

SB 454-A46
(LC 1229)
6/3/15 (CJC/ps)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 454**

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 25 and
2 delete pages 2 through 9 and insert:

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

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

6 **“(1)(a) ‘Employee’ means an individual who renders personal ser-
7 vices at a fixed rate to an employer if the employer either pays or
8 agrees to pay for personal services or permits the individual to per-
9 form personal services.**

10 **“(b) ‘Employee’ includes, but is not limited to:**

11 **“(A) An individual who is paid on a piece-rate basis or the basis of
12 the number of operations accomplished or quantity produced or han-
13 dled;**

14 **“(B) Individuals paid on an hourly, salary or commission basis;**

15 **“(C) Individuals for whom withholding is required under ORS
16 316.162 to 316.221; and**

17 **“(D) Home care workers as defined in ORS 410.600.**

18 **“(c) ‘Employee’ does not include:**

19 **“(A) An employee who receives paid sick time under federal law;**

20 **“(B) An independent contractor;**

21 **“(C) A participant in a work training program administered under
22 a state or federal assistance program;**

From the Desk of
Senator Ted Ferrioli

1 **“(D) A participant in a work-study program that provides students**
2 **in secondary or post-secondary educational institutions with employ-**
3 **ment opportunities for financial or vocational training;**

4 **“(E) A railroad worker exempted under the federal Railroad Unem-**
5 **ployment Insurance Act; and**

6 **“(F) An individual employed by that individual’s parent, spouse or**
7 **child.**

8 **“(2)(a) ‘Employer’ means any person that employs 25 or more em-**
9 **ployees working anywhere in this state, a political subdivision of the**
10 **state and any county, city, district, authority, public corporation or**
11 **entity, and any instrumentality of a county, city, district, authority,**
12 **public corporation or entity, organized and existing under law or**
13 **charter.**

14 **“(b) ‘Employer’ does not include the federal government.**

15 **“(3) ‘Family member’ has the meaning given that term in ORS**
16 **659A.150.**

17 **“(4)(a) ‘Front-load,’ except as provided in paragraph (b) of this**
18 **subsection, means to assign and make available a certain number of**
19 **hours of sick time to an employee as soon as the employee becomes**
20 **eligible to use sick time and on the first day of the immediately sub-**
21 **sequent year without regard to an accrual rate.**

22 **“(b) For employees employed by an employer for less than a full**
23 **year, ‘front-load’ means to assign and make available to an employee**
24 **as soon as the employee becomes eligible to use sick time a number**
25 **of hours of sick time that is the pro rata percentage of the hours the**
26 **employee would be entitled to for an entire year based on the number**
27 **of hours the employee was actually employed by the employer for the**
28 **year.**

29 **“(5) ‘Paid sick time’ means time off:**

30 **“(a) That is provided to an employee by an employer;**

1 “(b) That may be used for the purposes specified in section 6 of this
2 2015 Act; and

3 “(c) That is compensated at the regular rate of pay and without
4 reductions in benefits, including but not limited to health care bene-
5 fits, that the employee earns from the employer at the time the em-
6 ployee uses the paid sick time.

7 “(6) ‘Sick time’ means time during which an employee is permitted
8 to be absent from work for a reason authorized under section 6 of this
9 2015 Act without a reduction in benefits, including but not limited to
10 health care benefits, that the employee earns from the employer.

11 “(7) ‘Year’ includes any consecutive 12-month period, such as a
12 calendar year, a tax year, a fiscal year, a contract year or the
13 12-month period beginning on the anniversary of the date of employ-
14 ment of the employee.

15 “SECTION 3. (1)(a) Employers shall implement a sick time policy
16 that allows an employee to earn and use up to 40 hours of paid sick
17 time per year. Paid sick time shall accrue at the rate of at least one
18 hour of paid sick time for every 30 hours the employee works or 1-1/3
19 hours for every 40 hours the employee works.

20 “(b) Employers that front-load for employees at least 40 hours of
21 paid sick time or paid time off at the beginning of each year used to
22 calculate the accrual and usage of sick time or time off need not
23 comply with subsections (1)(a) and (3) of this section.

24 “(2)(a) The number of employees employed by an employer shall be
25 ascertained by determining the per-day average number of employees
26 for each of 20 workweeks in the calendar year or the fiscal year of the
27 employer immediately preceding the year in which the leave is to be
28 taken.

29 “(b) If the business of the employer was not in existence for the
30 entire year preceding the determination made under paragraph (a) of

1 this subsection, the number of employees shall be based on any 20
2 workweeks preceding the request for sick time, which may include
3 workweeks in the current year, workweeks in the preceding year or a
4 combination of workweeks in the current year and workweeks in the
5 preceding year.

6 “(3) An employee shall begin to earn and accrue sick time on the
7 first day of employment with an employer. The employee may carry
8 over up to 40 hours of unused sick time from one year to a subsequent
9 year. However, an employer may adopt a policy that limits:

10 “(a) An employee to accruing no more than 80 hours of sick time;
11 or

12 “(b) An employee to using no more than 40 hours of sick time in a
13 year.

14 “(4)(a) An employer is not required to carry over unused sick time
15 if, by mutual consent, the employer and an employee agree that the
16 employee will be paid for all unused paid sick time at the end of the
17 year in which the sick time is accrued and the employer will credit the
18 employee with an amount of paid sick time that meets the require-
19 ments of this section on the first day of the immediately subsequent
20 year.

21 “(b) The Commissioner of the Bureau of Labor and Industries shall
22 adopt rules for the determination of the number of employees em-
23 ployed by an employer.

24 “(5)(a) An employee is eligible to use sick time beginning on the 91st
25 calendar day of employment with the employer and may use sick time
26 as it is accrued.

27 “(b) An employer may authorize an employee to use accrued sick
28 time prior to the 91st calendar day of employment.

29 “(c)(A) An employer shall pay an employee for accrued sick time
30 used at the regular rate of pay of the employee.

1 **“(B) For an employee employed on a commission or piece-rate basis,**
2 **the employer shall pay the employee for accrued sick time used at the**
3 **employee’s regular rate of pay. If the employee is paid on a commis-**
4 **sion or piece-rate basis and does not have a previously established**
5 **regular rate of pay, the employer shall pay the employee at a rate**
6 **equal to at least the minimum wage specified in ORS 653.025.**

7 **“(6) An employee who is exempt from overtime requirements under**
8 **29 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act of 1938 is**
9 **presumed to work 40 hours in each workweek for the purpose of ac-**
10 **crual of sick time unless the actual workweek of the employee is less**
11 **than 40 hours, in which case sick time accrues based on the actual**
12 **workweek of the employee.**

13 **“(7) Nothing in sections 2 to 16 of this 2015 Act requires an employer**
14 **to compensate an employee for accrued unused sick time upon the**
15 **employee’s termination, resignation, retirement or other separation**
16 **from employment.**

17 **“(8) An employer may not require an employee to:**

18 **“(a) Search for or find a replacement worker as a condition of the**
19 **employee’s use of accrued sick time; or**

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

21 **“(9) Upon mutual consent by the employee and the employer, an**
22 **employee may work additional hours or shifts to compensate for hours**
23 **or shifts during which the employee was absent from work without**
24 **using accrued sick time for the hours or shifts missed. However, the**
25 **employer may not require the employee to work additional hours or**
26 **shifts authorized by this subsection. If the employee works additional**
27 **hours or shifts, the employer must comply with any applicable federal,**
28 **state or local laws regarding overtime pay.**

29 **“(10) An employee retains accrued sick time if the employer sells,**
30 **transfers or otherwise assigns the business or an interest in the busi-**

1 ness to another employer.

2 “(11)(a) An employer shall restore previously accrued unused sick
3 time to an employee who is reemployed by that employer within 180
4 days of separation from employment with the employer.

5 “(b) If an employee leaves employment with an employer before the
6 91st day of employment and subsequently is reemployed by that em-
7 ployer within 180 days of separation from employment, the employer
8 shall restore the accrued sick time balance the employee had when the
9 employee left the employment of the employer and the employee may
10 use accrued sick time after the combined total of days of employment
11 with the employer exceeds 90 calendar days.

12 “(12) If an employee is transferred to a separate division, entity or
13 location of the employer but remains employed by that same employer,
14 the employee is entitled to use all sick time accrued while working at
15 the former division, entity or location of the employer and is entitled
16 to retain or use all sick time as provided by sections 2 to 16 of this 2015
17 Act.

18 “SECTION 4. (1) An employer with a sick leave policy, paid vacation
19 policy, paid personal time off policy or other paid time off program
20 that is substantially equivalent to or more generous to the employee
21 than the minimum requirements of sections 2 to 16 of this 2015 Act
22 shall be deemed to be in compliance with the requirements of sections
23 2 to 16 of this 2015 Act.

24 “(2) If an employee of an employer that has a policy for paid sick
25 time, paid vacation leave, paid personal time off or other paid time
26 off programs has exhausted all paid and unpaid leave available to the
27 employee, the employer is not obligated to provide additional leave for
28 paid or unpaid sick time as required by sections 2 to 16 of this 2015
29 Act. However, the employer may be obligated to provide paid or unpaid
30 sick time by federal or state law that provides for paid or unpaid leave

1 for similar purposes.

2 **“SECTION 5. Notwithstanding section 3 (5) of this 2015 Act, an**
3 **employee who is employed by an employer on the effective date of this**
4 **2015 Act is eligible to use any accrued sick time as it accrues on or**
5 **after the effective date of this 2015 Act.**

6 **“SECTION 6. An employee may use sick time earned under section**
7 **3 of this 2015 Act:**

8 **“(1) For an employee’s mental or physical illness, injury or health**
9 **condition, need for medical diagnosis, care or treatment of a mental**
10 **or physical illness, injury or health condition or need for preventive**
11 **medical care.**

12 **“(2) For care of a family member with a mental or physical illness,**
13 **injury or health condition, care of a family member who needs medical**
14 **diagnosis, care, or treatment of a mental or physical illness, injury or**
15 **health condition or care of a family member who needs preventive**
16 **medical care.**

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

19 **“(4) For a purpose specified in ORS 659A.272, notwithstanding ORS**
20 **659A.270 (1).**

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

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

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

30 **“(b) A determination by a lawful public health authority or by a**

1 health care provider that the presence of the employee or the family
2 member of the employee in the community would jeopardize the health
3 of others, such that the employee must provide self care or care for
4 the family member; or

5 “(c) The exclusion of the employee from the workplace under any
6 law or rule that requires the employer to exclude the employee from
7 the workplace for health reasons.

8 “SECTION 7. (1)(a) Upon request of an employee with accrued sick
9 time available, an employer must allow the employee to use sick time.
10 If possible, the employee shall include the anticipated duration of the
11 sick time requested in the request.

12 “(b) Sick time earned under section 3 of this 2015 Act shall be taken
13 in hourly increments unless:

14 “(A) To do so would impose an undue hardship on the employer;
15 and

16 “(B) The employer has a policy or combination of policies that al-
17 lows an employee to use at least 56 hours of paid leave per year that
18 may be taken in minimum increments of four hours and may be used
19 for the purposes specified in section 6 of this 2015 Act.

20 “(c) The Commissioner of the Bureau of Labor and Industries shall
21 adopt rules for the implementation and administration of this sub-
22 section. The rules adopted shall include, but need not be limited to,
23 criteria for establishment of undue hardship under this section that
24 are based on the difficulty of securing a replacement worker while al-
25 lowing the employer to apply a consistent policy to all employees.

26 “(2) An employer may require the employee to comply with the
27 employer’s usual and customary notice and procedural requirements
28 for absences or for requesting time off if those requirements do not
29 interfere with the ability of the employee to use sick time.

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

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

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

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

13 “SECTION 8. (1)(a) If an employee takes more than three consec-
14 utive scheduled workdays of sick time for a purpose described in sec-
15 tion 6 (1) to (4) of this 2015 Act, an employer may require the employee
16 to provide verification from a health care provider of the need for the
17 sick time, or certification of the need for leave for purposes of ORS
18 659A.272 as provided in ORS 659A.280.

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

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

26 “(A) Medical verification shall be provided to the employer within
27 15 calendar days after the employer requests the verification; or

28 “(B) Certification provided as specified in ORS 659A.280 shall be
29 provided to the employer within a reasonable time after the employee
30 receives the request for certification.

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

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

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

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

19 “SECTION 9. (1) An employer shall:

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

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

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

30 “(3) The Bureau of Labor and Industries shall make available to

1 employers a template that meets the required notice provisions of this
2 section.

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

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

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

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

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

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

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

30 “(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 (5), 3 (5), 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
20 (2) or (3) of this 2015 Act may file a complaint with the Commissioner
21 of 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

1 enforcement of sections 2 to 16 of this 2015 Act.

2 **“SECTION 15. The State of Oregon preempts all charter and statu-**
3 **tory authority of local governments as defined in ORS 174.116 to set**
4 **any sick leave requirements.**

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

9 **“SECTION 17. ORS 653.256 is amended to read:**

10 **“653.256. (1) In addition to any other penalty provided by law, the Com-**
11 **missioner of the Bureau of Labor and Industries may assess a civil penalty**
12 **not to exceed \$1,000 against any person [who] that willfully violates ORS**
13 **653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 or sections 3, 4, 5, 6, 7,**
14 **8, 9 and 10 of this 2015 Act or any rule adopted thereunder.**

15 **“(2) In addition to any other penalty provided by law, the commissioner**
16 **may assess a civil penalty not to exceed \$1,000 against any person [who] that**
17 **intentionally violates ORS 653.077 or any rule adopted thereunder.**

18 **“(3) Civil penalties authorized by this section shall be imposed in the**
19 **manner provided in ORS 183.745.**

20 **“(4)(a) All sums collected as penalties under this section shall be first**
21 **applied toward reimbursement of costs incurred in determining the vio-**
22 **lations, conducting hearings under this section and addressing and collecting**
23 **the penalties.**

24 **“(b) The remainder, if any, of the sums collected as penalties under sub-**
25 **section (1) of this section shall be paid over by the commissioner to the De-**
26 **partment of State Lands for the benefit of the Common School Fund of this**
27 **state. The department shall issue a receipt for the money to the commis-**
28 **sioner.**

29 **“(c) The remainder, if any, of the sums collected as penalties under sub-**
30 **section (2) of this section shall be paid over by the commissioner to the De-**

1 department of Human Services for the benefit of the Breastfeeding Mother
2 Friendly Employer Project. The department shall issue a receipt for the
3 moneys to the commissioner.

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

5 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
6 tice specified in subsection (2) of this section may file a civil action in cir-
7 cuit court. In any action under this subsection, the court may order
8 injunctive relief and any other equitable relief that may be appropriate, in-
9 cluding but not limited to reinstatement or the hiring of employees with or
10 without back pay. A court may order back pay in an action under this sub-
11 section only for the two-year period immediately preceding the filing of a
12 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
13 bor and Industries, or if a complaint was not filed before the action was
14 commenced, the two-year period immediately preceding the filing of the
15 action. In any action under this subsection, the court may allow the pre-
16 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
17 cept as provided in subsection (3) of this section:

18 “(a) The judge shall determine the facts in an action under this sub-
19 section; and

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

23 “(2) An action may be brought under subsection (1) of this section alleg-
24 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
25 (2), 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063,
26 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,
27 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
28 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
29 659A.309, 659A.315, 659A.318, 659A.320 or 659A.421 **or sections 2 to 16 of**
30 **this 2015 Act.**

1 “(3) In any action under subsection (1) of this section alleging a violation
2 of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
3 659A.082, 659A.103 to 659A.145, 659A.199, 659A.228, 659A.230, 659A.250 to
4 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

9 “(c) Upon appeal of any judgment finding a violation, the appellate court
10 shall review the judgment pursuant to the standard established by ORS
11 19.415 (1); and

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

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

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

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

25 “(7) Any individual against whom any distinction, discrimination or re-
26 striction on account of race, color, religion, sex, sexual orientation, national
27 origin, marital status or age, if the individual is 18 years of age or older,
28 has been made by any place of public accommodation, as defined in ORS
29 659A.400, by any employee or person acting on behalf of the place or by any
30 person aiding or abetting the place or person in violation of ORS 659A.406

1 may bring an action against the operator or manager of the place, the em-
2 ployee or person acting on behalf of the place or the aider or abettor of the
3 place or person. Notwithstanding subsection (1) of this section, in an action
4 under this subsection:

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

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

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

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

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

17 “(f) Upon any appeal of a judgment under this subsection, the appellate
18 court shall review the judgment pursuant to the standard established by ORS
19 19.415 (1).

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

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

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

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

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

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

15 “(A) Has been injured by an unlawful practice or discriminatory housing
16 practice; or

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

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

24 **“SECTION 19. In addition to and not in lieu of any other appropri-**
25 **ation, there is appropriated to the Bureau of Labor and Industries, for**
26 **the biennium beginning July 1, 2015, out of the General Fund, the**
27 **amount of \$402,879, which may be expended for carrying out the pro-**
28 **visions of sections 2 to 16 of this 2015 Act.**

29 **“SECTION 20. In addition to and not in lieu of any other appropri-**
30 **ation, there is appropriated to the Department of Human Services, for**

1 the biennium beginning July 1, 2015, out of the General Fund, the
2 amount of \$1,015,574, which may be expended for carrying out the
3 provisions of sections 2 to 16 of this 2015 Act.

4 **SECTION 21.** In addition to and not in lieu of any other appropri-
5 ation, there is appropriated to the Oregon Health Authority, for the
6 biennium beginning July 1, 2015, out of the General Fund, the amount
7 of \$3,094, which may be expended for carrying out the provisions of
8 sections 2 to 16 of this 2015 Act.

9 **SECTION 22.** Except for penalties assessed for a violation of sec-
10 tion 11 (2) or (3) of this 2015 Act, the Bureau of Labor and Industries
11 may assess civil penalties against an employer only for violations of
12 sections 2 to 16 of this 2015 Act occurring on or after January 1, 2017.

13 **SECTION 23.** Sections 2 to 16 of this 2015 Act and the amendments
14 to ORS 653.256 and 659A.885 by sections 17 and 18 of this 2015 Act apply
15 to hours worked and sick time accrued or used on or after January 1,
16 2016.”.

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