

**PROPOSED AMENDMENTS TO
HOUSE BILL 3390**

1 On page 1 of the printed bill, delete lines 4 through 29 and delete pages
2 2 through 5 and insert:

3 **“SECTION 1. As used in sections 1 to 10 of this 2013 Act:**

4 **“(1) ‘Covered employer’ means an employer who employs six or**
5 **more employees in this state for 20 or more calendar workweeks in the**
6 **year in which the sick leave is to be taken or in the year immediately**
7 **preceding the year in which the sick leave is to be taken. The deter-**
8 **mination of the number of employees employed by an employer shall**
9 **include the total number of full-time, part-time and temporary em-**
10 **ployees employed by the employer.**

11 **“(2) ‘Eligible employee’ means an employee of a covered employer,**
12 **except as provided in section 3 of this 2013 Act.**

13 **“(3) ‘Family member’ has the meaning given that term in ORS**
14 **659A.150.**

15 **“(4) ‘Sick leave’ means an absence from work with a covered em-**
16 **ployer for a reason authorized under section 4 of this 2013 Act.**

17 **“SECTION 2. (1) A covered employer shall implement a sick leave**
18 **policy that allows an eligible employee to earn and accrue at least 56**
19 **hours of paid sick leave per year. Paid sick leave shall accrue at the**
20 **rate of one hour of paid sick leave for every 30 hours worked.**

21 **“(2) An eligible employee shall begin to earn and accrue paid sick**
22 **leave on the first day of employment with a covered employer. Unused**

1 paid sick leave shall be carried over from one calendar year to a sub-
2 sequent calendar year. However, a covered employer may adopt a pol-
3 icy that:

4 “(a) Allows an eligible employee to accrue no more than seven paid
5 sick leave days in a calendar year; or

6 “(b) Limits the use of paid sick leave by an eligible employee to no
7 more than 56 hours of paid sick leave in a calendar year.

8 “(3) Employees who are exempt from overtime requirements under
9 29 U.S.C. 213(a)(1) of the Federal Fair Labor Standards Act shall be
10 presumed to work 40 hours in each workweek for the purpose of ac-
11 crual of paid sick leave and leave authorized under ORS 659A.272 un-
12 less the normal workweek of the employee is less than 40 hours, in
13 which case paid sick leave and leave authorized under ORS 659A.272
14 accrues based on the actual workweek of the employee.

15 “(4) The requirements of subsection (1) of this section do not apply
16 to a covered employer who has a sick leave policy that:

17 “(a) Provides eligible employees with paid sick leave benefits that
18 equal or exceed the paid sick leave benefits required by this section
19 and that may be used by the employee for the purposes specified in
20 section 4 of this 2013 Act; and

21 “(b) Specifies that the protections against retaliation specified in
22 section 9 of this 2013 Act are applicable to the employee.

23 “(5) Nothing in sections 1 to 10 of this 2013 Act requires an employer
24 to compensate an employee for accrued unused sick time upon the
25 employee’s termination, resignation, retirement or other separation
26 from employment.

27 “(6) An employer may not require an employee to:

28 “(a) Search for or find a replacement worker as a condition of the
29 employee’s use of accrued sick leave; or

30 “(b) Work an alternate shift to make up for the use of sick leave.

1 **“(7) Upon mutual consent by the employee and the employer, an**
2 **employee may work additional hours or shifts during the same or next**
3 **pay period without using accrued sick leave for the hours or shifts**
4 **missed. However, the employer may not require the employee to work**
5 **additional hours or shifts authorized by this subsection. If the em-**
6 **ployee works additional hours or shifts, the employer must comply**
7 **with any applicable federal, state or local laws regarding overtime pay.**

8 **“(8) Accrued paid sick leave shall be retained by the eligible em-**
9 **ployee if the covered employer sells, transfers or otherwise assigns the**
10 **business to another employer.**

11 **“(9) A covered employer shall provide previously accrued and un-**
12 **used paid sick leave to an eligible employee who is rehired by that**
13 **covered employer within six months of separation from employment**
14 **with that covered employer. The eligible employee shall be entitled to**
15 **use previously accrued paid sick leave immediately upon reemploy-**
16 **ment.**

17 **“SECTION 3. All employees of a covered employer are eligible to**
18 **take paid sick leave for the purposes specified in section 4 of this 2013**
19 **Act except employees who begin employment after the effective date**
20 **of this 2013 Act, who shall be entitled to use accrued paid sick leave**
21 **beginning on the 90th calendar day following commencement of their**
22 **employment. After the 90th calendar day of employment, employees**
23 **who begin employment after the effective date of this 2013 Act may**
24 **use paid sick time as it is accrued.**

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

27 **“(1) For an employee’s mental or physical illness, injury or health**
28 **condition, need for medical diagnosis, care or treatment of a mental**
29 **or physical illness, injury or health condition or an employee’s need**
30 **for preventive medical care;**

1 **“(2) For care of a family member with a mental or physical illness,**
2 **injury or health condition, care of a family member who needs medical**
3 **diagnosis, care, or treatment of a mental or physical illness, injury or**
4 **health condition or care of a family member who needs preventive**
5 **medical care;**

6 **“(3) For care for an infant or newly adopted child under 18 years**
7 **of age or for a newly placed foster child under 18 years of age;**

8 **“(4) For a purpose specified in ORS 659A.272 notwithstanding ORS**
9 **659A.270 (1); or**

10 **“(5) In the event of a public health emergency, including, but not**
11 **limited to:**

12 **“(a) Closure of the employee’s place of business, or the school or**
13 **place of care of the employee’s child, by order of a public official due**
14 **to a public health emergency;**

15 **“(b) Care for a family member when it has been determined by a**
16 **lawful public health authority or by a health care provider that the**
17 **family member’s presence in the community would jeopardize the**
18 **health of others; or**

19 **“(c) Any law or rule that requires the employer to exclude the em-**
20 **ployee from the workplace for health reasons.**

21 **“SECTION 5. (1) Except as provided in subsection (2) of this section,**
22 **a covered employer may require an eligible employee to give the em-**
23 **ployer notice up to seven days before commencing paid sick leave. If**
24 **it is not possible for the employee to meet the employer’s advance**
25 **notice requirement, then the employee shall give the employer rea-**
26 **sonable advance notice if feasible. The employer may require the em-**
27 **ployee to include in the notice an explanation of the need for and**
28 **anticipated length of the sick leave.**

29 **“(2) When the circumstances surrounding the need for sick leave**
30 **make the provision of notice infeasible, an eligible employee may**

1 commence taking paid sick leave without prior notice to the covered
2 employer.

3 “(3) If an eligible employee commences paid sick leave without prior
4 notice under subsection (2) of this section, the employee must provide
5 notice to the employer before the start of the employee’s scheduled
6 work shift or as soon as practicable. The notice required by this sub-
7 section may be given by any other individual on behalf of the employee
8 taking the sick leave.

9 “(4) When the need for sick leave is foreseeable, an eligible em-
10 ployee must attempt to schedule paid sick leave in a manner that
11 provides minimal disruption to the operations of the covered employer.

12 **“SECTION 6. (1) If an eligible employee takes more than three days
13 of sick leave for a purpose described in section 4 of this 2013 Act, a
14 covered employer may require the employee to provide verification
15 from a health care provider of the need for the sick leave or certifi-
16 cation for victims of domestic violence, harassment, sexual assault
17 or stalking as provided in ORS 659A.280. If an eligible employee is re-
18 quired to give notice under section 5 of this 2013 Act, the employer
19 may require that verification be provided by the employee before the
20 sick leave commences. If the employee commences paid sick leave
21 without providing prior notice required by the covered employer under
22 section 5 of this 2013 Act, medical verification must be provided by the
23 employee within 15 days after the employer requests the verification.**

24 “(2) Any costs for providing medical verification required under this
25 section shall be paid by the employer.

26 “(3) As used in this section, ‘health care provider’ has the meaning
27 given that term in ORS 659A.150.

28 **“SECTION 7. (1) A covered employer shall maintain records of the
29 hours worked and the paid sick leave accrued and used by each em-
30 ployee.**

1 “(2) Records required to be maintained under this section shall be
2 available for inspection by the Commissioner of the Bureau of Labor
3 and Industries upon request. A covered employer may not unreason-
4 ably delay or refuse to allow the commissioner to review the records
5 required to be maintained under this section.

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

8 “(4) Health records related to paid sick leave or information per-
9 taining to leave under ORS 659A.272 that is provided in accordance
10 with sections 1 to 10 of this 2013 Act are confidential and shall be
11 maintained separately from other employment records.

12 “(5) A covered employer shall post a summary of the provisions of
13 sections 1 to 10 of this 2013 Act in a conspicuous and accessible place
14 in or about the premises where employees are employed. Employers
15 shall be provided copies of the required summaries by the commis-
16 sioner without charge.

17 “SECTION 8. Sections 1 to 10 of this 2013 Act do not limit any right
18 of an eligible employee to paid sick leave to which the employee may
19 be entitled under an agreement between a covered employer and the
20 employee, a collective bargaining agreement or a policy of the em-
21 ployer.

22 “SECTION 9. It is an unlawful practice for a covered employer or
23 any other person to:

24 “(1) Deny, interfere with, restrain or fail to pay for paid sick leave
25 to which an eligible employee is entitled under sections 1 to 10 of this
26 2013 Act;

27 “(2) Retaliate or in any way discriminate against an employee with
28 respect to any term or condition of employment because the employee
29 has inquired about the provisions of sections 1 to 10 of this 2013 Act,
30 submitted a request for paid sick leave, taken paid sick leave or in-

1 voked any provision of sections 1 to 10 of this 2013 Act; or

2 “(3) Apply a policy described in section 2 (4) of this 2013 Act to any
3 sick leave taken under sections 1 to 10 of this 2013 Act as an absence
4 that may lead to or result in an adverse employment action against
5 an employee.

6 **“SECTION 10.** The requirements of sections 1 to 10 of this 2013 Act
7 do not apply to an employee:

8 “(a) In the building and construction industry whose terms and
9 conditions of employment are covered by a collective bargaining
10 agreement; or

11 “(b) Who works as a longshoreman or stage hand whose terms and
12 conditions of employment are covered by a collective bargaining
13 agreement if the agreement includes a statement in clear and unam-
14 biguous terms that the paid leave requirements of sections 1 to 10 of
15 this 2013 Act are expressly waived.

16 **“SECTION 11.** ORS 659A.885 is amended to read:

17 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
18 tice specified in subsection (2) of this section may file a civil action in cir-
19 cuit court. In any action under this subsection, the court may order
20 injunctive relief and any other equitable relief that may be appropriate, in-
21 cluding but not limited to reinstatement or the hiring of employees with or
22 without back pay. A court may order back pay in an action under this sub-
23 section only for the two-year period immediately preceding the filing of a
24 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
25 bor and Industries, or if a complaint was not filed before the action was
26 commenced, the two-year period immediately preceding the filing of the
27 action. In any action under this subsection, the court may allow the pre-
28 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
29 cept as provided in subsection (3) of this section:

30 “(a) The judge shall determine the facts in an action under this sub-

1 section; and

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

5 “(2) An action may be brought under subsection (1) of this section alleg-
6 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
7 (2), 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063,
8 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,
9 659A.194, 659A.199, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250
10 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
11 659A.318, 659A.320 or 659A.421 **or sections 1 to 10 of this 2013 Act.**

12 “(3) In any action under subsection (1) of this section alleging a violation
13 of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
14 659A.082, 659A.103 to 659A.145, 659A.199, 659A.230, 659A.250 to 659A.262,
15 659A.290, 659A.318 or 659A.421:

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

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

20 “(c) Upon appeal of any judgment finding a violation, the appellate court
21 shall review the judgment pursuant to the standard established by ORS
22 19.415 (1); and

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

24 “(4) In any action under subsection (1) of this section alleging a violation
25 of ORS 652.355 or 653.060, the court may award, in addition to the relief
26 authorized under subsection (1) of this section, compensatory damages or
27 \$200, whichever is greater.

28 “(5) In any action under subsection (1) of this section alleging a violation
29 of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addi-
30 tion to the relief authorized under subsection (1) of this section,

1 compensatory damages or \$250, whichever is greater.

2 “(6) In any action under subsection (1) of this section alleging a violation
3 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
4 thorized under subsection (1) of this section, a civil penalty in the amount
5 of \$720.

6 “(7) Any individual against whom any distinction, discrimination or re-
7 striction on account of race, color, religion, sex, sexual orientation, national
8 origin, marital status or age, if the individual is 18 years of age or older,
9 has been made by any place of public accommodation, as defined in ORS
10 659A.400, by any employee or person acting on behalf of the place or by any
11 person aiding or abetting the place or person in violation of ORS 659A.406
12 may bring an action against the operator or manager of the place, the em-
13 ployee or person acting on behalf of the place or the aider or abettor of the
14 place or person. Notwithstanding subsection (1) of this section, in an action
15 under this subsection:

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

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

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

22 “(d) The court shall award reasonable attorney fees to a prevailing
23 plaintiff;

24 “(e) The court may award reasonable attorney fees and expert witness fees
25 incurred by a defendant who prevails only if the court determines that the
26 plaintiff had no objectively reasonable basis for asserting a claim or no
27 reasonable basis for appealing an adverse decision of a trial court; and

28 “(f) Upon any appeal of a judgment under this subsection, the appellate
29 court shall review the judgment pursuant to the standard established by ORS
30 19.415 (1).

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

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

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

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

22 “(10) In an action under subsection (1) or (8) of this section alleging a
23 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
24 ing law:

25 “(a) ‘Aggrieved person’ includes a person who believes that the person:

26 “(A) Has been injured by an unlawful practice or discriminatory housing
27 practice; or

28 “(B) Will be injured by an unlawful practice or discriminatory housing
29 practice that is about to occur.

30 “(b) An aggrieved person in regard to issues to be determined in an action

1 may intervene as of right in the action. The Attorney General may intervene
2 in the action if the Attorney General certifies that the case is of general
3 public importance. The court may allow an intervenor prevailing party costs
4 and reasonable attorney fees at trial and on appeal.

5 **“SECTION 12. Sections 1 to 10 of this 2013 Act are added to and**
6 **made a part of ORS chapter 659A.**

7 **“SECTION 13. Sections 1 to 10 of this 2013 Act and the amendments**
8 **to ORS 659A.885 by section 11 of this 2013 Act apply to requests for paid**
9 **sick leave made on or after January 1, 2014.”.**

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