

House Bill 3390

Sponsored by Representative DEMBROW, Senator ROSENBAUM, Representative KENY-GUYER, Senator STEINER HAYWARD

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 covered employer to implement paid sick leave for eligible employees. Creates exception. Specifies purposes for which leave may be taken and rate at which leave accrues. Requires advance notice and authorization of leave under certain circumstances. Prohibits discrimination against employee for inquiring about or using paid leave. Makes violation unlawful practice subject to jurisdiction of Bureau of Labor and Industries. Authorizes civil action for violation.

A BILL FOR AN ACT

1
2 Relating to paid leave; creating new provisions; and amending ORS 659A.885.

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

4 **SECTION 1. As used in sections 1 to 9 of this 2013 Act:**

5 (1) **“Covered employer” means an employer who employs six or more employees in this**
6 **state for each working day during each of 20 or more calendar workweeks in the year in**
7 **which the sick leave is to be taken or in the year immediately preceding the year in which**
8 **the sick leave is to be taken.**

9 (2) **“Eligible employee” means an employee of a covered employer, except as provided in**
10 **section 3 of this 2013 Act.**

11 (3) **“Family member” means the spouse of an employee, a biological, adoptive or foster**
12 **parent or child of the employee, a parent-in-law of the employee, a grandparent or grandchild**
13 **of the employee or an individual with whom the employee was or is in a relationship of in**
14 **loco parentis.**

15 (4) **“Sick leave” means an absence from work with a covered employer for a reason au-**
16 **thorized under section 4 of this 2013 Act.**

17 **SECTION 2. (1) A covered employer shall implement a sick leave policy that allows an**
18 **eligible employee to earn and accrue at least seven days of paid sick leave per year. Paid sick**
19 **leave shall accrue at the rate of one hour of paid sick leave for every 30 hours worked.**
20 **Part-time employees shall earn and accrue paid sick leave on a prorated basis.**

21 (2) **An eligible employee shall begin to earn and accrue paid sick leave on the first day**
22 **of employment with a covered employer. Unused paid sick leave shall be carried over from**
23 **one calendar year to a subsequent calendar year. However, a covered employer may adopt a**
24 **policy that:**

25 (a) **Allows an eligible employee to accrue no more than seven paid sick leave days in a**
26 **calendar year; or**

27 (b) **Limits the use of paid sick leave by an eligible employee to no more than seven days**
28 **in a calendar year.**

29 (3) **The requirements of subsection (1) of this section do not apply to a covered employer**

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 who:

2 (a) Offers to an eligible employee a nondiscriminatory cafeteria plan, as defined by sec-
 3 tion 125 of the Internal Revenue Code of 1986, providing, as one of its options, employee leave
 4 at least as generous as the leave required by ORS 659A.150 to 659A.186; or

5 (b) Has a sick leave policy in effect that provides eligible employees with paid sick leave
 6 benefits that equal or exceed the paid sick leave required by this section.

7 **SECTION 3.** All employees of a covered employer are eligible to take paid sick leave for
 8 the purposes specified in section 4 of this 2013 Act except employees who were employed by
 9 the covered employer for fewer than 90 days immediately before the date on which the sick
 10 leave would commence.

11 **SECTION 4.** Paid sick leave required under section 2 of this 2013 Act may be taken by
 12 an eligible employee:

13 (1) To recover from or seek treatment for an illness or injury of the employee;

14 (2) To care for an infant or newly adopted child under 18 years of age, or for a newly
 15 placed foster child under 18 years of age, or for an adopted or foster child older than 18 years
 16 of age if the child is incapable of self-care because of a mental or physical disability;

17 (3) To care for a family member with a serious illness or injury;

18 (4) To care for a child of the employee who is suffering from an illness, injury or condi-
 19 tion that is not a serious health condition as defined in ORS 659A.150 but that requires home
 20 care; or

21 (5) For a purpose specified in ORS 659A.272.

22 **SECTION 5.** (1) Except as provided in subsection (2) of this section, a covered employer
 23 may require an eligible employee to give the employer written notice at least seven days
 24 before commencing paid sick leave. The employer may require the employee to include in the
 25 notice an explanation of the need for and anticipated length of the sick leave.

26 (2) An eligible employee may commence taking paid sick leave without prior notice to the
 27 covered employer under the following circumstances:

28 (a) An illness, an injury or an unexpected serious health condition, as defined in ORS
 29 659A.150, of the employee or a family member of the employee; or

30 (b) A premature birth, unexpected adoption or unexpected foster placement.

31 (3) If an eligible employee commences paid sick leave without prior notice under sub-
 32 section (2) of this section, the employee must give oral notice to the covered employer within
 33 24 hours after commencement of the sick leave, and must provide written notice, if required
 34 by the employer under subsection (1) of this section, within three days after the employee
 35 returns to work. The oral notice required by this subsection may be given by any other in-
 36 dividual on behalf of the employee taking the sick leave.

37 (4) An eligible employee must attempt to schedule paid sick leave in a manner that pro-
 38 vides minimal disruption to the operations of the covered employer.

39 **SECTION 6.** (1) If an eligible employee takes more than three days of sick leave for a
 40 purpose described in section 4 of this 2013 Act, a covered employer may require the employee
 41 to provide medical verification from a health care provider of the need for the sick leave. If
 42 an eligible employee is required to give notice under section 5 of this 2013 Act, the employer
 43 may require that medical verification be provided by the employee before the sick leave
 44 commences. If the employee commences paid sick leave without providing prior notice re-
 45 quired by the covered employer under section 5 of this 2013 Act, medical verification must

1 be provided by the employee within 15 days after the employer requests the medical verifi-
 2 cation.

3 (2) As used in this section, “health care provider” has the meaning given that term in
 4 ORS 659A.150.

5 **SECTION 7.** (1) A covered employer shall maintain records of the hours worked and the
 6 paid sick leave accrued and used by each employee.

7 (2) Records required to be maintained under this section shall be available for inspection
 8 by the Commissioner of the Bureau of Labor and Industries upon request. A covered em-
 9 ployer may not unreasonably delay or refuse to allow the commissioner to review the records
 10 required to be maintained under this section.

11 (3) Records required under this section shall be maintained for three years from the date
 12 paid sick leave accrues.

13 (4) Health records related to paid sick leave that is provided in accordance with sections
 14 1 to 9 of this 2013 Act are confidential and shall be maintained separately from other em-
 15 ployment records.

16 (5) A covered employer shall post a summary of the provisions of sections 1 to 9 of this
 17 2013 Act in a conspicuous and accessible place in or about the premises where employees are
 18 employed. Employers shall be provided copies of the required summaries by the commis-
 19 sioner without charge.

20 **SECTION 8.** Sections 1 to 9 of this 2013 Act do not limit any right of an eligible employee
 21 to paid sick leave to which the employee may be entitled under an agreement between a
 22 covered employer and the employee, a collective bargaining agreement or a policy of the
 23 employer.

24 **SECTION 9.** It is an unlawful practice for a covered employer to:

25 (1) Deny paid sick leave to which an eligible employee is entitled under sections 1 to 9
 26 of this 2013 Act; or

27 (2) Retaliate or in any way discriminate against an employee with respect to any term
 28 or condition of employment because the employee has inquired about the provisions of
 29 sections 1 to 9 of this 2013 Act, submitted a request for paid sick leave or invoked any pro-
 30 vision of sections 1 to 9 of this 2013 Act.

31 **SECTION 10.** ORS 659A.885 is amended to read:

32 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 33 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 34 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 35 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 36 court may order back pay in an action under this subsection only for the two-year period imme-
 37 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 38 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 39 year period immediately preceding the filing of the action. In any action under this subsection, the
 40 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 41 cept as provided in subsection (3) of this section:

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

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

45 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS

1 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
 2 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 3 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236,
 4 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318,
 5 659A.320 or 659A.421 **or sections 1 to 9 of this 2013 Act.**

6 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 7 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 8 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

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

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

15 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 16 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 17 compensatory damages or \$200, whichever is greater.

18 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 19 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 20 of this section, compensatory damages or \$250, whichever is greater.

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

24 (7) Any individual against whom any distinction, discrimination or restriction on account of
 25 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 26 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 27 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 28 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 29 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 30 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 31 section:

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

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

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

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

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

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

45 (8) When the commissioner or the Attorney General has reasonable cause to believe that a

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

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

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

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

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

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

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

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

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

27 **SECTION 11. Sections 1 to 9 of this 2013 Act are added to and made a part of ORS**
28 **chapter 659A.**

29 **SECTION 12. Sections 1 to 9 of this 2013 Act and the amendments to ORS 659A.885 by**
30 **section 10 of this 2013 Act apply to requests for paid sick leave made on or after January 1,**
31 **2014.**

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