

House Bill 3519

Sponsored by Representative OLSON

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**.

Requires employers to implement paid time off for employees. Creates exceptions. Specifies limits for paid time off accrual and usage. Requires advance notice of request to use paid time off under certain circumstances. Makes discrimination against employee for inquiring about or using paid time off unlawful practice. Authorizes civil action for violation. Preempts local government jurisdiction over employment benefits.

A BILL FOR AN ACT

Relating to employment benefits; creating new provisions; and amending ORS 659A.885.

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

SECTION 1. Sections 2 to 14 of this 2015 Act are added to and made a part of ORS chapter 653.

SECTION 2. As used in sections 2 to 14 of this 2015 Act:

(1) "Employee" means eligible employee as defined in ORS 659A.153 other than those employees exempted under the provisions of ORS 659A.156.

(2) "Employer" means covered employer as defined in ORS 659A.153.

(3) "Employment benefit" includes but is not limited to paid time off, personal time off or PTO, bonus pay, tips, profit-sharing, rewards to workers, sick leave, health benefits or life insurance.

(4) "Local government" includes a county, city, district or other public corporation, authority or entity organized and existing under statute or city or county charter.

(5) "Paid time off," "personal time off" and "PTO" mean time for which an employee is paid but does not work for reasons related to sickness, vacation or personal needs.

SECTION 3. (1) All employers shall implement a time off policy that allows an employee to earn and accrue at least 40 hours of paid time off per year. Paid time off shall accrue at the rate of one hour of paid time off for every 52 hours worked.

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

(a) An employee from accruing more than 40 hours of paid time off.

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

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

(A) The employee will be paid for all unused paid time off in an amount up to 40 hours at the end of the year in which the paid time off is accrued; or

(B) The employer credits the employee with an amount of paid time off that meets 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 requirements of this section on the first day of the immediately subsequent year, not to ex-
 2 ceed a total of 40 hours of accrued paid time off.

3 (4)(a) An employee is eligible to use paid time off beginning on the 180th calendar day of
 4 employment with the employer and may use paid time off as it is accrued.

5 (b) An employer may authorize an employee to use accrued paid time off prior to the
 6 180th calendar day of employment.

7 (c) An employer shall pay an employee for accrued paid time off used at the regular rate
 8 of pay of the employee.

9 (5) An employee who is exempt from overtime requirements under 29 U.S.C. 213(a)(1) of
 10 the federal Fair Labor Standards Act of 1938 is presumed to work 40 hours in each workweek
 11 for the purpose of accrual of paid time off unless the actual workweek of the employee is less
 12 than 40 hours, in which case paid time off accrues based on the actual workweek of the
 13 employee.

14 (6) Nothing in sections 2 to 14 of this 2015 Act requires an employer to compensate an
 15 employee for accrued unused paid time off upon the employee's termination, resignation,
 16 retirement or other separation from employment.

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

18 (a) Search for or find a replacement worker as a condition of the employee's use of ac-
 19 crued paid time off; or

20 (b) Work an alternate shift to make up for the use of paid time off.

21 (8) Upon mutual consent by the employee and the employer, an employee may work ad-
 22 ditional hours or shifts to compensate for hours or shifts during which the employee was
 23 absent from work without using accrued paid time off for the hours or shifts missed. How-
 24 ever, the employer may not require the employee to work additional hours or shifts author-
 25 ized by this subsection. If the employee works additional hours or shifts, the employer must
 26 comply with any applicable federal, state or local laws regarding overtime pay.

27 (9) If an employee is transferred to a separate division, location or entity of the employer
 28 but remains employed by that same employer, the employee is entitled to use all paid time
 29 off accrued while working at the former entity of the employer and is entitled to retain or
 30 use all paid time off as provided by sections 2 to 14 of this 2015 Act.

31 (10)(a) An employer shall restore previously accrued unused paid time off to an employee
 32 who is reemployed by that employer within 180 days of separation from employment with the
 33 employer. The employee shall be entitled to use previously accrued paid time off immediately
 34 upon reemployment.

35 (b) If an employee leaves employment with an employer before the 180th day of employ-
 36 ment and subsequently is reemployed by that employer within 180 days of separation from
 37 employment, the employer shall restore the accrued paid time off balance the employee had
 38 when the employee left the employment of the employer and the employee may use accrued
 39 paid time off after the combined total of days of employment with the employer exceeds 180
 40 calendar days.

41 (11) If an employee is transferred to a separate division, entity or location of the em-
 42 ployer but remains employed by that same employer, the employee is entitled to use all paid
 43 time off accrued while working at the former division, entity or location of the employer and
 44 is entitled to retain or use all paid time off as provided by sections 2 to 14 of this 2015 Act.

45 **SECTION 4.** (1) An employer with a sick leave policy, paid vacation policy, paid personal

1 time off policy or other paid time off program that provides employees with paid time off that
 2 meets or exceeds the requirements of sections 2 to 14 shall be deemed to be in compliance
 3 with the requirements of sections 2 to 14 of this 2015 Act.

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

6 (a) The policy or combination of policies allows the use of 40 hours of paid time off as
 7 defined in section 2 of this 2015 Act; and

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

10 (3) If an employee of an employer that has an existing policy for paid sick time, paid va-
 11 cation leave, paid personal time off or other paid time off programs has exhausted all paid
 12 and unpaid leave available to the employee, the employer is not obligated to provide addi-
 13 tional paid leave as required by sections 2 to 14 of this 2015 Act. However, the employer may
 14 be obligated to provide time off by federal or state law that requires paid or unpaid leave.

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

18 **SECTION 6.** (1)(a) Upon request of an employee with accrued paid time off available, an
 19 employer must allow the employee to use paid time off. If possible, the employee shall include
 20 the anticipated duration of the paid time off requested in the request.

21 (b) Paid time off earned under section 3 of this 2015 Act shall be taken in hourly incre-
 22 ments.

23 (2) An employer may require the employee to comply with the employer's usual and
 24 customary notice and procedural requirements for absences or for requesting time off if
 25 those requirements do not interfere with the ability of the employee to use paid time off.

26 (3) If the need to use paid time off is foreseeable:

27 (a) The employer may require reasonable advance notice of the employee's intention to
 28 use paid time off prior to the date the paid time off is to begin or as soon as otherwise
 29 practicable; and

30 (b) The employee shall make a reasonable attempt to schedule the use of paid time off
 31 in consultation with the employer to minimize the disruption to the employer and to ac-
 32 commodate and coordinate paid time off requests of other employees.

33 (4) If the need to use paid time off is unforeseeable, the employee shall provide notice to
 34 the employer as soon as practicable and must comply generally with the employer's notice
 35 or procedural requirements for requesting or reporting other time off if those requirements
 36 do not interfere with the ability of the employee to use paid time off.

37 **SECTION 7.** (1) An employer shall:

38 (a) Provide written notification at least quarterly to each employee of the amount of
 39 accrued and unused paid time off available for use by the employee. Inclusion of the amount
 40 of accrued and used paid time off on the statement required under ORS 652.610 meets the
 41 requirements of this paragraph.

42 (b) Provide written notice of the requirements of sections 2 to 14 of this 2015 Act to each
 43 employee in accordance with rules adopted by the Commissioner of the Bureau of Labor and
 44 Industries.

45 (2) The notices provided under this section must be in the language the employer typi-

1 cally uses to communicate with the employee.

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

4 (4) Health information of an employee related to time off is confidential and may not be
5 released without the permission of the employee. Information pertaining to leave under ORS
6 659A.272 that is provided by an employee in accordance with sections 2 to 14 of this 2015 Act
7 is confidential as provided in ORS 659A.280.

8 **SECTION 8.** (1) Sections 2 to 14 of this 2015 Act establish minimum requirements per-
9 taining to paid time off and may not be construed to preempt, limit or otherwise affect the
10 applicability of any employer policy, standard or collective bargaining agreement that pro-
11 vides for greater use of paid time off.

12 (2) The State of Oregon preempts all charter and statutory authority of local govern-
13 ments as defined in section 2 of this 2015 Act to set any employment benefit requirements
14 or other terms and conditions of employment except as provided in ORS 653.017.

15 **SECTION 9.** This 2015 Act preempts all charter or statutory authority of local govern-
16 ments to mandate that employers provide paid time off to employees except as provided by
17 collective bargaining agreement or contract.

18 **SECTION 10.** It is an unlawful practice for an employer or any other person to:

19 (1) Deny, interfere with, restrain or fail to pay for paid time off to which an employee is
20 entitled under sections 2 to 14 of this 2015 Act;

21 (2) Retaliate or in any way discriminate against an employee with respect to any term
22 or condition of employment because the employee has inquired about the provisions of
23 sections 2 to 14 of this 2015 Act, submitted a request for paid time off, taken paid time off,
24 participated in any manner in an investigation, proceeding or hearing related to sections 2
25 to 14 of this 2015 Act, or invoked any provision of sections 2 to 14 of this 2015 Act; or

26 (3) Apply an absence control policy that includes paid time off absences covered under
27 sections 2 to 14 of this 2015 Act as an absence that may lead to or result in an adverse em-
28 ployment action against the employee.

29 **SECTION 11.** (1) The requirements of sections 2 to 14 of this 2015 Act do not apply to an
30 employee:

31 (a) Whose employment is subject to ORS 279C.800 to 279C.870;

32 (b) Whose terms and conditions of employment are covered by a collective bargaining
33 agreement;

34 (c) Who is employed through a hiring hall or similar referral system operated by a labor
35 organization or a third party; and

36 (d) Whose employment-related benefits are provided by a joint multi-employer-employee
37 trust or benefit plan.

38 (2)(a) The Home Care Commission created under ORS 410.602 shall establish a paid time
39 off policy for consumer employed home care workers.

40 (b) A policy for paid time off for consumer employed home care workers implemented
41 by the Home Care Commission that allows an eligible home care worker to accrue and use
42 up to 40 hours of paid time off a year, including but not limited to paid time off, is deemed
43 to meet the requirements of sections 2 to 14 of this 2015 Act and is exempt from the pro-
44 visions of sections 2 (5), 3 (4), 4, 6 and 7 of this 2015 Act.

45 (3) As used in this section, "consumer employed home care worker" has the meaning

1 given the term “home care worker” in ORS 410.600.

2 **SECTION 12.** (1) An employee asserting a violation of section 10 (2) or (3) of this 2015
3 Act may file a complaint with the Commissioner of the Bureau of Labor and Industries under
4 ORS 659A.820 or a civil action as provided in ORS 659A.885.

5 (2) The commissioner has the same enforcement powers with respect to the rights es-
6 tablished under sections 2 to 14 of this 2015 Act as are established in ORS chapters 652 and
7 653.

8 **SECTION 13.** The Commissioner of the Bureau of Labor and Industries:

9 (1) Shall enforce the provisions of sections 2 to 14 of this 2015 Act; and

10 (2) May adopt rules necessary for the implementation and enforcement of sections 2 to
11 14 of this 2015 Act.

12 **SECTION 14.** If any provision or application of sections 2 to 14 of this 2015 Act is deter-
13 mined to be invalid, the remaining provisions remain in force and have full effect, and the
14 invalid provisions are declared severable.

15 **SECTION 15.** ORS 659A.885 is amended to read:

16 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
17 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
18 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
19 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
20 court may order back pay in an action under this subsection only for the two-year period imme-
21 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
22 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
23 year period immediately preceding the filing of the action. In any action under this subsection, the
24 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
25 cept as provided in subsection (3) of this section:

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

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

29 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
30 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
31 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
32 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
33 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
34 659A.318, 659A.320 or 659A.421 or section 2 to 14 of this 2015 Act.

35 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
36 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
37 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

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

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

44 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
45 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,

1 compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

39 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 40 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 41 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 42 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 43 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 44 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 45 appealing an adverse decision of the trial court.

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

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

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

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

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

11 **SECTION 16. Sections 2 to 14 of this 2015 Act and the amendment to ORS 659A.885 by**
12 **section 15 of this 2015 Act apply to hours worked and paid time off accrued or used on or**
13 **after January 1, 2016.**