

IT'S NO "BARGAIN" IF IT VIOLATES THE LAW

QUESTION: We are a manufacturing company and are in the process of renegotiating our collective bargaining agreement with the union that represents our employees. We have manufacturing plants in several other states as well as here in Oregon.

There are a couple of areas in which the union representatives proposed revisions and additions to the contract, and our local management team is concerned that we are unable/cannot agree to the items/issues based on the fact that Oregon state laws apply that are different from the other states where plants are located.

One area is rest breaks. It would be beneficial for the employees and the efficiency of our manufacturing operations if we could agree to the union's proposal, but some members of the management team insist that Oregon's laws regarding breaks do not offer the flexibility that would be necessary to follow the union's proposed rest and meal breaks schedule.

Would Oregon law trump a collective bargaining agreement between us and our employees about rest and meal breaks?

ANSWER: As long as the terms of the collective bargaining agreement specifically prescribe rules concerning rest and meal periods, the rest and meal period provisions of Oregon law do not apply.

And since you are involved in the bargaining process, you may be interested in some of the other notable exceptions incorporated in Oregon laws that apply to collectively bargained agreements. We've summarized the most important ones below:

Final paycheck rules

If a union agreement provides for payment of wages upon termination, the final pay provisions of the law do not apply (pursuant to ORS 652.140(5)). These are the laws that outline the time limits that apply to employers providing the final paycheck to employees, depending on the type of separation from employment and whether the employee has provided notice to the employer.

Maximum hours of work and overtime requirements for manufacturing occupations

As we saw in last week's column, employees in manufacturing establishments cannot be made to work more than 13 hours in a 24 hour period. In addition, these employees must be paid overtime for all hours worked after the 10th hour in a day. But employees who are represented by a collective bargaining agreement are excluded from these requirements, as long as limits on the required hours of work and overtime payment have been addressed in the agreement (pursuant to ORS 652.020(4)).

Workers' compensation reinstatement and reemployment rights

An injured worker's right of reinstatement to the employee's former position (pursuant to ORS 659A.043), as well as the right to reemployment in an available and suitable position (pursuant to ORS 659A.046) following a compensable on-the-job injury, are subject to provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement (pursuant to ORS 659A.043(2) and ORS 659A.046(4) respectively).

Restricting use of tobacco in non-working hours

Although it is an unlawful employment practice for an employer to require, as a condition of employment, that applicants and employees refrain from using lawful tobacco products during non-working hours (except when the restriction relates to a bona fide occupational requirement), an exception applies if a collective bargaining agreement prohibits off-duty use of tobacco products (pursuant to ORS 659A.315).

For more information on this and other issues affecting Oregon employers (including seminars presented by our Technical Assistance Unit), please visit our website at www.oregon.gov/boli/ta. You can also call us 971-673-0824.

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