

# SPECIAL COMPLIANCE ALERT

December 28, 2007

## NEW OREGON RULES FOR NONCOMPETITION AND ARBITRATION AGREEMENTS

Oregon credit unions' use of noncompetition and arbitration agreements for employees will be subject to significant new rules effective January 1, 2008. Noncompetition agreements can be effective tools for credit unions and CUSOs to protect their market position from top management or key employees being lured to a competitor. Arbitration clauses or agreements can also help credit unions reduce the cost of litigating employment disputes.

However, the Oregon legislature has adopted new rules that extend notice rights to employees and limit employers' use of these important protections. These new rules affect agreements executed on or after January 1, 2008.

### Noncompetition Agreements

In the areas of mortgage and business lending, securities and insurance sales, the use of noncompetition agreements with key employees who build member relationships is critical in protecting the credit union or CUSO's interests.

However, Oregon's limits on the enforceability of such agreements just got narrower. After January 1, 2008, a noncompetition agreement will not be enforceable against an employee unless:

1. For new employees – a written notification about the noncompetition agreement is provided to the new employee at least two weeks before the employee's first day of work;
2. For existing employees – the noncompetition agreement is signed by the employee upon a "bona fide advancement";
3. The employee is exempt from overtime wage laws;
4. The enforcement terms of a noncompetition agreement do not exceed two years; and

In any event, credit unions considering a noncompete agreement with certain employees will need to carefully assess the relationship and assure the agreement is carefully drafted to meet the new requirements.

## NEW OREGON RULES FOR NONCOMPETITION (CONT.)

5. The credit union demonstrates a “protectable interest” that justifies the noncompetition restriction upon the employee. Generally in order to establish a protectable interest under the new law, the credit union must meet the following requirements:

- The employee must have access to sensitive confidential business or proprietary information; and
- The employee’s annual gross salary exceeds \$61,945 (the median family income for a 4-person family).

Under the new law, employers can still enforce noncompete agreements against non-exempt employees or those making less than the threshold amount, if the employer is willing to pay the employee 50% of their salary or the median income during the enforcement term.

In any event, credit unions considering a noncompetition agreement with certain employees will need to carefully assess the relationship and assure the agreement is carefully drafted to meet the new requirements.

### **Nondisclosure and Nonsolicitation Agreements Unaffected**

Fortunately, the new Oregon rules do not affect another tool that credit unions and CUSOs frequently use with key employees: nondisclosure and nonsolicitation agreements. Nondisclosure agreements restrict the employee from disclosing proprietary credit union information such as a list of mortgage borrowers, insurance policy holders, or business clients to a new employer or using any related information to contact or solicit members from the credit union. Nonsolicitation clauses prohibit the employee from soliciting existing clients.

After January 1, 2008, credit union employers can still enforce nondisclosure and nonsolicitation clauses with employees who have not signed a noncompetition agreement as part of an employment severance agreement.

### **Arbitration Agreements**

Many employment contracts include arbitration clauses that require employees to agree to arbitrate any employment contract disputes. The new Oregon rules now require a two week notification of an arbitration clause or agreement before a new employee begins work or upon an existing employee’s bona fide advancement.

Credit unions and CUSOs that have used noncompetition agreements or arbitration clauses in the past or are considering such protections for the future must be aware of the new Oregon rules and carefully prepare these types of employment agreements to ensure enforceability and protection of your interests.

*Please feel free to contact any of the credit union attorneys at Farleigh Witt with any questions regarding these new Oregon rules or in preparing your employment or compensation related agreements with your key employees.*

*Brian Witt*

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