Commissioner Brad Avakian

Bureau of Labor and Industries

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CONTACTS: Kate Newhall, 503-467-1665

New Federal Family Leave Regulations Effective Today, Avakian Wants Public Comment on Conforming Rules

Major changes in federal rules prompt State Labor Commissioner to seek public comment

PORTLAND – New federal family leave regulations were implemented today by the U.S. Department of Labor, which enforces the Family and Medical Leave Act (FMLA). The new federal regulations are applicable to Oregon employers of 50 or more employees, who are required to comply with both FMLA and the Oregon Family Leave Act (OFLA). Upon review by the Oregon Bureau of Labor and Industries (BOLI), which enforces OFLA protections, several inconsistencies have been identified between state requirements and the new FMLA regulations. In response, BOLI Commissioner Brad Avakian announced today his intention to hold informational hearings in February to gather public comment on the new differences between OFLA and FMLA.

"We need to ensure Oregon leave law remains strong, but we also need to facilitate employer compliance and reduce confusion for those employers covered by both OFLA and FMLA," said Commissioner Avakian. "Careful consideration of the new differences between these laws is necessary, and I want to hear from both employers and employees about the impact of the new federal leave requirements before making changes in Oregon's practices."

The changes to federal rules include the provision of additional leave for military members and their families, which does not conflict with OFLA. In several respects, Oregon law is more generous to employees than federal law. As with all laws pertaining to employment where state and federal standards differ, employers must follow the law most beneficial to the employee. Efforts have been made to ensure as much consistency as possible between the two laws in order to facilitate compliance for employers covered under both, without undercutting any protections for employees covered by Oregon law.

Specific areas of conflict between the new federal law and Oregon law include changes to qualifying serious health conditions, leave entitlements, attendance bonuses, and employer contact with the employee's health care provider. After taking public comment at informational hearings in February 2009, the Bureau will determine if changes to Oregon leave law regulations are necessary. If changes are necessary, the Bureau will begin the formal rulemaking process. Commissioner Avakian specified his intentions in rulemaking are to ensure Oregon employers are able to comply with the more generous standards provided under OFLA without creating overly complicated and conflicting regulations.

"I want Oregon employers to have clear guidance on the applicability of both OFLA and FMLA and how to comply with the new regulations," continued Commissioner Avakian. "Oregon has had a long standing tradition of a more generous family leave benefit, but we need to ensure, under the new federal rule, that employers are able to comply with both standards."

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