

**Enrolled**  
**House Bill 2460**

Sponsored by Representatives HOLVEY, ROSENBAUM, SCHAUFLER

CHAPTER .....

AN ACT

Relating to Oregon family leave; creating new provisions; and amending ORS 659A.043, 659A.046, 659A.150 and 659A.162.

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

**SECTION 1.** ORS 659A.150 is amended to read:

659A.150. As used in ORS 659A.150 to 659A.186:

- (1) "Covered employer" means an employer described in ORS 659A.153.
- (2) "Eligible employee" means any employee of a covered employer other than those employees exempted under the provisions of ORS 659A.156.
- (3) "Family leave" means a leave of absence described in ORS 659A.159, **except that "family leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.**
- (4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.
- (5) "Health care provider" means:
  - (a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:
    - (A) A physician licensed to practice medicine under ORS 677.110, including a doctor of osteopathy;
    - (B) A podiatrist licensed under ORS 677.825;
    - (C) A dentist licensed under ORS 679.090;
    - (D) A psychologist licensed under ORS 675.030;
    - (E) An optometrist licensed under ORS 683.070;
    - (F) A naturopath licensed under ORS 685.080;
    - (G) A registered nurse licensed under ORS 678.050;
    - (H) A nurse practitioner certified under ORS 678.375;
    - (I) A direct entry midwife licensed under ORS 687.420;
    - (J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;
    - (K) A clinical social worker licensed under ORS 675.530; or
    - (L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(6) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy, or period of absence for prenatal care.

**SECTION 2.** ORS 659A.162 is amended to read:

659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee is entitled to up to 12 weeks of family leave within any one-year period.

(2)(a) In addition to the 12 weeks of leave authorized by subsection (1) of this section, [a] **eligible** female employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the **eligible** employee from performing any available job duties offered by the employer.

(b) An **eligible** employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

(3) When two family members work for the same covered employer, the **eligible** employees may not take concurrent family leave unless:

(a) One employee needs to care for the other employee who is suffering from a serious health condition; or

(b) One employee needs to care for a child who has a serious health condition while the other employee is also suffering a serious health condition.

(4) An **eligible** employee may take family leave for the purposes specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(5) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

**(6) A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.**

[6] (7) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an **eligible** employee or a family member of the **eligible** employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this subsection shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek will not result in the loss of an **eligible** employee's exempt status under the federal Fair Labor Standards Act.

**SECTION 3. The amendments to ORS 659A.150 and 659A.162 by sections 1 and 2 of this 2007 Act apply only to periods of family leave taken on or after the effective date of this 2007 Act.**

**SECTION 4.** ORS 659A.043 is amended to read:

659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is available even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position that is vacant and suitable. A certificate by the attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 that the physician or nurse practitioner approves the worker's return to

the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(E) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years elapse from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

**(4) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(a)(D) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:**

**(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and**

**(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.**

[4] (5) Any violation of this section is an unlawful employment practice.

**SECTION 5.** ORS 659A.043, as amended by section 22, chapter 811, Oregon Laws 2003, and section 470, chapter 22, Oregon Laws 2005, is amended to read:

659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is available even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position that is vacant and suitable. A certificate by the attending physician that the physician approves the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(E) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years elapse from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

**(4) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(a)(D) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:**

**(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and**

**(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.**

[4] (5) Any violation of this section is an unlawful employment practice.

**SECTION 6.** ORS 659A.046 is amended to read:

659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Notwithstanding subsection (1) of this section, the right to reemployment under this section terminates when whichever of the following events first occurs:

(a) The worker cannot return to reemployment at any position with the employer either by determination of the attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 or upon appeal of that determination, by determination of a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

(b) The worker is eligible and participates in vocational assistance under ORS 656.340.

(c) The worker accepts suitable employment with another employer after becoming medically stationary.

(d) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(e) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has released the worker for reemployment unless the worker requests reemployment within that time period.

(f) Three years elapse from the date of injury.

(4) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

**(5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:**

**(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and**

**(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.**

[(5)] (6) Any violation of this section is an unlawful employment practice.

[(6)] (7) This section applies only to employers who employ six or more persons.

**SECTION 7.** ORS 659A.046, as amended by section 24, chapter 811, Oregon Laws 2003, is amended to read:

659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Notwithstanding subsection (1) of this section, the right to reemployment under this section terminates when whichever of the following events first occurs:

(a) The worker cannot return to reemployment at any position with the employer either by determination of the attending physician or upon appeal of that determination, by determination of a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

(b) The worker is eligible and participates in vocational assistance under ORS 656.340.

(c) The worker accepts suitable employment with another employer after becoming medically stationary.

(d) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(e) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for reemployment unless the worker requests reemployment within that time period.

(f) Three years elapse from the date of injury.

(4) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

**(5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:**

**(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and**

**(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.**

[(5)] (6) Any violation of this section is an unlawful employment practice.

[(6)] (7) This section applies only to employers who employ six or more persons.

**SECTION 8.** The amendments to ORS 659A.043 and 659A.046 by sections 4 to 7 of this 2007 Act apply only to refusals of employment under ORS 659A.043 (3)(a)(D) and 659A.046 (3)(d) that occur after the effective date of this 2007 Act.

**Passed by House March 7, 2007**

**Repassed by House June 8, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 6, 2007**

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President of Senate

**Received by Governor:**

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

**Approved:**

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

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Governor

**Filed in Office of Secretary of State:**

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

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Secretary of State