

House Bill 2672

Sponsored by Representative GELSER (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**.

Establishes certain workplace protections for domestic workers. Makes violation unlawful employment practice. Requires Bureau of Labor and Industries to adopt rules related to employment of domestic workers.

A BILL FOR AN ACT

1
2 Relating to employment of domestic workers; creating new provisions; and amending ORS 659A.885.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) **“Domestic service” means services related to the care of persons in private homes**
6 **or the maintenance of private homes or their premises.**

7 (b)(A) **“Domestic worker” means an individual who works in the home of another person**
8 **for the purpose of caring for a child, serving as a companion for a sick, convalescing or el-**
9 **derly person, doing housekeeping or providing any other domestic service.**

10 (B) **“Domestic worker” does not include: for:**

11 (i) **A parent or spouse of the employer.**

12 (ii) **A child of the employer who is under 21 years of age.**

13 (iii) **Students who regularly attend elementary or secondary school during the day.**

14 (iv) **Children, other than children of the employer, who are under 14 years of age.**

15 (v) **Children under 18 years of age who provide babysitting services and persons who**
16 **provide babysitting on a casual basis.**

17 (vi) **Persons under 21 years of age who perform casual labor in private homes or the**
18 **maintenance of private homes or their premises, including but not limited to yard work,**
19 **washing windows and shoveling snow.**

20 (2) **A person employing a domestic worker shall:**

21 (a) **Prior to the date the domestic worker begins employment, on each anniversary of the**
22 **first date of employment and each time the worker's rate of pay changes, provide the do-**
23 **mestic worker with written notice of the expected hours of work, the rate of regular and**
24 **overtime pay, regular paydays, sick leave, vacation leave, personal leave, and holidays.**

25 (b) **Pay the domestic worker an overtime wage at a rate of one and one-half times the**
26 **worker's base rate for hours worked in excess of 40 hours in a calendar week, or in excess**
27 **of 44 hours in a calendar week if the domestic worker lives in the home of the employer.**

28 (c) **Provide the domestic worker 24 consecutive hours of rest each week, which should**
29 **coincide with the employee's day of worship if applicable. If the domestic worker agrees to**
30 **work on the anticipated day of rest, the employer shall pay the employee the overtime rate**
31 **specified in paragraph (b) of this subsection.**

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 (d) If the domestic worker lives in the home of the employer, provide eight hours of un-
2 interrupted sleep time under adequate conditions.

3 (e) Permit the domestic worker to cook the worker's own food.

4 (f) Provide the domestic worker with at least three paid personal leave days off after one
5 year of employment.

6 (g) Keep accurate records of the daily and weekly hours worked by the domestic worker
7 and provide the records to the Bureau of Labor and Industries if requested to do so.

8 (3) A person that employs a domestic worker may not:

9 (a) Request that the domestic worker allow the employer, on either a mandatory or vol-
10 untary basis, to have possession of the worker's passport.

11 (b) Engage in unwelcome sexual advances, request sexual favors or engage in other
12 verbal or physical conduct of a sexual nature directed toward a domestic worker when:

13 (A) Submission to the conduct is made, either explicitly or implicitly, a term or condition
14 of the domestic worker's employment;

15 (B) Submission to or rejection of the conduct by the domestic worker is used as the basis
16 for employment decisions affecting the domestic worker; or

17 (C) The conduct has the purpose or effect of unreasonably interfering with the domestic
18 worker's work performance by creating an intimidating, hostile or offensive work environ-
19 ment.

20 (c) Subject a domestic worker to harassment based on gender, race, religion or national
21 origin if the harassment has the purpose or effect of unreasonably interfering with the
22 worker's work performance by creating an intimidating, hostile or offensive work environ-
23 ment.

24 (d) Retaliate or in any way discriminate against an individual with respect to hire or
25 tenure or any other term or condition of employment because the individual has inquired
26 about the provisions of this section and section 2 of this 2013 Act or has reported a violation
27 to, or filed a complaint with, the Bureau of Labor and Industries alleging a violation of this
28 section.

29 **SECTION 2.** (1) The Bureau of Labor and Industries shall adopt rules necessary for the
30 implementation and administration of section 1 of this 2013 Act.

31 (2) Rules adopted under this section shall include, but are not limited to:

32 (a) Overtime compensation for hours worked by a domestic worker in excess of 40 hours
33 in a week, or in excess of 44 hours in a week if the employee lives in the home of the em-
34 ployer;

35 (b) Meal periods, rest periods and paid personal leave for domestic workers; and

36 (c) Uninterrupted sleep periods of eight hours within each 24-hour period and compen-
37 sation for interruptions of sleep periods for domestic workers.

38 **SECTION 3.** (1) Any violation of section 1 of this 2013 Act or rules adopted under section
39 2 of this 2013 Act by an employer is an unlawful employment practice.

40 (2) Domestic workers may file complaints alleging a violation of section 1 of this 2013 Act
41 or of a rule adopted under section 2 of this 2013 Act with the Commissioner of the Bureau
42 of Labor and Industries in the manner provided by ORS 659A.820. The commissioner shall
43 enforce section 1 of this 2013 Act and the rules adopted under section 2 of this 2013 Act in
44 the manner provided in ORS chapter 659A regarding other unlawful employment practices.

45 (3) Violation of section 1 of this 2013 Act or of a rule adopted under section 2 of this 2013

1 **Act subjects the violator to the same civil remedies and penalties as provided in ORS chapter**
 2 **659A.**

3 **SECTION 4. Sections 1 to 3 of this 2013 Act may be referred to as the Domestic Workers'**
 4 **Protection Act.**

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

6 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 7 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 8 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 9 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 10 court may order back pay in an action under this subsection only for the two-year period imme-
 11 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 12 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 13 year period immediately preceding the filing of the action. In any action under this subsection, the
 14 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 15 cept as provided in subsection (3) of this section:

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

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

19 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 20 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
 21 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 22 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236,
 23 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318,
 24 659A.320 or 659A.421 **or sections 1 and 2 of this 2013 Act.**

25 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 26 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 27 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 **or sections 1 and 2 of this 2013**
 28 **Act:**

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

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

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

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

35 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 36 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 37 compensatory damages or \$200, whichever is greater.

38 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 39 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 40 of this section, compensatory damages or \$250, whichever is greater.

41 (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
 42 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
 43 penalty in the amount of \$720.

44 (7) Any individual against whom any distinction, discrimination or restriction on account of
 45 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual

1 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 2 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 3 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 4 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 5 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 6 section:

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

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

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

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

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

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

20 (8) When the commissioner or the Attorney General has reasonable cause to believe that a
 21 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 22 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 23 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 24 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 25 manner as a person or group of persons may file a civil action under this section. In a civil action
 26 filed under this subsection, the court may assess against the respondent, in addition to the relief
 27 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

30 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 31 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 32 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 33 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 34 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 35 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 36 appealing an adverse decision of the trial court.

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

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

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

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

43 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
 44 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
 45 tifies that the case is of general public importance. The court may allow an intervenor prevailing

1 party costs and reasonable attorney fees at trial and on appeal.

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