

Senate Bill 1543

Sponsored by Senator DEMBROW; Senator MONNES ANDERSON, Representative KENY-GUYER (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 reduction of hours worked by full-time employee for sole purpose of preventing employee's eligibility for coverage under Patient Protection and Affordable Care Act unlawful employment practice. Imposes penalty for violation.

Specifies that aggregate total of hours worked by part-time faculty member at more than one public institution of higher education shall be considered in determination of full-time status of faculty member for certain purposes.

A BILL FOR AN ACT

1
2 Relating to employee health care coverage based on hours worked; creating new provisions; and
3 amending ORS 351.704 and 659A.885.

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

5 **SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS chapter 659A.**

6 **SECTION 2. (1) It is an unlawful employment practice for an employer to reduce the**
7 **number of hours a full-time employee works solely for the purpose of preventing the em-**
8 **ployee from qualifying for coverage under the Patient Protection and Affordable Care Act,**
9 **as specified in 26 U.S.C. 4980H.**

10 **(2) If a full-time employee files a complaint alleging a violation of subsection (1) of this**
11 **section, the employer has the burden to establish that the reduction in hours worked by the**
12 **full-time employee was made in compliance with subsection (1) of this section.**

13 **(3) Complaints alleging a violation of subsection (1) of this section may be filed by em-**
14 **ployees with the Commissioner of the Bureau of Labor and Industries in the manner pro-**
15 **vided by ORS 659A.820.**

16 **(4)(a) The commissioner shall enforce subsection (1) of this section in the manner pro-**
17 **vided in this chapter regarding other unlawful employment practices.**

18 **(b) Violation of subsection (1) of this section subjects the violator to the same civil**
19 **remedies and penalties as provided in ORS chapter 659A.**

20 **SECTION 3. ORS 659A.885 is amended to read:**

21 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
22 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
23 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
24 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
25 court may order back pay in an action under this subsection only for the two-year period imme-
26 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
27 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
28 year period immediately preceding the filing of the action. In any action under this subsection, the

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 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 2 cept as provided in subsection (3) of this section:

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

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

6 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 7 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
 8 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 9 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 10 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 11 659A.318, 659A.320 or 659A.421 **or section 2 of this 2014 Act.**

12 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 13 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 14 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 **or section 2 of this 2014**
 15 **Act:**

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

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

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

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

22 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 23 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 24 compensatory damages or \$200, whichever is greater.

25 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 26 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 27 of this section, compensatory damages or \$250, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 **SECTION 4.** ORS 351.704 is amended to read:

35 351.704. (1) Subject to ORS 351.094 and any group health and welfare insurance benefit plan
 36 developed under ORS 351.094, a part-time faculty member at a public institution of higher education
 37 is eligible for the same health care benefits as full-time faculty members if the part-time faculty
 38 member is eligible for membership in the Public Employees Retirement System or another plan au-
 39 thorized under ORS chapter 238 or 238A by teaching either at a single public institution of higher
 40 education or in aggregate at multiple public institutions of higher education during the prior year.

41 (2) A part-time faculty member at a public institution of higher education shall pay all insurance
 42 premiums for health care benefits unless otherwise provided for by the policy of the institution or
 43 by collective bargaining at the institution.

44 (3) **To the extent consistent with 26 U.S.C. 4980H, a faculty member employed on a part-**
 45 **time basis by more than one public institution of higher education shall be considered a**

1 full-time employee if the aggregate total of all hours worked at all public institutions of
2 higher education by the faculty member is equivalent to at least 30 hours per week.

3 **SECTION 5.** Section 2 of this 2014 Act and the amendments to ORS 659A.885 by section
4 3 of this 2014 Act shall be known as the Health Care Accountability Act.

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