

House Bill 2717

Sponsored by Representative THOMPSON

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**.

Allows court to award punitive damages in public employee whistleblower case. Requires court to award attorney fees to prevailing plaintiff in public employee whistleblower case.

Requires Oregon Government Ethics Commission to appoint ombudsman for public employees. Requires ombudsman to act as advocate for public employees by accepting, investigating and attempting to resolve complaints concerning alleged violations of whistleblower laws.

A BILL FOR AN ACT

1
2 Relating to whistleblowing by public employees; creating new provisions; and amending ORS
3 659A.885.

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

5 **SECTION 1.** ORS 659A.885, as amended by section 12, chapter 100, Oregon Laws 2007, section
6 8, chapter 180, Oregon Laws 2007, section 3, chapter 278, Oregon Laws 2007, section 1, chapter 280,
7 Oregon Laws 2007, section 4, chapter 525, Oregon Laws 2007, section 13, chapter 903, Oregon Laws
8 2007, and section 16, chapter 36, Oregon Laws 2008, is amended to read:

9 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice **in violation of a**
10 **statute** specified in subsection (2) of this section may file a civil action in circuit court. In any
11 action under this subsection, the court may order injunctive relief and any other equitable relief
12 that may be appropriate, including but not limited to reinstatement or the hiring of employees with
13 or without back pay. A court may order back pay in an action under this subsection only for the
14 two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Com-
15 missioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action
16 was commenced, the two-year period immediately preceding the filing of the action. In any action
17 under this subsection, the court may allow the prevailing party costs and reasonable attorney fees
18 at trial and on appeal. Except as provided in subsection (3) of this section:

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

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

22 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
23 25.337, 25.424, 171.120, 399.235, 408.230, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043,
24 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203,
25 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.300, 659A.306,
26 659A.309, 659A.315, 659A.318 or 659A.421.

27 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
28 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to
29 659A.262, 659A.318 or 659A.421:

30 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,

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 compensatory damages or \$200, whichever is greater, and punitive damages;

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

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

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

6 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
7 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
8 compensatory damages or \$200, whichever is greater.

9 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
10 659A.203 or 659A.218[.]:

11 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
12 compensatory damages or \$250, whichever is greater, **and punitive damages; and**

13 **(b) The court shall award a prevailing plaintiff costs and reasonable attorney fees at trial**
14 **and on appeal. The amount of attorney fees awarded under this paragraph may not exceed**
15 **the amount of attorney fees paid by the public employer to defend the action.**

16 (6) Any individual against whom any distinction, discrimination or restriction on account of
17 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
18 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
19 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
20 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
21 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
22 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
23 section:

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

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

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

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

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

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

37 (7) When the commissioner or the Attorney General has reasonable cause to believe that a
38 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
39 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
40 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
41 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
42 manner as a person or group of persons may file a civil action under this section. In a civil action
43 filed under this subsection, the court may assess against the respondent, in addition to the relief
44 authorized under subsections (1) and (3) of this section, a civil penalty:

45 (a) In an amount not exceeding \$50,000 for a first violation; and

1 (b) In an amount not exceeding \$100,000 for any subsequent violation.

2 (8) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
3 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
4 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
5 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
6 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
7 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
8 appealing an adverse decision of the trial court.

9 (9) In an action under subsection (1) or (7) of this section alleging a violation of ORS 659A.145
10 or 659A.421 or discrimination under federal housing law:

11 (a) "Aggrieved person" includes a person who believes that the person:

12 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

13 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
14 occur.

15 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
16 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
17 tifies that the case is of general public importance. The court may allow an intervenor prevailing
18 party costs and reasonable attorney fees at trial and on appeal.

19 **SECTION 2. (1) The Oregon Government Ethics Commission shall appoint an ombudsman**
20 **for public employees. The ombudsman is under the supervision and control of the commis-**
21 **sion and the commission may terminate the ombudsman.**

22 **(2) The ombudsman for public employees shall:**

23 **(a) Act as an advocate for public employees by accepting, investigating and attempting**
24 **to resolve complaints concerning alleged unlawful employment practices under ORS 659A.200**
25 **to 659A.224, 659A.230, 659A.233 or 659A.236;**

26 **(b) Provide information to public employees to enable them to protect their rights under**
27 **ORS 659A.200 to 659A.224, 659A.230, 659A.233 and 659A.236; and**

28 **(c) Report to the Governor and the commission in writing at least once each quarter. A**
29 **report shall include a summary of the services that the ombudsman provided during the**
30 **quarter and the ombudsman's recommendations for improving ombudsman services and for**
31 **protecting public employees' rights under ORS 659A.200 to 659A.224, 659A.230, 659A.233 and**
32 **659A.236.**

33 **SECTION 3. The amendments to ORS 659A.885 by section 1 of this 2009 Act apply only**
34 **to civil actions filed on or after the effective date of this 2009 Act.**

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