

Enrolled House Bill 2255

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Dan Gardner)

CHAPTER

AN ACT

Relating to employment discrimination based on employee taking wage-related actions; creating new provisions; and amending ORS 652.355, 653.060 and 659A.885.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 652.355 is amended to read:

652.355. (1) *[No employer shall]* **An employer may not** discharge or in any other manner discriminate against *[any]* **an** employee because:

(a) The employee has made a wage claim or discussed, inquired about or consulted an attorney or agency about a wage claim.

(b) The employee has caused to be instituted any proceedings under or related to ORS 652.310 to 652.414.

(c) The employee has testified or is about to testify in any such proceedings.

[(2) Any person who discharges or discriminates against an employee in violation of subsection (1) of this section shall be liable to the employee discharged or discriminated against for actual damages or \$200, whichever is greater. In any action under this subsection, the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees.]

(2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A person unlawfully discriminated against under this section may file a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries.

SECTION 2. ORS 653.060 is amended to read:

653.060. (1) *[No employer shall]* **An employer may not** discharge or in any other manner discriminate against *[any]* **an** employee **because:**

[(1)] (a) *[Because]* The employee has made complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261.

[(2)] (b) *[Because]* The employee has caused to be instituted or is about to cause to be instituted any proceedings under or related to ORS 653.010 to 653.261.

[(3)] (c) *[Because]* The employee has testified or is about to testify in any such proceedings.

(2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A person unlawfully discriminated against under this section may file a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries.

SECTION 3. ORS 659A.885 is amended to read:

659A.885. (1) Any individual claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and such other equitable relief as may be appropriate, includ-

ing but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 171.120, 399.235, 476.574, **652.355, 653.060**, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 (1) or (3).

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262, 659A.318 or 659A.421 (1) or (3):

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

[4] (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

[5] (6) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any person acting on behalf of *[such]* **the** place or by any person aiding or abetting *[such]* **the** place or person in violation of ORS 659A.406 may bring an action against the operator or manager of *[such]* **the** place, the employee or person acting on behalf of *[such]* **the** place or the aider or abettor of *[such]* **the** place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

SECTION 4. The amendments to ORS 652.355, 653.060 and 659A.885 by sections 1 to 3 of this 2007 Act apply only to discriminatory acts occurring on or after the effective date of this 2007 Act.

Passed by House March 29, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 17, 2007

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President of Senate

Received by Governor:

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Approved:

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State