Rethinking discrimination and harassment policies and trainings

Oregon’s Workplace Fairness Act (Senate Bill 726) will take effect on Oct. 1, 2020. It expands the statute of limitations for filing a discrimination or harassment claim from the current one-year standard to a new five-year deadline (from the date on which the alleged unlawful practice occurred). The act also makes it illegal for an employer to enter into an agreement with a current or prospective employee that contains a nondisclosure provision, a non-disparagement provision, or any other provision that prevents the employee from disclosing or discussing conduct that constitutes covered discrimination that includes but is not limited to sexual assault.

The only exceptions to this new blanket rule are that those provisions are still permissible if: (a) the employee alleging a violation of those laws requests one or more of those provisions be included in the agreement; or (b) the employer reaches a good faith determination that the manager involved in the alleged unlawful practice is aggrieved may request a nondisclosure agreement (and defines nondisclosure agreements); (c) states that an employee who is aggrieved may request a nondisclosure agreement in the agreement, and may revoke the agreement within seven days of signing it; and (e) advises employees to document incidents of discrimination and harassment.

The Oregon’s Workplace Fairness Act does not mandate that employers provide discrimination and harassment trainings, employers would be wise to update trainings as they work to incorporate revised written policies.

### New written policy requirements

The Workplace Fairness Act also requires every Oregon employer to adopt a written policy containing procedures and practices for the reduction and prevention of discrimination and harassment, including sexual assault. In particular, every employer must have a written policy that: (a) provides a process for reporting prohibited conduct; (b) includes the name of one person and one alternate who are responsible for receiving reports; (c) includes information about the relevant statute of limitations; (d) reaffirms that an employer cannot require employees to sign a nondisclosure agreement (and defines nondisclosure agreements); (e) states that an employee who is aggrieved may request a nondisclosure or non-disparagement agreement in the agreement, and may revoke the agreement within seven days of signing it; and (e) advises employees to document incidents of discrimination and harassment.

The written policy must also explicitly prohibit discrimination and sexual assault, be made available to employees and provided to new hires, and be provided in writing whenever an employee brings forth a complaint or allegation of discrimination or harassment. Employers are required to not only have a written policy, but also consider how their training programs should be updated to ensure they remain current on cutting-edge issues, such as power dynamics, consent, and the role of active bystanders in ensuring a professional and respectful work environment.

Andrew Schpak is co-managing partner of Barran Liebman LLP. He represents and advises management in a variety of employment law matters. Contact him at 503-782-2356 or asciphy@barran.com.