

A-Engrossed
House Bill 2460

Ordered by the Senate June 4
Including Senate Amendments dated June 4

Sponsored by Representatives HOLVEY, ROSENBAUM, SCHAUFLEER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Redefines "family leave" to exclude leave taken by employee who is unable to work because of disabling compensable injury under Workers' Compensation Law. **Provides conditions for use of family leave.**

A BILL FOR AN ACT

1
2 Relating to Oregon family leave; creating new provisions; and amending ORS 659A.043, 659A.046,
3 659A.150 and 659A.162.

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

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

6 659A.150. As used in ORS 659A.150 to 659A.186:

7 (1) "Covered employer" means an employer described in ORS 659A.153.

8 (2) "Eligible employee" means any employee of a covered employer other than those employees
9 exempted under the provisions of ORS 659A.156.

10 (3) "Family leave" means a leave of absence described in ORS 659A.159, **except that "family**
11 **leave" does not include leave taken by an eligible employee who is unable to work because**
12 **of a disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.**

13 (4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent
14 or child of the employee, a parent-in-law of the employee or a person with whom the employee was
15 or is in a relationship of in loco parentis.

16 (5) "Health care provider" means:

17 (a) A person who is primarily responsible for providing health care to an eligible employee or
18 a family member of an eligible employee, who is performing within the scope of the person's pro-
19 fessional license or certificate and who is:

20 (A) A physician licensed to practice medicine under ORS 677.110, including a doctor of
21 osteopathy;

22 (B) A podiatrist licensed under ORS 677.825;

23 (C) A dentist licensed under ORS 679.090;

24 (D) A psychologist licensed under ORS 675.030;

25 (E) An optometrist licensed under ORS 683.070;

26 (F) A naturopath licensed under ORS 685.080;

27 (G) A registered nurse licensed under ORS 678.050;

28 (H) A nurse practitioner certified under ORS 678.375;

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (I) A direct entry midwife licensed under ORS 687.420;

2 (J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse
3 midwife nurse practitioner;

4 (K) A clinical social worker licensed under ORS 675.530; or

5 (L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic
6 physician provides treatment consisting of manual manipulation of the spine to correct a subluxation
7 demonstrated to exist by X-rays.

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

11 (6) "Serious health condition" means:

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

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

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

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

19 659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee
20 is entitled to up to 12 weeks of family leave within any one-year period.

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

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

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

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

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

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

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

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

41 [(6)] (7) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing
42 when family leave for a serious health condition of an **eligible** employee or a family member of the
43 **eligible** employee may be taken intermittently or by working a reduced workweek. Rules adopted
44 by the commissioner under this subsection shall allow taking of family leave on an intermittent basis
45 or by use of a reduced workweek to the extent permitted by federal law and to the extent that

1 taking family leave on an intermittent basis or by use of a reduced workweek will not result in the
2 loss of an **eligible** employee's exempt status under the federal Fair Labor Standards Act.

3 **SECTION 3. The amendments to ORS 659A.150 and 659A.162 by sections 1 and 2 of this**
4 **2007 Act apply only to periods of family leave taken on or after the effective date of this 2007**
5 **Act.**

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

7 659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the
8 worker's employer to the worker's former position of employment upon demand for such rein-
9 statement, if the position exists and is available and the worker is not disabled from performing the
10 duties of such position. A worker's former position is available even if that position has been filled
11 by a replacement while the injured worker was absent. If the former position is not available, the
12 worker shall be reinstated in any other existing position that is vacant and suitable. A certificate
13 by the attending physician or a nurse practitioner authorized to provide compensable medical ser-
14 vices under ORS 656.245 that the physician or nurse practitioner approves the worker's return to
15 the worker's regular employment or other suitable employment shall be prima facie evidence that
16 the worker is able to perform such duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 **(4) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under**
44 **subsection (3)(a)(D) of this section and who otherwise is entitled to family leave under ORS**
45 **659A.150 to 659A.186:**

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

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

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

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

8 659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the
9 worker's employer to the worker's former position of employment upon demand for such rein-
10 statement, if the position exists and is available and the worker is not disabled from performing the
11 duties of such position. A worker's former position is available even if that position has been filled
12 by a replacement while the injured worker was absent. If the former position is not available, the
13 worker shall be reinstated in any other existing position that is vacant and suitable. A certificate
14 by the attending physician that the physician approves the worker's return to the worker's regular
15 employment or other suitable employment shall be prima facie evidence that the worker is able to
16 perform such duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 **(4) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under**
43 **subsection (3)(a)(D) of this section and who otherwise is entitled to family leave under ORS**
44 **659A.150 to 659A.186:**

45 **(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186**

1 **upon refusing the offer of employment; and**

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

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

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

6 659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing
7 the duties of the worker's former regular employment shall, upon demand, be reemployed by the
8 worker's employer at employment which is available and suitable.

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

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

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

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

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

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

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

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

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

31 **(5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under**
32 **subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS**
33 **659A.150 to 659A.186:**

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

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

38 [(5)] (6) Any violation of this section is an unlawful employment practice.

39 [(6)] (7) This section applies only to employers who employ six or more persons.

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

42 659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing
43 the duties of the worker's former regular employment shall, upon demand, be reemployed by the
44 worker's employer at employment which is available and suitable.

45 (2) A certificate of the worker's attending physician that the worker is able to perform described

1 types of work shall be prima facie evidence of such ability.

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

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

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

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

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

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

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

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

19 **(5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under**
20 **subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS**
21 **659A.150 to 659A.186:**

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

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

26 [(5)] (6) Any violation of this section is an unlawful employment practice.

27 [(6)] (7) This section applies only to employers who employ six or more persons.

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

31