

House Bill 3482

Sponsored by Representatives TOMEI, WHISNANT; 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**.

Requires certain employers to allow eligible employees to take unpaid leave to address issues arising from harassment or sexual harassment. Prohibits employer from taking certain employment actions toward individual who is victim of harassment or sexual harassment. Requires employer to make reasonable safety accommodation requested by employee who is victim of harassment or sexual harassment. Makes violation unlawful employment practice.

Allows certain state employees in unclassified or exempt service to be accompanied by individual selected by employee to be present during any interview with employee requested by employer. Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to employment; creating new provisions; amending ORS 659A.270, 659A.272, 659A.280 and
3 659A.290; and declaring an emergency.

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

5 **SECTION 1.** ORS 659A.270 is amended to read:

6 659A.270. As used in ORS 659A.270 to 659A.285:

7 (1) "Covered employer" means an employer who employs six or more individuals in the State
8 of Oregon for each working day during each of 20 or more calendar workweeks in the year in which
9 an eligible employee takes leave to address domestic violence, **harassment**, sexual assault, **sexual**
10 **harassment** or stalking, or in the year immediately preceding the year in which an eligible em-
11 ployee takes leave to address domestic violence, **harassment**, sexual assault, **sexual harassment**
12 or stalking.

13 (2) "Eligible employee" means an employee who:

14 (a) Worked an average of more than 25 hours per week for a covered employer for at least 180
15 days immediately before the date the employee takes leave; and

16 (b) Is a victim of domestic violence, **harassment**, sexual assault, **sexual harassment** or stalk-
17 ing or is the parent or guardian of a minor child or dependent who is a victim of domestic violence,
18 **harassment**, sexual assault, **sexual harassment** or stalking.

19 (3) "Protective order" means an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to
20 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from
21 contact with an eligible employee or the employee's minor child or dependent.

22 (4) "Victim of domestic violence" means:

23 (a) An individual who has been a victim of abuse, as defined in ORS 107.705; or

24 (b) Any other individual designated as a victim of domestic violence by rule adopted under ORS
25 659A.805.

26 (5) "**Victim of harassment**" means:

27 (a) **An individual against whom harassment has been committed as described in ORS**
28 **166.065.**

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 **(b) Any other individual designated as a victim of harassment by rule adopted under ORS**
2 **659A.805.**

3 [(5)] **(6)** “Victim of sexual assault” means:

4 (a) An individual against whom a sexual offense has been committed as described in ORS 163.305
5 to 163.467 or 163.525; or

6 (b) Any other individual designated as a victim of sexual assault by rule adopted under ORS
7 659A.805.

8 **(7) “Victim of sexual harassment” means:**

9 **(a) An individual who has been the victim of discrimination on the basis of sex that**
10 **constitutes sexual harassment; or**

11 **(b) Any other individual designated as a victim of sexual harassment by rule adopted**
12 **under ORS 659A.805.**

13 [(6)] **(8)** “Victim of stalking” means:

14 (a) An individual against whom stalking has been committed as described in ORS 163.732; or

15 (b) Any other individual designated as a victim of stalking by rule adopted under ORS 659A.805.

16 [(7)] **(9)** “Victim services provider” means a prosecutor-based victim assistance program or a
17 nonprofit program offering safety planning, counseling, support or advocacy related to domestic vi-
18 olence, **harassment**, sexual assault, **sexual harassment** or stalking.

19 **SECTION 2.** ORS 659A.272 is amended to read:

20 659A.272. Except as provided in ORS 659A.275, a covered employer shall allow an eligible em-
21 ployee to take reasonable leave from employment for any of the following purposes:

22 (1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of
23 the employee or the employee’s minor child or dependent, including preparing for and participating
24 in protective order proceedings or other civil or criminal legal proceedings related to domestic vi-
25 olence, **harassment**, sexual assault, **sexual harassment** or stalking.

26 (2) To seek medical treatment for or to recover from injuries caused by domestic violence or
27 sexual assault to or **harassment, sexual harassment or** stalking of the eligible employee or the
28 employee’s minor child or dependent.

29 (3) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed
30 mental health professional related to an experience of domestic violence, **harassment**, sexual as-
31 sault, **sexual harassment** or stalking.

32 (4) To obtain services from a victim services provider for the eligible employee or the employee’s
33 minor child or dependent.

34 (5) To relocate or take steps to secure an existing home to ensure the health and safety of the
35 eligible employee or the employee’s minor child or dependent.

36 **SECTION 3.** ORS 659A.280 is amended to read:

37 659A.280. (1) An eligible employee shall give the covered employer reasonable advance notice
38 of the employee’s intention to take leave for the purposes identified in ORS 659A.272, unless giving
39 the advance notice is not feasible.

40 (2) The covered employer may require the eligible employee to provide certification that:

41 (a) The employee or the employee’s minor child or dependent is a victim of domestic violence,
42 **harassment**, sexual assault, **sexual harassment** or stalking; and

43 (b) The leave taken is for one of the purposes identified in ORS 659A.272.

44 (3) The eligible employee shall provide the certification within a reasonable time after receiving
45 the covered employer’s request for the certification.

(4) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the employee’s minor child or dependent was a victim of domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking.

(b) A copy of a protective order or other evidence from a court, **administrative agency** or attorney that the eligible employee appeared in or was preparing for a civil, [or] criminal **or administrative** proceeding related to domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking.

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the employee’s minor child or dependent was undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking.

(5) All records and information kept by a covered employer regarding an eligible employee’s leave under ORS 659A.270 to 659A.285, including the fact that the employee has requested or obtained leave under ORS 659A.272, are confidential and may not be released without the express permission of the employee, unless otherwise required by law.

SECTION 4. ORS 659A.290 is amended to read:

659A.290. (1) As used in this section:

(a) “Reasonable safety accommodation” may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking.

(b) “Victim of domestic violence” has the meaning given that term in ORS 659A.270.

(c) **“Victim of harassment” has the meaning given that term in ORS 659A.270.**

[c] (d) “Victim of sexual assault” has the meaning given that term in ORS 659A.270.

(e) **“Victim of sexual harassment” has the meaning given that term in ORS 659A.270.**

[d] (f) “Victim of stalking” has the meaning given that term in ORS 659A.270.

(2) It is an unlawful employment practice for an employer to:

(a) Refuse to hire an otherwise qualified individual because the individual is a victim of domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking.

(b) Discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an individual with regard to promotion, compensation or other terms, conditions or privileges of employment because the individual is a victim of domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking.

(c) Refuse to make a reasonable safety accommodation requested by an individual who is a victim of domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer, as determined under ORS 659A.121.

(3)(a) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking.

(b) An individual must provide a certification required under paragraph (a) of this subsection within a reasonable time after receiving the employer’s request for certification.

1 (c) Any of the following constitutes sufficient certification:

2 (A) A copy of a police report indicating that the individual was or is a victim of domestic vi-
3 olence, **harassment**, sexual assault, **sexual harassment** or stalking.

4 (B) A copy of a protective order or other evidence from a court, **administrative agency** or at-
5 torney that the individual appeared in or is preparing for a civil, [or] criminal **or administrative**
6 proceeding related to domestic violence, **harassment**, sexual assault, **sexual harassment** or stalk-
7 ing.

8 (C) Documentation from an attorney, law enforcement officer, health care professional, licensed
9 mental health professional or counselor, member of the clergy or victim services provider that the
10 individual was or is undergoing treatment or counseling, obtaining services or relocating as a result
11 of domestic violence, **harassment**, sexual assault, **sexual harassment** or stalking.

12 (d) All records and information kept by an employer regarding a reasonable safety accommo-
13 dation made for an individual are confidential and may not be released without the express permis-
14 sion of the individual, unless otherwise required by law.

15 **SECTION 5. Section 6 of this 2011 Act is added to and made a part of ORS chapter 240.**

16 **SECTION 6. An employee in the state service employed in an unclassified or exempt po-
17 sition who is not a confidential employee, managerial employee or supervisory employee, as
18 defined in ORS 243.650, and who is not represented by an exclusive representative as defined
19 in ORS 243.650 may be accompanied by an individual selected by the employee to be present
20 during any interview with the employee requested by the appointing authority, manager or
21 supervisor of the employee.**

22 **SECTION 7. The amendments to ORS 659A.270, 659A.272, 659A.280 and 659A.290 by
23 sections 1 to 4 of this 2011 Act apply to actions and proceedings commenced before, on or
24 after the effective date of this 2011 Act.**

25 **SECTION 8. This 2011 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
27 on its passage.**

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