

House Bill 3311

Sponsored by Representatives PARRISH, PILUSO

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**.

Establishes unlawful employment practice of subjecting employee or intern to, or permitting employee or intern to be subjected to, harassment, intimidation or bullying in workplace.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to abusive work environments; creating new provisions; amending ORS 659A.350 and
3 659A.885; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 659A.**

6 **SECTION 2. (1) As used in this section, "harassment, intimidation or bullying" means**
7 **any persistent verbal or physical act of an employer or employee, unrelated to the employer's**
8 **legitimate business interests, that a reasonable person would find threatening, intimidating,**
9 **humiliating, hostile or offensive. "Harassment, intimidation or bullying" includes, but is not**
10 **limited to, derogatory remarks, insults or epithets, physical conduct that a reasonable per-**
11 **son would find threatening, intimidating or humiliating, or the gratuitous sabotage or**
12 **undermining of an employee's work performance.**

13 **(2) It is an unlawful employment practice for an employer to subject an employee to or**
14 **permit an employee to subjected to harassment, intimidation or bullying in the workplace.**

15 **(3) A complaint may be filed under ORS 659A.820 for violations of this section.**

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

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

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

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

30 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
31 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,

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 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 2 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 3 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 4 659A.318, 659A.320 or 659A.421 **or section 2 of this 2015 Act.**

5 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 6 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 7 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (8) When the commissioner or the Attorney General has reasonable cause to believe that a
 45 person or group of persons is engaged in a pattern or practice of resistance to the rights protected

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

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

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

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

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

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

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

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

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

26 **SECTION 4.** ORS 659A.350 is amended to read:

27 659A.350. (1) An intern is considered to be in an employment relationship with an employer for
 28 the purposes of the employee protections provided under ORS 659A.030, 659A.082, 659A.109,
 29 659A.112, 659A.136, 659A.142, 659A.199, 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303,
 30 659A.306 and 659A.315 **and section 2 of this 2015 Act.**

31 (2) Nothing in subsection (1) of this section creates an employment relationship between an
 32 employer and an intern for the purposes of ORS chapter 652, 653, 654, 656, 657 or 658.

33 (3) As used in this section, "intern" means a person who performs work for an employer for the
 34 purpose of training if:

35 (a) The employer is not committed to hire the person performing the work at the conclusion of
 36 the training period;

37 (b) The employer and the person performing the work agree in writing that the person per-
 38 forming the work is not entitled to wages for the work performed; and

39 (c) The work performed:

40 (A) Supplements training given in an educational environment that may enhance the
 41 employability of the intern;

42 (B) Provides experience for the benefit of the person performing the work;

43 (C) Does not displace regular employees;

44 (D) Is performed under the close supervision of existing staff; and

45 (E) Provides no immediate advantage to the employer providing the training and may occa-

1 sionally impede the operations of the employer.

2 **SECTION 5. Section 2 of this 2015 Act and the amendments to ORS 659A.350 and 659A.885**
3 **by sections 3 and 4 of this 2015 Act apply to actions pending or filed on or after the effective**
4 **date of this 2015 Act.**

5 **SECTION 6. This 2015 Act being necessary for the immediate preservation of the public**
6 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
7 **on its passage.**

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