

Senate Bill 249

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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 **as introduced**.

Establishes test for causation in civil actions for alleged discrimination. Allows compensatory and punitive damages and other relief for unlawful practices of discrimination. Provides that remedies available for violation of antidiscrimination statutes are in addition to common law remedies and other available remedies.

Prohibits retaliation or discrimination against individual because individual inquired about family leave, submitted request for family leave or invoked any provision of family leave law.

A BILL FOR AN ACT

1
2 Relating to unlawful practices of discrimination; creating new provisions; and amending ORS
3 652.230, 652.355, 659A.183, 659A.259, 659A.860, 659A.885 and 659A.890.

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

5 **SECTION 1.** ORS 652.230 is amended to read:

6 652.230. (1) Any employee whose compensation is at a rate that is in violation of ORS 652.220
7 [*shall have*] **has** a right of action against the employer for the recovery of:

8 (a) The amount of the unpaid wages to which the employee is entitled for the one year period
9 preceding the commencement of the action; and

10 (b) An additional amount as liquidated damages equal to the amount referred to in paragraph
11 (a) of this subsection.

12 (2) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under
13 this section. The court may award reasonable attorney fees and expert witness fees incurred by a
14 defendant who prevails in the action if the court determines that the plaintiff had no objectively
15 reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse
16 decision of a trial court.

17 (3) The action for the unpaid wages and liquidated damages may be maintained by one or more
18 employees on behalf of themselves or other employees similarly situated.

19 (4) [*No*] **An** agreement for compensation at a rate less than the rate to which such employee is
20 entitled under ORS 652.210 to 652.230 is **not** a defense to [*any*] **an** action under ORS 652.210 to
21 652.230.

22 (5) **In an action under this section, the test for causation is whether the act, omission,**
23 **motive or other causative factor at issue was a substantial factor in producing or bringing**
24 **about the result, harm, injury or damage at issue. A substantial factor is an important factor**
25 **and not an insignificant factor.**

26 **SECTION 2.** ORS 652.355 is amended to read:

27 652.355. (1) [*No employer shall*] **An employer may not** discharge or in any other manner dis-
28 criminate against [*any*] **an** employee because:

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

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

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

6 (2) Any person who discharges or discriminates against an employee in violation of subsection
7 (1) of this section *[shall be]* is liable to the employee discharged or discriminated against for actual
8 damages or \$200, whichever is greater. In *[any]* an action under this subsection[,]:

9 (a) **The test for causation is whether the act, omission, motive or other causative factor**
10 **at issue was a substantial factor in producing or bringing about the result, harm, injury or**
11 **damage at issue. A substantial factor is an important factor and not an insignificant factor.**

12 (b) The court may award to the prevailing party, in addition to costs and disbursements, rea-
13 sonable attorney fees.

14 **SECTION 3. Section 4 of this 2007 Act is added to and made a part of ORS chapter 659.**

15 **SECTION 4. An individual claiming to be aggrieved by conduct in violation of any pro-**
16 **vision of this chapter may file a civil action in circuit court. In an action under this section,**
17 **the test for causation is whether the act, omission, motive or other causative factor at issue**
18 **was a substantial factor in producing or bringing about the result, harm, injury or damage**
19 **at issue. A substantial factor is an important factor and not an insignificant factor.**

20 **SECTION 5.** ORS 659A.885 is amended to read:

21 659A.885. (1) *[Any]* **An** individual claiming to be aggrieved by an unlawful practice specified in
22 subsection (2) of this section may file a civil action in circuit court. In *[any]* **an** action under this
23 subsection[,]:

24 (a) **At the request of a party, the action shall be tried to a jury.**

25 (b) The court may order injunctive relief and such other equitable relief as may be appropriate,
26 including but not limited to reinstatement or the hiring of employees with or without back pay.
27 **[A] The** court may order back pay *[in an action under this subsection]* only for the two-year period
28 immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the
29 Bureau of Labor and Industries[,], or, if a complaint was not filed before the action was commenced,
30 the two-year period immediately preceding the filing of the action.

31 (c) **In addition to the relief authorized under paragraph (b) of this subsection, the trier**
32 **of fact may award compensatory damages or \$200, whichever is greater, and punitive dam-**
33 **ages.**

34 (d) *[In any action under this subsection,]* The court may allow the prevailing party costs and
35 reasonable attorney fees at trial and on appeal. **Any attorney fee agreement is subject to ap-**
36 **proval by the court. [Except as provided in subsection (3) of this section:]**

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

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

40 (e) **Upon appeal of a judgment finding a violation, the appellate court shall review the**
41 **judgment pursuant to the standard established by ORS 19.415 (1).**

42 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
43 25.337, 25.424, 171.120, 399.235, 476.574, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069,
44 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233,
45 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 (1) or

1 (3).

2 [(3) *In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,*
3 *659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262,*
4 *659A.318 or 659A.421 (1) or (3):]*

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

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

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

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

11 [(4) *In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,*
12 *659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)*
13 *of this section, compensatory damages or \$250, whichever is greater.]*

14 [(5)] (3) [Any] **An** individual against whom any distinction, discrimination or restriction on ac-
15 count of race, color, religion, sex, national origin, marital status or age, if the individual is 18 years
16 of age or older, has been made by [any] a place of public accommodation, as defined in ORS
17 659A.400, by [any] a person acting on behalf of [such] **the** place or by [any] a person aiding or
18 abetting [such] **the** place or person in violation of ORS 659A.406 may bring an action against the
19 operator or manager of [such] **the** place, the employee or person acting on behalf of [such] **the** place
20 or the aider or abettor of [such] **the** place or person. [Notwithstanding subsection (1) of this
21 section,] In an action under this subsection:

22 (a) The court may award[, *in addition to the relief authorized under subsection (1) of this section,*
23 *compensatory and punitive damages;]* **the relief authorized under subsection (1)(b) of this sec-**
24 **tion.**

25 **(b) The trier of fact may award the relief authorized under subsection (1)(c) of this sec-**
26 **tion.**

27 [(b)] (c) The operator or manager of the place of public accommodation, the employee or person
28 acting on behalf of the place[, and any aider or abettor [shall be] **of the place or person are** jointly
29 and severally liable for all damages awarded in the action.];]

30 [(c)] (d) At the request of [any] a party, the action shall be tried to a jury.];]

31 [(d)] (e) The court shall award reasonable attorney fees to a prevailing plaintiff.];]

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

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

38 **(4) The remedies provided by this section are in addition to any common law remedy or**
39 **other remedy that may be available to an individual for the conduct constituting a violation**
40 **of ORS 659A.406 or any statute listed in subsection (2) of this section.**

41 **(5) In an action under this section, the test for causation is whether the act, omission,**
42 **motive or other causative factor at issue was a substantial factor in producing or bringing**
43 **about the result, harm, injury or damage at issue. A substantial factor is an important factor**
44 **and not an insignificant factor.**

45 **SECTION 6. Section 4 of this 2007 Act and the amendments to ORS 652.230, 652.355 and**

1 **659A.885 by sections 1, 2 and 5 of this 2007 Act apply only to causes of action arising on or**
 2 **after the effective date of this 2007 Act.**

3 **SECTION 7.** ORS 659A.183 is amended to read:

4 659A.183. [A covered employer who denies family leave to an eligible employee in the manner re-
 5 quired by ORS 659A.150 to 659A.186 commits an unlawful employment practice.] **It is an unlawful**
 6 **practice for a covered employer to:**

7 (1) **Deny family leave to which an eligible employee is entitled under ORS 659A.150 to**
 8 **659A.186; or**

9 (2) **Retaliate or in any way discriminate against an individual with respect to hire or**
 10 **tenure or any other term or condition of employment because the individual has inquired**
 11 **about the provisions of ORS 659A.150 to 659A.186, submitted a request for family leave or**
 12 **invoked any provision of ORS 659A.150 to 659A.186.**

13 **SECTION 8.** The amendments to ORS 659A.183 by section 7 of this 2007 Act apply only
 14 **to conduct by an employer occurring on or after the effective date of this 2007 Act.**

15 **SECTION 9.** ORS 659A.259 is amended to read:

16 659A.259. (1) It is an unlawful employment practice for an employer to expel or evict from
 17 housing referred to in ORS 659A.250 to 659A.262 or to discharge, demote, suspend from employment
 18 or in any other manner discriminate or retaliate against an employee or any member of the em-
 19 ployee's household for the reason that the employee or any member of the employee's household has:

20 (a) Reported or complained concerning possible violations of ORS 659A.250 to 659A.262; or

21 (b) Conferred with or invited to residential areas, any authorized person or invited person.

22 (2) An employee or any member of the employee's household may file a complaint under ORS
 23 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover
 24 the relief as provided by ORS 659A.885 (1) [and (3)].

25 **SECTION 10.** ORS 659A.860 is amended to read:

26 659A.860. (1) The terms and conditions of any order issued by the Commissioner of the Bureau
 27 of Labor and Industries under this chapter, and of any settlement agreement entered into by a re-
 28 spondent under this chapter and signed by a representative of the commissioner, are binding on the
 29 agents and successors in interest of the respondent.

30 (2) The commissioner may relax any terms or conditions of a settlement agreement or of a cease
 31 and desist order issued by the commissioner under this chapter, if the performance of those terms
 32 and conditions would cause undue hardship on the respondent or another person and those terms
 33 and conditions are not essential to protecting the complainant's rights.

34 (3) Any person aggrieved by the violation of the terms and conditions of a cease and desist or-
 35 der, or of any settlement agreement signed by a representative of the commissioner, whether by a
 36 respondent or by any agent or successor in interest of the respondent, may bring a civil action in
 37 the manner provided by ORS 659A.885 [(3)] (1) and recover the same relief as provided by ORS
 38 659A.885 [(3)] (1) for unlawful practices.

39 **SECTION 11.** ORS 659A.890 is amended to read:

40 659A.890. (1) Any person aggrieved by a violation of ORS 659A.865 may bring a civil action in
 41 the manner provided by ORS 659A.885 [(3)] (1) and recover the same relief as provided by ORS
 42 659A.885 [(3)] (1) for unlawful practices.

43 (2) As a defense to any cause of action arising under this section, the defendant may plead and
 44 prove that either:

45 (a) Subsequent to the defendant's conduct on which the plaintiff bases the cause of action, the

1 complaint under ORS 659A.820 has been dismissed by the Commissioner of the Bureau of Labor and
2 Industries or deputy, or the court, either for want of evidence to proceed to a hearing or for lack
3 of merit after such hearing; or

4 (b) In the case of the sale of real property, defendant's conduct giving rise to plaintiff's cause
5 of action was neither committed within the first two years after notice by the commissioner or
6 deputy of the filing of the complaint under ORS 659A.820, nor within any extended period of time
7 obtained at the request of respondent for disposition of the case.

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