

House Bill 3308

Sponsored by Representatives WITT, DEMBROW

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 retaliation against employee for engaging in certain actions related to wage claim. Creates presumption of retaliation against employee for adverse actions against employee taken by employer within 90 days from date employee engaged in certain activities related to wage claim. Allows for rebuttal of presumption under certain circumstances.

Requires employer, upon written request, to provide conclusive statement of reasons for discharge of employee.

A BILL FOR AN ACT

1
2 Relating to employment; creating new provisions; and amending ORS 652.355, 653.060, 658.452 and
3 659A.885.

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

5 **SECTION 1.** ORS 652.355 is amended to read:

6 652.355. (1) An employer may not discharge, **retaliate against** or in any other manner discrim-
7 inate against an employee because:

8 (a) The employee has [*made a wage claim or discussed, inquired about or consulted an attorney*
9 *or agency about a wage claim*] **complained about underpayment of wages.**

10 (b) **The employee has discussed, inquired about or consulted with an attorney, a state or**
11 **federal agency, a collective bargaining representative, a worker advocacy organization or a**
12 **coworker about underpayment of wages.**

13 (c) **The employee has made a statement in contemplation of, or at, a hearing, grievance**
14 **or arbitration proceeding or to the press in support of a wage claim or that a provision of**
15 **ORS 652.310 to 652.414 or any rule adopted under ORS 651.060 related to ORS 652.310 to**
16 **652.414 has been violated.**

17 [(b)] (d) The employee has caused to be instituted any proceedings under or related to ORS
18 652.310 to 652.414.

19 [(c)] (e) The employee has **participated in an investigation, has testified, [or] is about to tes-**
20 **tify in [any such proceedings.] a proceeding described in this subsection or has prepared to**
21 **testify in any action described in ORS 652.200 or related to ORS 652.310 to 652.414.**

22 (f) **The employee has assisted another employee to make a wage claim or has opposed**
23 **any action that the employee reasonably believes to be a violation of ORS 652.310 to 652.414**
24 **or of a rule adopted under ORS 651.060 that is related to ORS 652.310 to 652.414.**

25 (g) **The employee is believed by the employer to have engaged in an action described in**
26 **this subsection.**

27 (2) **Taking any adverse action against an employee within 90 days of an employee's en-**
28 **gaging in the activities described in subsection (1) of this section creates a presumption that**
29 **the action constitutes retaliation. This presumption may be rebutted by a showing of clear**

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 **and convincing evidence that the action was taken for permissible reasons.**

2 [(2)] (3) A violation of this section is an unlawful employment practice under ORS chapter 659A.
 3 A person unlawfully discriminated against under this section may file a complaint under ORS
 4 659A.820 with the Commissioner of the Bureau of Labor and Industries.

5 **SECTION 2.** ORS 653.060 is amended to read:

6 653.060. (1) An employer may not discharge, **retaliate against** or in any other manner discrim-
 7 inate against an employee because:

8 (a) The employee has [*made complaint*] **complained** that the employee has not been paid wages
 9 in accordance with ORS 653.010 to 653.261.

10 (b) **The employee discussed, inquired or consulted with an attorney, a state or federal**
 11 **agency, a collective bargaining representative, a worker advocacy organization or a coworker**
 12 **concerning rights granted under ORS 653.010 to 653.261.**

13 [*(b) The employee has caused to be instituted or is about to cause to be instituted any proceedings*
 14 *under or related to ORS 653.010 to 653.261.*]

15 (c) **The employee has made a statement in contemplation of, or at, a hearing, grievance**
 16 **or arbitration proceeding or to the press in support of a wage claim or that the provisions**
 17 **of or a rule related to ORS 653.010 to 653.261 has been violated.**

18 (d) **The employee has caused to be instituted any proceeding under or related to ORS**
 19 **653.010 to 653.261.**

20 [*(c)*] (e) The employee has testified, [*or*] is about to testify [*in any such proceedings.*] **or has**
 21 **prepared to testify in a proceeding under or related to ORS 653.010 to 653.261.**

22 (f) **The employee has participated in an investigation of a claim made under or related**
 23 **to ORS 653.010 to 653.261.**

24 (g) **The employee has assisted another employee to make a wage claim or has opposed**
 25 **any action that the employee reasonably believes to be a violation of ORS 653.010 to 653.261**
 26 **or of a rule adopted under ORS 651.060 that is related to ORS 653.010 to 652.261.**

27 (h) **The employee is believed by the employer to have engaged in an action described in**
 28 **this subsection.**

29 (2) **Taking any adverse action against an employee within 90 days of an employee's en-**
 30 **gaging in the activities described in subsection (1) of this section creates a presumption that**
 31 **the action constitutes retaliation. This presumption may be rebutted by a showing of clear**
 32 **and convincing evidence that the action was taken for permissible reasons.**

33 [(2)] (3) A violation of this section is an unlawful employment practice under ORS chapter 659A.
 34 A person unlawfully discriminated against under this section may file a complaint under ORS
 35 659A.820 with the Commissioner of the Bureau of Labor and Industries.

36 **SECTION 3.** ORS 658.452 is amended to read:

37 658.452. (1) [*No*] **A farm labor contractor or employer [*shall*] may not discharge, retaliate**
 38 **against** or in any other manner discriminate against any employee because:

39 [(1)] (a) The employee has made a claim against the farm labor contractor or employer for
 40 compensation for the employee's own personal services.

41 (b) **The employee discussed, inquired or consulted with an attorney, a state or federal**
 42 **agency, a collective bargaining representative, a worker advocacy organization or a coworker**
 43 **concerning rights granted under ORS 658.405 to 658.503.**

44 (c) **The employee has made a statement in contemplation of, or at, a hearing, grievance**
 45 **or arbitration proceeding or to the press in support of a wage claim or a public hearing or**

1 **to the press regarding a wage claim or that the provisions of ORS 658.405 to 658.503 or any**
 2 **rule adopted under ORS 658.407 have been violated.**

3 [(2)] (d) The employee has caused to be instituted any proceedings under or related to ORS
 4 658.405 to 658.503.

5 [(3)] (e) The employee has testified, [or] is about to testify [*in any such proceedings.*] **or has**
 6 **prepared to testify in a proceeding under or related to ORS 658.405 to 658.503.**

7 (f) **The employee has participated in an investigation of a claim made under or related**
 8 **to ORS 658.405 to 658.503.**

9 (g) **The employee has assisted another employee to make a wage claim or has opposed**
 10 **any action that the employee reasonably believes to be a violation of ORS 658.405 to 658.503**
 11 **or of a rule adopted under ORS 658.407.**

12 [(4)] (h) The employee has discussed or consulted with anyone concerning the employee's rights
 13 under ORS 658.405 to 658.503.

14 (i) **The employee is believed by the employer to have engaged in an action described in**
 15 **this subsection.**

16 (2) **Taking any adverse action against an employee within 90 days of an employee's en-**
 17 **gaging in the activities described in subsection (1) of this section creates a presumption that**
 18 **the action constitutes retaliation. This presumption may be rebutted by a showing of clear**
 19 **and convincing evidence that the action was taken for permissible reasons.**

20 **SECTION 4. Section 5 of this 2013 Act is added to and made a part of ORS chapter 659A.**

21 **SECTION 5. (1) Upon receipt of a written demand from a discharged employee, an em-**
 22 **ployer shall provide to the employee a full, succinct and complete written statement of the**
 23 **reason or reasons for the discharge of the employee. The statement shall be provided to the**
 24 **employee within 10 days after the demand is made.**

25 (2) **An employer may not make or furnish to any person a statement with respect to the**
 26 **reason for the discharge of the employee that materially differs from the reason provided to**
 27 **the employee in the statement required under subsection (1) of this section.**

28 (3) **If a statement of the reason for the discharge of an employee is made under sub-**
 29 **section (1) of this section, there is established a conclusive presumption that the employer**
 30 **did not have good cause for the dismissal of the employee other than the reason provided in**
 31 **a timely manner in response to the request of the employee. The employer may not assert**
 32 **or submit into evidence any other cause for dismissal in any action or proceeding.**

33 (4) **A violation of the provisions of this section is an unlawful employment practice, and**
 34 **a person claimed to be aggrieved by the violation may file a complaint under ORS 659A.820.**

35 **SECTION 6. ORS 659A.885 is amended to read:**

36 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 37 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 38 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 39 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 40 court may order back pay in an action under this subsection only for the two-year period imme-
 41 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 42 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 43 year period immediately preceding the filing of the action. In any action under this subsection, the
 44 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 45 cept as provided in subsection (3) of this section:

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

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

4 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
5 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
6 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
7 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236,
8 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318,
9 659A.320 or 659A.421 **or section 5 of this 2013 Act.**

10 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
11 **652.355, 653.060**, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145,
12 659A.199, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 **or section 5 of this 2013**
13 **Act:**

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

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

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

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

20 *[(4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or*
21 *653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,*
22 *compensatory damages or \$200, whichever is greater.]*

23 *[(5)] (4) In any action under subsection (1) of this section alleging a violation of ORS 171.120,*
24 *476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under sub-*
25 *section (1) of this section, compensatory damages or \$250, whichever is greater.*

26 *[(6)] (5) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or*
27 *10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,*
28 *a civil penalty in the amount of \$720.*

29 *[(7)] (6) Any individual against whom any distinction, discrimination or restriction on account*
30 *of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individ-*
31 *ual is 18 years of age or older, has been made by any place of public accommodation, as defined in*
32 *ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or*
33 *abetting the place or person in violation of ORS 659A.406 may bring an action against the operator*
34 *or manager of the place, the employee or person acting on behalf of the place or the aider or abettor*
35 *of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-*
36 *section:*

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

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

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

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

44 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
45 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable

1 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
 2 and

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

5 [(8)] (7) When the commissioner or the Attorney General has reasonable cause to believe that
 6 a person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 7 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 8 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 9 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 10 manner as a person or group of persons may file a civil action under this section. In a civil action
 11 filed under this subsection, the court may assess against the respondent, in addition to the relief
 12 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

15 [(9)] (8) In any action under subsection (1) of this section alleging a violation of ORS 659A.145
 16 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 17 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 18 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 19 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 20 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 21 appealing an adverse decision of the trial court.

22 [(10)] (9) In an action under subsection (1) or [(8)] (7) of this section alleging a violation of ORS
 23 659A.145 or 659A.421 or discrimination under federal housing law:

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

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

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

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

32