashed out for their accrued vacation time upon the termination of employment.

- True
- False

Bonus Question

- True
- False

15. Reference Requests

An ER should only give name/rank/serial number-type info in a job reference because there is nothing the ER can do to avoid liability for giving a negative reference to a former EE.

- True
- False

16. Retaliation Claims

Retaliation claims are rarely alleged by EEs and, when they are, they are easily defeated by ERs.

- True
- False

17. Overtime Pay

Even though an EE is paid a yearly salary, he can still be entitled to overtime pay.

- True
- False

18. Social Media (#1)

It is not illegal for an ER to check a job applicant's social media pages during the hiring process.

- True
- False

19. Social Media (#2)

An ER can legally fire an EE who posts negative comments or complaints on Facebook about his supervisor or the ER.

- True
- False
- Depends

20. Investigations

It is illegal to ask an EE to refrain from discussing ongoing internal investigation matters with co-workers until after the investigation is concluded.

- True
- False

21. Shortening the Statutes of Limitation

An ER and EE can enter into an enforceable agreement that shortens the statutes of limitation on any claims to 180 days.

- True
- False

22. Litigation

Employment litigation is fun and relaxing so you should not worry about complying with the labor and employment laws.

- True
- False



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October 20, 2014
Presented by: DAVE RIEWALD
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1. SEVERANCE PAY

Federal age discrimination law requires an ER to pay a fired EE severance pay if the EE's combined age + years of service = 80 or more.

True

False

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2. ACCESS TO PERSONNEL FILES (#1)

Under Oregon's personnel file statute, an EE is only entitled to see the documents that are physically located in his personnel file.

True

False

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2. ACCESS TO PERSONNEL FILES (#1)

- ORS 652.750
 - An ER must allow an EE (or ex-EE), within 45 days of the EE's request, to inspect all personnel records that were used by the ER "to determine the EE's qualification for employment, promotion, additional compensation or employment termination or other disciplinary action."

2. ACCESS TO PERSONNEL FILES (#1)

- ORS 652.750
 - EE is entitled to see all documents used by the ER to make decisions about her employment
 - Can be narrower or broader than personnel file

3. ACCESS TO PERSONNEL FILES (#2)

An EE is allowed to inspect her personnel file as often as she wants.

True

False

4. PAYROLL DEDUCTIONS

If an EE does something to cause her ER to lose money, the ER can deduct that loss from the EE's pay.

True

False

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4. PAYROLL DEDUCTIONS

ORS 652.610

- **General rule** = deductions not allowed
- **4 exceptions:**
 - Required by law
 - Required by CBA
 - Repay loan from ER
 - Not for ER's benefit

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4. PAYROLL DEDUCTIONS

“Not for ER's benefit” exception

- EE voluntarily authorized in writing
- Recorded in ER's records
- Either:
 - Deduction is “for the EE's benefit,” or
 - “Ultimate recipient is not the ER”

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5. CONFIDENTIALITY RULES

A private sector ER cannot prohibit its EEs from telling each other how much money they make.

True

False

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BONUS QUESTION

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6. AT-WILL EMPLOYMENT RULE

If an EE is employed at-will, she cannot sue her ER for employment discrimination (e.g., sex discrimination).

True

False

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7. GIVING REASON FOR FIRING

When an ER fires an at-will EE, the ER is not required to tell the EE why she is being fired.

True

False

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8. MINIMUM WAGE

Washington and Oregon are the states with the highest minimum wage rates in the nation.

True

False

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9. PERSONAL LIABILITY

An EE who is wrongfully denied overtime pay can sue not only the ER but also the individual owners, supervisors and managers who made the decision.

True

False

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10. FINAL PAYCHECKS (#1)

When an Oregon EE is fired, he must receive his final paycheck by the end of the 1st business day after the firing.

True

False

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10. FINAL PAYCHECKS (#1)

ORS 652.140

- Terminated employees: By the end of 1st business day after the termination.

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10. FINAL PAYCHECKS (#1)

ORS 652.140

- Employees who quit with:

- At least 48 hours notice (excluding weekends and holidays): On the day the quit becomes effective.
- Less than 48 hours notice (excluding weekends and holidays): Upon the *earlier* of: (1) the end of the 5th business day after the quit becomes effective; or (2) the next regularly scheduled payday after the quit becomes effective.

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10. FINAL PAYCHECKS (#1)

ORS 652.140

- Commission-paid employees: By the end of the 1st business day after the amount of the commissions becomes capable of accurate calculation.

11. FINAL PAYCHECKS (#2)

An ER is not liable for violating the Oregon final paycheck deadlines if the EE's paycheck has to come from out of state.

True

False

BONUS QUESTION

12. SEPARATION AGREEMENTS

When an EE is 40 years old or older, it is illegal to ask him to release his right to sue for age discrimination.

True

False

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12. SEPARATION AGREEMENTS

Things Er can give to Ee:

- Severance pay
- Won't actively contest unemployment benefits
- Letter of reference
- Pay cost of medical insurance premiums
- Outplacement assistance

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12. SEPARATION AGREEMENTS

Things Ee can give to Er:

- Resignation
- Promise not to reapply
- Non-disparagement promise
- Release of claims
 - ADEA claims
 - Un-releasable claims

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13. ARBITRATION AGREEMENTS

A non-union ER can ask its job applicants, but not its existing EEs, to sign an arbitration agreement.

True

False



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13. ARBITRATION AGREEMENTS

1. Consideration – both EE and ER must get something they otherwise would not get
2. Voluntariness – agreements signed under coercion are not enforceable



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14. CASHING OUT ACCRUED VACATION TIME UPON TERMINATION

An ER can have a policy that says EEs will not be cashed out for their accrued vacation time upon the termination of employment.

True

False



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BONUS QUESTION

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15. REFERENCE REQUESTS

ORS 30.178

- Gives former ER immunity from civil liability for discussing former EE's job performance with prospective ER, unless EE can show former ER didn't act in "good faith"
- Lack of "good faith" = knowingly false, deliberately misleading, or malicious purpose

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15. REFERENCE REQUESTS

An ER should only give name/rank/serial number-type info in a job reference because there is nothing the ER can do to avoid liability for giving a negative reference to a former EE.

True

False

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15. REFERENCE REQUESTS

Suggestions

- Get a release
- Funnel reference requests to 1 person
- Document what is given out
- Truthful (and best if objectively provable)
- Avoid retaliation
- Dangerous propensities?

16. RETALIATION CLAIMS

Retaliation claims are rarely alleged by EEs and, when they are, they are easily defeated by ERs.

True

False

17. OVERTIME PAY

An EE who is paid on a salary rather than hourly basis cannot be entitled to overtime pay.

True

False

17. OVERTIME PAY

General rule: ER must pay OT after 40 hours

- 4 Most Popular Exemptions:

- “Outside salesperson”
- “Executive”
- “Professional”
- “Administrative”

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18. SOCIAL MEDIA (#1)

It is not illegal for an ER to check a job applicant’s social media pages during the hiring process.

True

False

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19. SOCIAL MEDIA (#2)

An ER can legally fire an EE who posts negative comments and complaints on Facebook about his supervisor or ER.

True

False

Depends

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19. SOCIAL MEDIA (#2)

2 Rules:

- An ER cannot discipline an EE for their social media post if it constituted "protected concerted activity"
- An ER can discipline an EE for a post that is threatening, discrimination or slander

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20. INVESTIGATIONS

It is illegal to ask an EE to refrain from discussing ongoing internal investigation matters with co-workers until after the investigation is concluded.

True

False

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20. INVESTIGATIONS

Banner Health, NLRB No. 28-CA-123438

To justify ER's request that an EE not discuss matter with other EE's, ER must show in this specific situation that request is needed to:

1. Protect witnesses,
2. Keep evidence from being destroyed,
3. Keep testimony from being fabricated, or
4. Keep a cover-up from taking place

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21. SHORTENING STATUTES OF LIMITATION

An ER and EE can enter into an enforceable agreement that shortens the statutes of limitation on their claims to 180 days.

True

False



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22. LITIGATION

Employment litigation is fun and relaxing so you should not worry about complying with the labor and employment laws.

True

False



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Thank you!



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PRACTICE AREAS

Employment Litigation
Personnel Policies and Practices
Preventative Employment Practices
Wage and Hour

BAR ADMISSION

Oregon, 1988
Washington, 1989
Idaho, 2006
Utah, 2006
Michigan, 1983
Ninth Circuit Court of Appeals, 1992
U.S. District Courts for Oregon,
Eastern and Western Washington and
Michigan

EDUCATION

J.D., University of Oregon, 1983
B.A., Albion College, 1980

Dave Riewald has always been intrigued by the way people interact in the workplace. As the son of an industrial psychologist, Dave grew up hearing stories, good and bad, about the employees of his father's clients. While attending law school, Dave realized that he could positively impact problems in the workplace by entering the world of labor and employment law.

For over 30 years Dave has specialized in labor and employment law. His practice focuses on advising employers and management personnel on how to avoid employment lawsuits, and on defending them in court if they do become caught up in those lawsuits. His clients rely on him to provide them with sound advice to prevent issues before they become bigger problems. When clients are faced with lawsuits, Dave has a strong track record of successfully helping them achieve favorable outcomes.

Dave is the immediate past President of Worklaw® Network, an international network of independent law firms with over 350 attorneys that limit their practice to management-side labor and employment law. He also has served as an adjunct professor of employment discrimination law at Willamette University's School of Law. Currently Dave serves on the Leadership Council for the Oregon Chapter of the National Federation of Independent Business.

When he is not practicing law he is serving in the community; Dave is a panel member for a local Youth Diversion Program that seeks to prevent youth from becoming repeat criminal offenders. He also is active with a food bank known as Birch Community Services, with his church, and with his children's sports teams and he was for many years the president of the Wilsonville Basketball Association. For fun Dave enjoys working out at the gym, trying to fix the things that constantly break around his house, and helping things grow in his yard.

Dave has been with Bullard Law since 1987, and currently serves on its management committee.