

# House Bill 2416

Sponsored by Representative MATTHEWS (Presession filed.)

## 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**.

Makes violation by employer of statute providing for leave of absence by employee who is search and rescue volunteer unlawful employment practice. Authorizes employee to file complaint for violation with Commissioner of Bureau of Labor and Industries or to file civil action.

## A BILL FOR AN ACT

1  
2 Relating to leaves of absence for search and rescue volunteers; creating new provisions; and  
3 amending ORS 659A.885.

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

5 **SECTION 1. (1) Any violation of ORS 404.250 is an unlawful employment practice.**

6 **(2) An employee may file a complaint alleging a violation of ORS 404.250 with the Com-**  
7 **missioner of the Bureau of Labor and Industries under ORS 659A.820. The commissioner**  
8 **shall enforce ORS 404.250 in the manner provided in ORS chapter 659A for the enforcement**  
9 **of other unlawful employment practices.**

10 **(3) Any person claiming to be aggrieved by a violation of ORS 404.250 may bring a civil**  
11 **action in the manner provided in ORS 659A.885.**

12 **SECTION 2.** ORS 659A.885 is amended to read:

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

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

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

26 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS  
27 10.090, 10.092, 25.337, 25.424, 171.120, **404.250**, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,  
28 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
29 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236,  
30 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318,  
31 659A.320 or 659A.421.

**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.082, 659A.103 to 659A.145, 659A.199,  
 3 659A.230, 659A.250 to 659A.262, 659A.290, 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) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,  
 17 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil  
 18 penalty in the amount of \$720.

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

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

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

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

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

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

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

40 (8) When the commissioner or the Attorney General has reasonable cause to believe that a  
 41 person or group of persons is engaged in a pattern or practice of resistance to the rights protected  
 42 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied  
 43 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner  
 44 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same  
 45 manner as a person or group of persons may file a civil action under this section. In a civil action

1 filed under this subsection, the court may assess against the respondent, in addition to the relief  
2 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

12 (10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145  
13 or 659A.421 or discrimination under federal housing law:

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

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

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

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

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