

# Enrolled Senate Bill 552

Sponsored by Senator GELSER, Representative VEGA PEDERSON, Senator KNOPP; Senators ROSENBAUM, SHIELDS, Representatives BARKER, BARNHART, BUCKLEY, DOHERTY, FAGAN, FREDERICK, HOLVEY, HOYLE, KENY-GUYER, KOMP, LININGER, LIVELY, REARDON, WILLIAMSON, WITT

CHAPTER .....

AN ACT

Relating to employment of domestic workers; creating new provisions; and amending ORS 659A.885.

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

**SECTION 1. (1) As used in this section:**

(a) **“Domestic service” means services related to the care of persons in private homes or the maintenance of private homes or their premises.**

(b)(A) **“Domestic worker” means an individual who works in the home of another person for the purpose of caring for a child, doing housekeeping or providing other domestic service and who is not compensated with public funds for the work performed.**

(B) **“Domestic worker” does not include:**

(i) **A parent or spouse of the employer.**

(ii) **A child of the employer who is under 26 years of age.**

(iii) **Students who regularly attend elementary or secondary school during the day.**

(iv) **Children, other than children of the employer, who are under 14 years of age.**

(v) **Children under 18 years of age who provide babysitting services and persons who provide babysitting on a casual basis.**

(vi) **Persons who perform casual labor in private homes or the maintenance of private homes or their premises, including but not limited to yard work, washing windows and shoveling snow.**

(vii) **Individuals employed by organizations licensed as required by ORS 443.015 or 443.315.**

(viii) **Independent contractors.**

(ix) **Individuals performing companionship services exempt from the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).**

(x) **Persons who perform house sitting duties that do not involve domestic service.**

(xi) **Persons who provide domestic service in exchange for an in-kind good or service.**

(c) **“Employer” means a person that employs another person in this state.**

(2) **A person employing a domestic worker shall:**

(a) **Notwithstanding ORS 653.020, pay the domestic worker an overtime wage at a rate of one and one-half times the worker’s base rate for hours worked in excess of 40 hours in a workweek, or in excess of 44 hours in a workweek if the domestic worker lives in the home of the employer.**

(b) Provide the domestic worker at least 24 consecutive hours of rest each workweek. If the domestic worker agrees to work on the anticipated day of rest, the employer shall pay the employee the overtime rate specified in paragraph (a) of this subsection.

(c) If the domestic worker lives in the home of the employer, provide at least eight consecutive hours of rest within each 24-hour period and provide a space with adequate conditions for uninterrupted sleep.

(d) If the domestic worker lives in the home of the employer, permit the domestic worker to cook the worker's own food, subject to reasonable restrictions based on the religious or health needs of the home's residents.

(e) If the domestic worker worked an average of at least 30 hours per week during the previous year, provide the domestic worker with at least three paid personal leave days off.

(3) Notwithstanding subsection (2)(a) of this section, the Commissioner of the Bureau of Labor and Industries shall adopt rules for the calculation of overtime wages for domestic workers during periods of travel and medical emergencies.

(4) A person that employs a domestic worker may not:

(a) Request that the domestic worker allow the employer, on either a mandatory or voluntary basis, to have possession of the worker's passport.

(b) Engage in unwelcome sexual advances, request sexual favors or engage in other verbal or physical conduct of a sexual nature directed toward a domestic worker when:

(A) Submission to the conduct is made, either explicitly or implicitly, a term or condition of the domestic worker's employment;

(B) Submission to or rejection of the conduct by the domestic worker is used as the basis for employment decisions affecting the domestic worker; or

(C) The conduct has the purpose or effect of unreasonably interfering with the domestic worker's work performance by creating an intimidating, hostile or offensive work environment.

(c) Subject a domestic worker to harassment based on gender, race, religion, disability, sexual orientation or national origin if the harassment has the purpose or effect of unreasonably interfering with the worker's work performance by creating an intimidating, hostile or offensive work environment.

(d) Retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions of this section and section 2 of this 2015 Act or has reported a violation to, or filed a complaint with, the Bureau of Labor and Industries alleging a violation of this section.

**SECTION 2.** (1) The Bureau of Labor and Industries shall adopt rules necessary for the implementation and administration of section 1 of this 2015 Act.

(2) Rules adopted under this section shall include, but are not limited to:

(a) Meal periods, rest periods and paid personal leave for domestic workers; and

(b) Uninterrupted rest periods of at least eight hours within each 24-hour period and compensation for interruptions of rest periods for domestic workers.

**SECTION 3.** (1) Except as provided in subsection (4) of this section, any violation of section 1 of this 2015 Act or rules adopted under section 2 of this 2015 Act by an employer is an unlawful employment practice.

(2) Domestic workers may file complaints alleging a violation of section 1 of this 2015 Act or of a rule adopted under section 2 of this 2015 Act with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. The commissioner shall enforce section 1 of this 2015 Act and the rules adopted under section 2 of this 2015 Act in the manner provided in ORS chapter 659A regarding other unlawful employment practices.

**(3) Violation of section 1 of this 2015 Act or of a rule adopted under section 2 of this 2015 Act subjects the violator to the same civil remedies and penalties as provided in ORS chapter 659A.**

**(4) Domestic workers may file complaints alleging violations of section 1 (2)(a) of this 2015 Act under ORS 652.310 to 652.414.**

**SECTION 4. Sections 1 to 3 of this 2015 Act may be referred to as the Domestic Workers' Protection Act.**

**SECTION 5.** ORS 659A.885 is amended to read:

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

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

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

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

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 **or sections 1 and 2 of this 2015 Act:**

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

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

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

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

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

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

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

(7) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor

of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Passed by Senate April 29, 2015**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 4, 2015**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2015

**Approved:**

.....M,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State