

House Bill 2748

Sponsored by Representative ESQUIVEL; Representatives GARRARD, HUFFMAN, JENSON, G SMITH, SPRENGER, WHISNANT

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**.

Prohibits public employer from laying off or terminating employee who does not speak Spanish.

A BILL FOR AN ACT

1
2 Relating to employment of public employees who do not speak Spanish; creating new provisions; and
3 amending ORS 659A.885.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 659A.**

6 **SECTION 2. (1) It is an unlawful employment practice for a public employer to lay off**
7 **or terminate the employment of an employee because the employee does not speak Spanish.**

8 **(2) As used in this section, "public employer" has the meaning given that term in ORS**
9 **659A.200.**

10 **SECTION 3. ORS 659A.885, as amended by section 12, chapter 100, Oregon Laws 2007, section**
11 **8, chapter 180, Oregon Laws 2007, section 3, chapter 278, Oregon Laws 2007, section 1, chapter 280,**
12 **Oregon Laws 2007, section 4, chapter 525, Oregon Laws 2007, section 13, chapter 903, Oregon Laws**
13 **2007, and section 16, chapter 36, Oregon Laws 2008, is amended to read:**

14 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
15 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
16 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
17 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
18 court may order back pay in an action under this subsection only for the two-year period imme-
19 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
20 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
21 year period immediately preceding the filing of the action. In any action under this subsection, the
22 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
23 cept as provided in subsection (3) of this section:

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

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

27 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
28 25.337, 25.424, 171.120, 399.235, 408.230, 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043,
29 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203,
30 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.300, 659A.306,
31 659A.309, 659A.315, 659A.318 or 659A.421 **or section 2 of this 2009 Act.**

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 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 2 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to
 3 659A.262, 659A.318 or 659A.421:

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

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

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

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

10 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 11 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 12 compensatory damages or \$200, whichever is greater.

13 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 14 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 15 of this section, compensatory damages or \$250, whichever is greater.

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.
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