

# D R A F T

## SUMMARY

Requires all employers to implement sick time for employees. Creates exceptions. Specifies purposes for which sick time may be taken and rate at which sick time accrues. Requires advance notice of request to use sick time under certain circumstances. Prohibits discrimination against employee for inquiring about or using sick time. Makes violation unlawful practice subject to jurisdiction of Bureau of Labor and Industries. Authorizes civil action for violation. Establishes state preemption of charter and statutory authority of political subdivision to set employment benefit requirements. Creates exceptions.

## A BILL FOR AN ACT

1  
2 Relating to employee benefits; creating new provisions; and amending ORS  
3 653.256 and 659A.885.

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

5 **SECTION 1. Sections 2 to 16 of this 2015 Act are added to and made**  
6 **a part of ORS chapter 653.**

7 **SECTION 2. As used in sections 2 to 16 of this 2015 Act:**

8 **(1)(a) “Employee” means:**

9 **(A) An individual who renders personal services at a fixed rate to**  
10 **an employer if the employer either pays or agrees to pay for personal**  
11 **services or permits the individual to perform personal services.**

12 **(b) “Employee” includes, but is not limited to:**

13 **(A) An individual who is paid on the basis of the number of oper-**  
14 **ations accomplished or quantity produced or handled;**

15 **(B) Individuals paid on a salary or commission basis; and**

16 **(C) Home care workers as defined in ORS 410.600.**

1 (c) “Employee” does not include:

2 (A) An employee who receives paid sick time under federal law;

3 (B) An independent contractor;

4 (C) A participant in a work training program administered under a  
5 state or federal assistance program;

6 (D) A participant in a work-study program that provides students  
7 in secondary or post-secondary educational institutions with employ-  
8 ment opportunities for financial or vocational training;

9 (E) A railroad worker exempted under the federal Railroad Unem-  
10 ployment Insurance Act; and

11 (F) An individual employed by that individual’s parent, spouse or  
12 child.

13 (2)(a) “Employer” means any person that employs another person,  
14 the State of Oregon or a political subdivision of the state and any  
15 county, city, district, authority, public corporation or entity and any  
16 instrumentality thereof organized and existing under law or charter.

17 (b) “Employer” does not include the federal government.

18 (3) “Family member” has the meaning given that term in ORS  
19 659A.150.

20 (4) “Paid sick time” means time off:

21 (a) That is provided to an employee by an employer that employs  
22 six or more employees;

23 (b) That may be used for the purposes specified in section 6 of this  
24 2015 Act; and

25 (c) That is compensated at the regular rate of pay and without re-  
26 ductions in benefits, including but not limited to health care benefits,  
27 that the employee earns from the employer at the time the employee  
28 uses the paid sick time.

29 (5) “Sick time” means time during which an employee is permitted  
30 to be absent from work for a reason authorized under section 6 of this  
31 2015 Act.

1 (6) "Year" includes any consecutive 12-month period, such as a  
2 calendar year, a tax year, a fiscal year, a contract year or the  
3 12-month period beginning on the anniversary of the date of employ-  
4 ment of the employee.

5 **SECTION 3.** (1)(a) Employers who employ at least six employees  
6 shall implement a sick time policy that allows an employee to earn  
7 and use up to 40 hours of paid sick time per year. Paid sick time shall  
8 accrue at the rate of at least one hour of paid sick time for every 30  
9 hours the employee works.

10 (b) Employers who employ fewer than six employees shall imple-  
11 ment a sick time policy that allows an employee to earn and use up  
12 to 40 hours of unpaid sick time per year. Unpaid sick time shall accrue  
13 at the rate of at least one hour of unpaid sick time for every 30 hours  
14 the employee works.

15 (2) An employee shall begin to earn and accrue sick time on the  
16 first day of employment with an employer. The employee may carry  
17 over up to 40 hours of unused sick time from one year to a subsequent  
18 year. However, an employer may adopt a policy that limits:

19 (a) An employee to accruing no more than 80 hours of sick time;  
20 or

21 (b) The use of sick time by an employee to no more than 40 hours  
22 of sick time in a year.

23 (3)(a) An employer is not required to carry over unused sick time  
24 if, by mutual consent, the employer and the employee agree that:

25 (A) If the employer has six or more employees, the employee will  
26 be paid for all unused paid sick time at the end of the year in which  
27 the sick time is accrued and the employer will credit the employee  
28 with an amount of paid sick time that meets the requirements of this  
29 section on the first day of the immediately subsequent year; or

30 (B) If the employer has fewer than six employees, the employer will  
31 credit the employee with an amount of sick time that meets the re-

1 **quirements of this section on the first day of the immediately subse-**  
2 **quent year.**

3 **(b) The Commissioner of the Bureau of Labor and Industries shall**  
4 **adopt rules for the determination of the number of employees em-**  
5 **ployed by an employer.**

6 **(4)(a) An employee is eligible to use sick time beginning on the 91st**  
7 **calendar day of employment with the employer and may use sick time**  
8 **as it is accrued.**

9 **(b) An employer may authorize an employee to use accrued sick**  
10 **time prior to the 91st calendar day of employment.**

11 **(c)(A) An employer that employs six or more employees shall pay**  
12 **an employee for accrued sick time used at the regular rate of pay of**  
13 **the employee.**

14 **(B) For an employee employed on a commission or piece rate basis**  
15 **by an employer that employs six or more employees, the employer**  
16 **shall pay the employee for accrued sick time used at a regular rate**  
17 **of pay of at least the minimum wage specified in ORS 653.025.**

18 **(5) An employee who is exempt from overtime requirements under**  
19 **29 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act of 1938 is**  
20 **presumed to work 40 hours in each workweek for the purpose of ac-**  
21 **crual of sick time unless the actual workweek of the employee is less**  
22 **than 40 hours, in which case sick time accrues based on the actual**  
23 **workweek of the employee.**

24 **(6) Nothing in sections 2 to 16 of this 2015 Act requires an employer**  
25 **to compensate an employee for accrued unused sick time upon the**  
26 **employee's termination, resignation, retirement or other separation**  
27 **from employment.**

28 **(7) An employer may not require an employee to:**

29 **(a) Search for or find a replacement worker as a condition of the**  
30 **employee's use of accrued sick time; or**

31 **(b) Work an alternate shift to make up for the use of sick time.**

1 (8) Upon mutual consent by the employee and the employer, an  
2 employee may work additional hours or shifts to compensate for hours  
3 or shifts during which the employee was absent from work without  
4 using accrued sick time for the hours or shifts missed. However, the  
5 employer may not require the employee to work additional hours or  
6 shifts authorized by this subsection. If the employee works additional  
7 hours or shifts, the employer must comply with any applicable federal,  
8 state or local laws regarding overtime pay.

9 (9) An employee retains accrued sick time if the employer sells,  
10 transfers or otherwise assigns the business or an interest in the busi-  
11 ness to another employer.

12 (10)(a) An employer shall restore previously accrued unused sick  
13 time to an employee who is reemployed by that employer within 180  
14 days of separation from employment with the employer.

15 (b) If an employee leaves employment with an employer before the  
16 91st day of employment and subsequently is reemployed by that em-  
17 ployer within 180 days of separation from employment, the employer  
18 shall restore the accrued sick time balance the employee had when the  
19 employee left the employment of the employer and the employee may  
20 use accrued sick time after the combined total of days of employment  
21 with the employer exceeds 90 calendar days.

22 (11) If an employee is transferred to a separate division, entity or  
23 location of the employer but remains employed by that same employer,  
24 the employee is entitled to use all sick time accrued while working at  
25 the former division, entity or location of the employer and is entitled  
26 to retain or use all sick time as provided by sections 2 to 16 of this 2015  
27 Act.

28 SECTION 4. (1) An employer with a sick leave policy, paid vacation  
29 policy, paid personal time off policy or other paid time off program  
30 that provides employees with paid time off that meets or exceeds the  
31 requirements of this section shall be deemed to be in compliance with

1 the requirements of sections 2 to 16 of this 2015 Act.

2 (2) An employer with an existing policy for paid sick time, paid  
3 vacation leave, paid personal time off or other paid time off is not  
4 required to provide additional paid sick time if:

5 (a) The policy or combination of policies allows the use of 40 hours  
6 of paid or unpaid leave for the same purposes as sick time specified in  
7 section 6 of this 2015 Act; and

8 (b) The employer specifies that the protections against retaliation  
9 established by section 11 of this 2015 Act are applicable to the em-  
10 ployee.

11 (3) If an employee of an employer that has an existing policy for  
12 paid sick time, paid vacation leave, paid personal time off or other paid  
13 time off programs has exhausted all paid and unpaid leave available  
14 to the employee, the employer is not obligated to provide additional  
15 leave for paid or unpaid sick time as required by sections 2 to 16 of this  
16 2015 Act. However, the employer may be obligated to provide paid or  
17 unpaid sick time by federal or state law that provides for paid or un-  
18 paid leave for similar purposes.

19 SECTION 5. Notwithstanding section 3 (4) of this 2015 Act, an em-  
20 ployee who is employed by an employer on the effective date of this  
21 2015 Act is eligible to use any accrued sick time as it accrues on or  
22 after the effective date of this 2015 Act.

23 SECTION 6. An employee may use sick time earned under section  
24 3 of this 2015 Act in hourly increments:

25 (1) For an employee's mental or physical illness, injury or health  
26 condition, need for medical diagnosis, care or treatment of a mental  
27 or physical illness, injury or health condition or need for preventive  
28 medical care.

29 (2) For care of a family member with a mental or physical illness,  
30 injury or health condition, care of a family member who needs medical  
31 diagnosis, care or treatment of a mental or physical illness, injury or

1 **health condition or care of a family member who needs preventive**  
2 **medical care.**

3 **(3) Notwithstanding ORS 659A.153, for any other purpose specified**  
4 **in ORS 659A.159.**

5 **(4) For a purpose specified in ORS 659A.272, notwithstanding ORS**  
6 **659A.270 (1).**

7 **(5) To donate accrued sick time to another employee if the other**  
8 **employee uses the donated sick time for a purpose specified in this**  
9 **section and the employer has a policy that allows an employee to do-**  
10 **nate sick time to a coworker for a purpose specified in this section.**

11 **(6) In the event of a public health emergency. For purposes of this**  
12 **subsection, a public health emergency includes, but is not limited to:**

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

16 **(b) A determination by a lawful public health authority or by a**  
17 **health care provider that the presence of the employee or the family**  
18 **member of the employee in the community would jeopardize the health**  
19 **of others, such that the employee must provide self care or care for**  
20 **the family member; and**

21 **(c) The exclusion of the employee from the workplace under any**  
22 **law or rule that requires the employer to exclude the employee from**  
23 **the workplace for health reasons.**

24 **SECTION 7. (1)(a) Upon request of an employee with accrued sick**  
25 **time available, an employer must allow the employee to use sick time.**  
26 **If possible, the employee shall include the anticipated duration of the**  
27 **sick time requested in the request.**

28 **(b) Sick time earned under section 3 of this 2015 Act shall be taken**  
29 **in hourly increments.**

30 **(2) An employer may require the employee to comply with the**  
31 **employer's usual and customary notice and procedural requirements**

1 for absences or for requesting time off if those requirements do not  
2 interfere with the ability of the employee to use sick time.

3 (3) If the need to use sick time is foreseeable:

4 (a) The employer may require reasonable advance notice of the  
5 employee's intention to use sick time, not to exceed 10 days prior to  
6 the date the sick time is to begin or as soon as otherwise practicable;  
7 and

8 (b) The employee shall make a reasonable attempt to schedule the  
9 use of sick time in a manner that does not unduly disrupt the oper-  
10 ations of the employer.

11 (4) If the need to use sick time is unforeseeable, the employee shall  
12 provide notice to the employer as soon as practicable and must comply  
13 generally with the employer's notice or procedural requirements for  
14 requesting or reporting other time off if those requirements do not  
15 interfere with the ability of the employee to use sick time.

16 **SECTION 8.** (1)(a) If an employee takes more than three consec-  
17 utive scheduled work days of sick time for a purpose described in  
18 section 6 (1) to (4) of this 2015 Act, an employer may require the em-  
19 ployee to provide verification from a health care provider of the need  
20 for the sick time, or certification of the need for leave for purposes  
21 of ORS 659A.272 as provided in ORS 659A.280.

22 (b) If the need for sick time is foreseeable and is projected to last  
23 more than three scheduled work days and an employee is required to  
24 provide notice under section 7 of this 2015 Act, the employer may re-  
25 quire that verification or certification be provided before the sick time  
26 commences or as soon as otherwise practicable.

27 (c) If the employee commences sick time without providing prior  
28 notice required by the employer under section 7 of this 2015 Act:

29 (A) Medical verification shall be provided to the employer within  
30 15 calendar days after the employer requests the verification; or

31 (B) Certification provided as specified in ORS 659A.280 shall be



1 provided to the employer within a reasonable time after the employee  
2 receives the request for certification.

3 (2) The employer shall pay any reasonable costs for providing med-  
4 ical verification or certification required under this section, including  
5 lost wages, that are not paid under a health benefit plan in which the  
6 employee is enrolled.

7 (3)(a) An employer may not require that the verification or certi-  
8 fication required under this section explain the nature of the illness  
9 or details related to the domestic violence, sexual assault, harassment,  
10 or stalking that necessitates the use of sick time.

11 (b) If an employer suspects that an employee is abusing sick time,  
12 including engaging in a pattern of abuse, the employer may require  
13 verification from a health care provider of the need of the employee  
14 to use sick time, regardless of whether the employee has used sick  
15 time for more than three consecutive days. As used in this paragraph,  
16 “pattern of abuse” includes, but is not limited to, repeated use of un-  
17 scheduled sick time on or adjacent to weekends, holidays, vacation  
18 days or paydays.

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

21 **SECTION 9.** (1) An employer shall:

22 (a) Provide written notification at least quarterly to each employee  
23 of the amount of accrued and unused sick time available for use by  
24 the employee. Inclusion of the amount of accrued and used sick time  
25 on the statement required under ORS 652.610 meets the requirements  
26 of this paragraph.

27 (b) Provide written notice of the requirements of sections 2 to 16  
28 of this 2015 Act to each employee in accordance with rules adopted by  
29 the Commissioner of the Bureau of Labor and Industries.

30 (2) The notices provided under this section must be in the language  
31 the employer typically uses to communicate with the employee.

1 (3) The Bureau of Labor and Industries shall make available to  
2 employers a template that meets the required notice provisions of this  
3 section.

4 (4) Health information of an employee related to sick time is con-  
5 fidential and may not be released without the permission of the em-  
6 ployee. Information pertaining to leave under ORS 659A.272 that is  
7 provided by an employee in accordance with sections 2 to 16 of this  
8 2015 Act is confidential as provided in ORS 659A.280.

9 SECTION 10. Sections 2 to 16 of this 2015 Act establish minimum  
10 requirements pertaining to sick time and may not be construed to  
11 preempt, limit or otherwise affect the applicability of any employer  
12 policy, standard or collective bargaining agreement that provides for  
13 greater use of paid or unpaid sick time.

14 SECTION 11. It is an unlawful practice for an employer or any  
15 other person to:

16 (1) Deny, interfere with, restrain or fail to pay for sick time to  
17 which an employee is entitled under sections 2 to 16 of this 2015 Act;

18 (2) Retaliate or in any way discriminate against an employee with  
19 respect to any term or condition of employment because the employee  
20 has inquired about the provisions of sections 2 to 16 of this 2015 Act,  
21 submitted a request for sick time, taken sick time, participated in any  
22 manner in an investigation, proceeding or hearing related to sections  
23 2 to 16 of this 2015 Act, or invoked any provision of sections 2 to 16  
24 of this 2015 Act; or

25 (3) Apply an absence control policy that includes sick time absences  
26 covered under sections 2 to 16 of this 2015 Act as an absence that may  
27 lead to or result in an adverse employment action against the em-  
28 ployee.

29 SECTION 12. (1) The requirements of sections 2 to 16 of this 2015  
30 Act do not apply to an employee:

31 (a) Whose terms and conditions of employment are covered by a

1 **collective bargaining agreement;**

2 **(b) Who is employed through a hiring hall or similar referral sys-**  
3 **tem operated by the labor organization or a third party; and**

4 **(c) Whose employment-related benefits are provided by a joint**  
5 **multi-employer-employee trust or benefit plan.**

6 **(2)(a) The Home Care Commission created under ORS 410.602 shall**  
7 **establish a paid sick time policy for consumer employed home care**  
8 **workers.**

9 **(b) A policy for paid sick time for consumer employed home care**  
10 **workers implemented by the Home Care Commission that allows an**  
11 **eligible home care worker to accrue and use up to 40 hours of paid**  
12 **time off a year, including but not limited to sick time, is deemed to**  
13 **meet the requirements of sections 2 to 16 of this 2015 Act and is ex-**  
14 **empt from the provisions of sections 2 (4), 3 (4), 4, 7, 8 and 9 of this**  
15 **2015 Act.**

16 **(3) As used in this section, “consumer employed home care**  
17 **worker” has the meaning given the term “home care worker” in ORS**  
18 **410.600.**

19 **SECTION 13. (1) An employee asserting a violation of section 11 (2)**  
20 **or (3) of this 2015 Act may file a complaint with the Commissioner of**  
21 **the Bureau of Labor and Industries under ORS 659A.820 or a civil**  
22 **action as provided in ORS 659A.885.**

23 **(2) The commissioner has the same enforcement powers with re-**  
24 **spect to the rights established under sections 2 to 16 of this 2015 Act**  
25 **as are established in ORS chapters 652 and 653.**

26 **SECTION 14. The Commissioner of the Bureau of Labor and In-**  
27 **dustries:**

28 **(1) Shall enforce the provisions of sections 2 to 16 of this 2015 Act;**  
29 **and**

30 **(2) May adopt rules necessary for the implementation and enforce-**  
31 **ment of sections 2 to 16 of this 2015 Act.**

1       **SECTION 15. Except as provided in subsection (3) of this section:**

2       **(1) The State of Oregon preempts all charter and statutory author-**  
3 **ity of a political subdivision to set any employment benefit require-**  
4 **ments.**

5       **(2) A political subdivision may not establish, mandate or otherwise**  
6 **require an employer to provide employment benefits other than em-**  
7 **ployment benefits required by state or federal law, or to apply a state**  
8 **or federal mandate to provide employment benefits to employees oth-**  
9 **erwise not subject to such mandates.**

10       **(3) Subsection (2) of this section does not limit the authority of a**  
11 **political subdivision to mandate employment benefits other than em-**  
12 **ployment benefits required by state or federal law:**

13       **(a) For employees of the political subdivision.**

14       **(b) To the extent necessary to allow the receipt of federal funds or**  
15 **to remove inconsistencies with federal requirements for receipt of**  
16 **federal funds, if it is determined by the officer or agency responsible**  
17 **for the distribution of federal funds to a political subdivision that**  
18 **compliance with subsection (2) of this section would prevent the re-**  
19 **ceipt of those federal funds or would otherwise be inconsistent with**  
20 **federal requirements pertaining to those funds.**

21       **(c) As a condition of the political subdivision providing direct tax**  
22 **abatements or subsidies for private employers with 10 or more em-**  
23 **ployees.**

24       **SECTION 16. If any provision or application of sections 2 to 16 of**  
25 **this 2015 Act is determined to be invalid, the remaining provisions re-**  
26 **main in force and have full effect, and the invalid provisions are de-**  
27 **clared severable.**

28       **SECTION 17. ORS 653.256 is amended to read:**

29       **653.256. (1) In addition to any other penalty provided by law, the Com-**  
30 **missioner of the Bureau of Labor and Industries may assess a civil penalty**  
31 **not to exceed \$1,000 against any person who willfully violates ORS 653.025,**

1 653.030, 653.045, 653.050, 653.060 or 653.261 **or sections 3, 4, 5, 6, 7, 8, 9 and**  
2 **10 of this 2015 Act** or any rule adopted thereunder.

3 (2) In addition to any other penalty provided by law, the commissioner  
4 may assess a civil penalty not to exceed \$1,000 against any person who in-  
5 tentionally violates ORS 653.077 or any rule adopted thereunder.

6 (3) Civil penalties authorized by this section shall be imposed in the  
7 manner provided in ORS 183.745.

8 (4)(a) All sums collected as penalties under this section shall be first ap-  
9 plied toward reimbursement of costs incurred in determining the violations,  
10 conducting hearings under this section and addressing and collecting the  
11 penalties.

12 (b) The remainder, if any, of the sums collected as penalties under sub-  
13 section (1) of this section shall be paid over by the commissioner to the De-  
14 partment of State Lands for the benefit of the Common School Fund of this  
15 state. The department shall issue a receipt for the money to the commis-  
16 sioner.

17 (c) The remainder, if any, of the sums collected as penalties under sub-  
18 section (2) of this section shall be paid over by the commissioner to the De-  
19 partment of Human Services for the benefit of the Breastfeeding Mother  
20 Friendly Employer Project. The department shall issue a receipt for the  
21 moneys to the commissioner.

22 **SECTION 18.** ORS 659A.885 is amended to read:

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

1 year period immediately preceding the filing of the action. In any action  
2 under this subsection, the court may allow the prevailing party costs and  
3 reasonable attorney fees at trial and on appeal. Except as provided in sub-  
4 section (3) of this section:

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

7 (b) Upon any appeal of a judgment in an action under this subsection, the  
8 appellate court shall review the judgment pursuant to the standard estab-  
9 lished by ORS 19.415 (3).

10 (2) An action may be brought under subsection (1) of this section alleging  
11 a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),  
12 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063,  
13 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,  
14 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
15 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,  
16 659A.309, 659A.315, 659A.318, 659A.320 or 659A.421 **or sections 2 to 16 of**  
17 **this 2015 Act.**

18 (3) In any action under subsection (1) of this section alleging a violation  
19 of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
20 659A.082, 659A.103 to 659A.145, 659A.199, 659A.228, 659A.230, 659A.250 to  
21 659A.262, 659A.290, 659A.318 or 659A.421:

22 (a) The court may award, in addition to the relief authorized under sub-  
23 section (1) of this section, compensatory damages or \$200, whichever is  
24 greater, and punitive damages;

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

26 (c) Upon appeal of any judgment finding a violation, the appellate court  
27 shall review the judgment pursuant to the standard established by ORS  
28 19.415 (1); and

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

30 (4) In any action under subsection (1) of this section alleging a violation  
31 of ORS 652.355 or 653.060, the court may award, in addition to the relief

1 authorized under subsection (1) of this section, compensatory damages or  
2 \$200, whichever is greater.

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

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

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

21 (a) The court may award, in addition to the relief authorized under sub-  
22 section (1) of this section, compensatory and punitive damages;

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

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

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

29 (e) The court may award reasonable attorney fees and expert witness fees  
30 incurred by a defendant who prevails only if the court determines that the  
31 plaintiff had no objectively reasonable basis for asserting a claim or no

1 reasonable basis for appealing an adverse decision of a trial court; and

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

5 (8) When the commissioner or the Attorney General has reasonable cause  
6 to believe that a person or group of persons is engaged in a pattern or  
7 practice of resistance to the rights protected by ORS 659A.145 or 659A.421  
8 or federal housing law, or that a group of persons has been denied any of the  
9 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the  
10 commissioner or the Attorney General may file a civil action on behalf of  
11 the aggrieved persons in the same manner as a person or group of persons  
12 may file a civil action under this section. In a civil action filed under this  
13 subsection, the court may assess against the respondent, in addition to the  
14 relief 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  
18 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing  
19 law, when the commissioner is pursuing the action on behalf of an aggrieved  
20 complainant, the court shall award reasonable attorney fees to the commis-  
21 sioner if the commissioner prevails in the action. The court may award rea-  
22 sonable attorney fees and expert witness fees incurred by a defendant that  
23 prevails in the action if the court determines that the commissioner had no  
24 objectively reasonable basis for asserting the claim or for appealing an ad-  
25 verse decision of the trial court.

26 (10) In an action under subsection (1) or (8) of this section alleging a vi-  
27 olation of ORS 659A.145 or 659A.421 or discrimination under federal housing  
28 law:

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

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



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

3 (b) An aggrieved person in regard to issues to be determined in an action  
4 may intervene as of right in the action. The Attorney General may intervene  
5 in the action if the Attorney General certifies that the case is of general  
6 public importance. The court may allow an intervenor prevailing party costs  
7 and reasonable attorney fees at trial and on appeal.

8 **SECTION 19. Except for penalties assessed for a violation of section**  
9 **11 (2) or (3) of this 2015 Act, the Bureau of Labor and Industries may**  
10 **assess civil penalties against an employer only for violations of**  
11 **sections 2 to 16 of this 2015 Act occurring on or after January 1, 2017.**

12 **SECTION 20. Sections 2 to 16 of this 2015 Act and the amendments**  
13 **to ORS 653.256 and 659A.885 by sections 17 and 18 of this 2015 Act apply**  
14 **to hours worked and sick time accrued or used on or after January 1,**  
15 **2016.**

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