

SENATE AMENDMENTS TO HOUSE BILL 2460

By COMMITTEE ON COMMERCE

June 4

- 1 On page 1 of the printed bill, line 2, after “ORS” insert “659A.043, 659A.046.”
- 2 On page 3, after line 1, insert:
- 3 “**SECTION 4.** ORS 659A.043 is amended to read:
- 4 “659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the
- 5 worker’s employer to the worker’s former position of employment upon demand for such rein-
- 6 statement, if the position exists and is available and the worker is not disabled from performing the
- 7 duties of such position. A worker’s former position is available even if that position has been filled
- 8 by a replacement while the injured worker was absent. If the former position is not available, the
- 9 worker shall be reinstated in any other existing position that is vacant and suitable. A certificate
- 10 by the attending physician or a nurse practitioner authorized to provide compensable medical ser-
- 11 vices under ORS 656.245 that the physician or nurse practitioner approves the worker’s return to
- 12 the worker’s regular employment or other suitable employment shall be prima facie evidence that
- 13 the worker is able to perform such duties.
- 14 “(2) Such right of reemployment shall be subject to the provisions for seniority rights and other
- 15 employment restrictions contained in a valid collective bargaining agreement between the employer
- 16 and a representative of the employer’s employees.
- 17 “(3) Notwithstanding subsection (1) of this section:
- 18 “(a) The right to reinstatement to the worker’s former position under this section terminates
- 19 when whichever of the following events first occurs:
- 20 “(A) A medical determination by the attending physician or, after an appeal of such determi-
- 21 nation to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made
- 22 that the worker cannot return to the former position of employment.
- 23 “(B) The worker is eligible and participates in vocational assistance under ORS 656.340.
- 24 “(C) The worker accepts suitable employment with another employer after becoming medically
- 25 stationary.
- 26 “(D) The worker refuses a bona fide offer from the employer of light duty or modified employ-
- 27 ment that is suitable prior to becoming medically stationary.
- 28 “(E) Seven days elapse from the date that the worker is notified by the insurer or self-insured
- 29 employer by certified mail that the worker’s attending physician or a nurse practitioner authorized
- 30 to provide compensable medical services under ORS 656.245 has released the worker for employment
- 31 unless the worker requests reinstatement within that time period.
- 32 “(F) Three years elapse from the date of injury.
- 33 “(b) The right to reinstatement under this section does not apply to:
- 34 “(A) A worker hired on a temporary basis as a replacement for an injured worker.
- 35 “(B) A seasonal worker employed to perform less than six months’ work in a calendar year.

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

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

5 “(4) **Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under**
6 **subsection (3)(a)(D) of this section and who otherwise is entitled to family leave under ORS**
7 **659A.150 to 659A.186:**

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

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

12 “[4] (5) Any violation of this section is an unlawful employment practice.

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

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

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

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

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

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

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

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

36 “(D) The worker refuses a bona fide offer from the employer of light duty or modified employ-
37 ment that is suitable prior to becoming medically stationary.

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

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

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

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

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

45 “(C) A worker whose employment at the time of injury resulted from referral from a hiring hall

1 operating pursuant to a collective bargaining agreement.

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

4 “(4) **Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under**
5 **subsection (3)(a)(D) of this section and who otherwise is entitled to family leave under ORS**
6 **659A.150 to 659A.186:**

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

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

11 “[4] (5) Any violation of this section is an unlawful employment practice.

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

13 “659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing
14 the duties of the worker’s former regular employment shall, upon demand, be reemployed by the
15 worker’s employer at employment which is available and suitable.

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

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

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

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

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

28 “(d) The worker refuses a bona fide offer from the employer of light duty or modified employ-
29 ment that is suitable prior to becoming medically stationary.

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

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

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

38 “(5) **Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under**
39 **subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS**
40 **659A.150 to 659A.186:**

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

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

45 “[5] (6) Any violation of this section is an unlawful employment practice.

1 “[6] (7) This section applies only to employers who employ six or more persons.

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

4 “659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing
5 the duties of the worker’s former regular employment shall, upon demand, be reemployed by the
6 worker’s employer at employment which is available and suitable.

7 “(2) A certificate of the worker’s attending physician that the worker is able to perform de-
8 scribed types of work shall be prima facie evidence of such ability.

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

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

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

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

17 “(d) The worker refuses a bona fide offer from the employer of light duty or modified employ-
18 ment that is suitable prior to becoming medically stationary.

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

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

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

26 “**(5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under**
27 **subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS**
28 **659A.150 to 659A.186:**

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

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

33 “[5] (6) Any violation of this section is an unlawful employment practice.

34 “[6] (7) This section applies only to employers who employ six or more persons.

35 “**SECTION 8. The amendments to ORS 659A.043 and 659A.046 by sections 4 to 7 of this**
36 **2007 Act apply only to refusals of employment under ORS 659A.043 (3)(a)(D) and 659A.046**
37 **(3)(d) that occur after the effective date of this 2007 Act.”.**

38