

**PROPOSED AMENDMENTS TO
HOUSE BILL 2005**

1 On page 1 of the printed bill, line 2, after “ORS” insert “653.256 and”.

2 Delete lines 4 through 28 and delete pages 2 through 7 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:**

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

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

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

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

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

15 **“(b) ‘Employee’ does not include:**

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

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

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

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

1 “(E) A railroad worker exempted under the federal Railroad Unem-
2 ployment Insurance Act; and

3 “(F) An individual employed by that individual’s parent, spouse or
4 child.

5 “(2)(a) ‘Employer’ means any person that employs another person,
6 the State of Oregon or a political subdivision of the state and any
7 county, city, district, authority, public corporation or entity and any
8 instrumentality thereof organized and existing under law or charter.

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

10 “(3) ‘Family member’ has the meaning given that term in ORS
11 659A.150.

12 “(4) ‘Paid sick time’ means time off:

13 “(a) That is provided to an employee by an employer that employs
14 six or more employees;

15 “(b) That may be used for the purposes specified in section 6 of this
16 2015 Act; and

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

21 “(5) ‘Sick time’ means time during which an employee is permitted
22 to be absent from work for a reason authorized under section 6 of this
23 2015 Act.

24 “(6) ‘Year’ includes any consecutive 12-month period, such as a
25 calendar year, a tax year, a fiscal year, a contract year or the
26 12-month period beginning on the anniversary of the date of employ-
27 ment of the employee.

28 “SECTION 3. (1)(a) Employers who employ at least six employees
29 shall implement a sick time policy that allows an employee to earn
30 and use up to 40 hours of paid sick time per year. Paid sick time shall

1 accrue at the rate of at least one hour of paid sick time for every 30
2 hours the employee works.

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

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

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

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

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

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

23 “(B) If the employer has fewer than six employees, the employer
24 will credit the employee with an amount of sick time that meets the
25 requirements of this section on the first day of the immediately sub-
26 sequent year.

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

30 “(4)(a) An employee is eligible to use sick time beginning on the 91st

1 calendar day of employment with the employer and may use sick time
2 as it is accrued.

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

5 “(c)(A) An employer that employs six or more employees shall pay
6 an employee for accrued sick time used at the regular rate of pay of
7 the employee.

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

12 “(5) An employee who is exempt from overtime requirements under
13 29 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act of 1938 is
14 presumed to work 40 hours in each workweek for the purpose of ac-
15 crual of sick time unless the actual workweek of the employee is less
16 than 40 hours, in which case sick time accrues based on the actual
17 workweek of the employee.

18 “(6) Nothing in sections 2 to 16 of this 2015 Act requires an employer
19 to compensate an employee for accrued unused sick time upon the
20 employee’s termination, resignation, retirement or other separation
21 from employment.

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

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

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

26 “(8) Upon mutual consent by the employee and the employer, an
27 employee may work additional hours or shifts to compensate for hours
28 or shifts during which the employee was absent from work without
29 using accrued sick time for the hours or shifts missed. However, the
30 employer may not require the employee to work additional hours or

1 shifts authorized by this subsection. If the employee works additional
2 hours or shifts, the employer must comply with any applicable federal,
3 state or local laws regarding overtime pay.

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

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

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

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

23 “SECTION 4. (1) An employer with a sick leave policy, paid vacation
24 policy, paid personal time off policy or other paid time off program
25 that provides employees with paid time off that meets or exceeds the
26 requirements of this section shall be deemed to be in compliance with
27 the requirements of sections 2 to 16 of this 2015 Act.

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

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

4 “(b) The employer specifies that the protections against retaliation
5 established by section 11 of this 2015 Act are applicable to the em-
6 ployee.

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

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

19 “SECTION 6. An employee may use sick time earned under section
20 3 of this 2015 Act in hourly increments:

21 “(1) For an employee’s mental or physical illness, injury or health
22 condition, need for medical diagnosis, care or treatment of a mental
23 or physical illness, injury or health condition or need for preventive
24 medical care.

25 “(2) For care of a family member with a mental or physical illness,
26 injury or health condition, care of a family member who needs medical
27 diagnosis, care, or treatment of a mental or physical illness, injury or
28 health condition or care of a family member who needs preventive
29 medical care.

30 “(3) Notwithstanding ORS 659A.153, for any other purpose specified

1 in ORS 659A.159.

2 “(4) For a purpose specified in ORS 659A.272, notwithstanding ORS
3 659A.270 (1).

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

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

10 “(a) Closure of the employee’s place of business, or the school or
11 place of care of the employee’s child, by order of a public official due
12 to a public health emergency;

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

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

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

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

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

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

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

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

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

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

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

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

27 **“(A) Medical verification shall be provided to the employer within**
28 **15 calendar days after the employer requests the verification; or**

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

1 receives the request for certification.

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

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

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

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

20 “SECTION 9. (1) An employer shall:

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

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

29 “(2) The notices provided under this section must be in the language
30 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 ab-**
26 **sences covered under sections 2 to 16 of this 2015 Act as an absence**
27 **that may lead to or result in an adverse employment action against**
28 **the employee.**

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

1 “(a) Whose terms and conditions of employment are covered by a
2 collective bargaining agreement;

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

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

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

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

17 “(3) As used in this section, ‘consumer employed home care
18 worker’ has the meaning given the term ‘home care worker’ in ORS
19 410.600.

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

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

27 “SECTION 14. The Commissioner of the Bureau of Labor and In-
28 dustries:

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

1 “(2) May adopt rules necessary for the implementation and
2 enforcement of sections 2 to 16 of this 2015 Act.

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

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

10 “SECTION 17. ORS 653.256 is amended to read:

11 “653.256. (1) In addition to any other penalty provided by law, the Com-
12 missioner of the Bureau of Labor and Industries may assess a civil penalty
13 not to exceed \$1,000 against any person who willfully violates ORS 653.025,
14 653.030, 653.045, 653.050, 653.060 or 653.261 **or sections 3, 4, 5, 6, 7, 8, 9 and**
15 **10 of this 2015 Act** or any rule adopted thereunder.

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

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

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

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

30 “(c) The remainder, if any, of the sums collected as penalties under sub-

1 section (2) of this section shall be paid over by the commissioner to the De-
2 partment of Human Services for the benefit of the Breastfeeding Mother
3 Friendly Employer Project. The department shall issue a receipt for the
4 moneys to the commissioner.

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

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

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

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

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

1 **this 2015 Act.**

2 “(3) In any action under subsection (1) of this section alleging a violation
3 of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
4 659A.082, 659A.103 to 659A.145, 659A.199, 659A.228, 659A.230, 659A.250 to
5 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

10 “(c) Upon appeal of any judgment finding a violation, the appellate court
11 shall review the judgment pursuant to the standard established by ORS
12 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
15 of ORS 652.355 or 653.060, the court may award, in addition to the relief
16 authorized under subsection (1) of this section, compensatory damages or
17 \$200, whichever is greater.

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

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

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

1 person aiding or abetting the place or person in violation of ORS 659A.406
2 may bring an action against the operator or manager of the place, the em-
3 ployee or person acting on behalf of the place or the aider or abettor of the
4 place or person. Notwithstanding subsection (1) of this section, in an action
5 under this subsection:

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

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

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

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

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

18 “(f) Upon any appeal of a judgment under this subsection, the appellate
19 court shall review the judgment pursuant to the standard established by ORS
20 19.415 (1).

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

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

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

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

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

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

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

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

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

25 **“SECTION 19. (1) Except as provided in subsection (2) of this sec-**
26 **tion, the Bureau of Labor and Industries may assess civil penalties**
27 **only for violations of sections 2 to 16 of this 2015 Act against an em-**
28 **ployer occurring on or after January 1, 2017.**

29 **“(2) Penalties for violations of section 11 (2) and (3) of this 2015 Act**
30 **may be assessed against an employer only for violations occurring on**

1 or after January 1, 2017.

2 **“SECTION 20. Sections 2 to 16 of this 2015 Act and the amendments**
3 **to ORS 653.256 and 659A.885 by sections 17 and 18 of this 2015 Act apply**
4 **to hours worked and sick time accrued or used on or after January 1,**
5 **2016.**

6 **“SECTION 21. Oregon Sick Time and Retirement Savings Board.**

7 **(1) The Oregon Sick Time and Retirement Savings Board is established**
8 **in the office of the State Treasurer. The board consists of seven**
9 **members as follows:**

10 **“(a) The State Treasurer or the designee of the State Treasurer.**

11 **“(b) Four members appointed by the Governor as follows:**

12 **“(A) One representative of employers.**

13 **“(B) One member with experience in the field of investments.**

14 **“(C) One representative of an association representing employees.**

15 **“(D) One representative from the Employment Department.**

16 **“(c) A member of the Senate appointed by the President of the**
17 **Senate to be a nonvoting advisory member of the board.**

18 **“(d) A member of the House of Representatives appointed by the**
19 **Speaker of the House of Representatives to be a nonvoting advisory**
20 **member of the board.**

21 **“(2) Members of the board appointed by the Governor must be**
22 **confirmed by the Senate in the manner prescribed in ORS 171.562 and**
23 **171.565.**

24 **“(3) The term of office of each member of the board appointed by**
25 **the Governor is four years, but a member serves at the pleasure of the**
26 **Governor. A member is eligible for reappointment. If there is a va-**
27 **cancy for any cause, the Governor shall make an appointment to be-**
28 **come immediately effective for the unexpired term.**

29 **“(4) Each legislative member serves at the pleasure of the appoint-**
30 **ing authority and may serve as long as the member remains in the**

1 chamber of the Legislative Assembly from which the member was ap-
2 pointed.

3 “(5) The State Treasurer or the designee appointed to the board
4 under subsection (1) of this section shall serve as chairperson of the
5 board.

6 “(6) A majority of the voting members of the board constitutes a
7 quorum for the transaction of business.

8 “(7) A member of the board appointed by the Governor is entitled
9 to compensation and expenses as provided in ORS 292.495. A legisla-
10 tive member shall receive compensation and expenses as provided in
11 ORS 171.072.

12 “(8) The office of the State Treasurer shall provide staff support to
13 the board.

14 “SECTION 22. Rules defining sick time. The Director of the Em-
15 ployment Department shall adopt rules necessary to define and enforce
16 the circumstances under which a participant may withdraw funds
17 from the plan developed under section 23 of this 2015 Act for employee
18 leave related to reimbursement for wages for sick time away from
19 work.

20 “SECTION 23. Powers and duties of Oregon Sick Time and Retire-
21 ment Savings Board. (1) The Oregon Sick Time and Retirement
22 Savings Board shall develop a defined contribution retirement plan
23 that allows for the minimum possible penalties for withdrawals of
24 funds for reimbursement of sick time for persons employed for com-
25 pensation in this state and shall conduct a market and legal analysis
26 of the plan.

27 “(2) The board shall have the following powers:

28 “(a) To establish, implement and maintain the plan developed under
29 this section.

30 “(b) To adopt rules for the general administration of the plan as

1 provided in section 25 of this 2015 Act.

2 “(c) To direct the investment of the funds contributed to accounts
3 in the plan consistent with the investment restrictions established by
4 the board. The investment restrictions must be consistent with the
5 objectives of the plan, and the board shall exercise the judgment and
6 care then prevailing that persons of prudence, discretion and intelli-
7 gence exercise in the management of their own affairs with due regard
8 to the probable income and level of risk from certain types of invest-
9 ments of money, in accordance with the policies established by the
10 board.

11 “(d) To collect application, account or administrative fees to defray
12 the costs of administering the plan.

13 “(e) To make and enter into contracts, agreements or arrange-
14 ments, and to retain, employ and contract for any of the following
15 considered necessary or desirable, for carrying out the purposes set
16 forth in sections 21 to 29 of this 2015 Act:

17 “(A) Services of private and public financial institutions, deposito-
18 ries, consultants, investment advisers, investment administrators and
19 third-party plan administrators.

20 “(B) Research, technical and other services.

21 “(C) Services of other state agencies to assist the board in its du-
22 ties.

23 “(f) To develop and implement an outreach plan to gain input and
24 disseminate information regarding the plan, sick time and retirement
25 savings in general.

26 **SECTION 24. Requirements for Oregon Sick Time and Retirement**
27 **Savings Plan.** (1) The plan developed and established by the Oregon
28 Sick Time and Retirement Savings Board under section 23 of this 2015
29 Act must:

30 “(a) Allow eligible individuals employed for compensation in this

1 state to contribute to an account established under the plan through
2 payroll deduction.

3 “(b) Require an employer to offer its employees the opportunity to
4 contribute to the plan through payroll deductions unless the employer
5 offers alternative sick time and retirement savings plans to its em-
6 ployees that meet requirements prescribed by the board by rule.

7 “(c) Provide for automatic enrollment of employees in the plan and
8 allow employees to opt out of the plan.

9 “(d) Have a default contribution rate not to exceed five percent set
10 by the board by rule.

11 “(e) Offer default escalation of contribution levels that can be in-
12 creased or decreased by the account owner within the limits allowed
13 by the Internal Revenue Code.

14 “(f) Provide for contributions to the plan to be deposited directly
15 with the investment administrator for the plan.

16 “(g) Whenever possible, use existing employer and public
17 infrastructure to facilitate contributions to the plan.

18 “(h) Whenever possible, qualify for the favorable federal tax treat-
19 ment ordinarily accorded to individual retirement accounts.

20 “(i) Whenever possible, allow account owners to withdraw funds
21 from the account with minimum penalty for reimbursement of sick
22 time as defined by the Employment Department under section 22 of
23 this 2015 Act.

24 “(j) Comply with applicable laws and regulations.

25 “(k) Not require employer contributions to employee accounts.

26 “(L) Require the maintenance of separate records and accounting
27 for each employee account.

28 “(m) Provide for reports on the status of employee accounts to be
29 provided to employees at least annually.

30 “(n) Allow for account owners to maintain an account regardless

1 of place of employment and to roll over funds into other retirement
2 accounts.

3 “(o) Pool accounts established under the plan for investment.

4 “(p) Be professionally managed.

5 “(q) Provide that the State of Oregon and employers that partic-
6 ipate in the plan have no proprietary interest in the contributions to
7 or earnings on amounts contributed to accounts established under the
8 plan.

9 “(r) Provide that the Oregon Sick Time and Retirement Savings
10 Board is the trustee of all contributions and earnings on amounts
11 contributed to accounts established under the plan.

12 “(s) Not impose any duties under the Employee Retirement Income
13 Security Act of 1974, 29 U.S.C. 1001 et seq., on employers.

14 “(t) Keep administration fees in the plan low.

15 “(u) Ensure that the earnings on contributions of account owners
16 are exempt from state income taxation until the moneys are disbursed
17 to the account owner.

18 “(v) Ensure that the earnings on contributions of account owners
19 are exempt from federal income taxation until the moneys are dis-
20 bursed to the account owner.

21 “(w) Allow the use of private sector partnerships to administer and
22 invest the contributions to the plan under the supervision and guid-
23 ance of the board.

24 “(2) The plan, the board, each board member and the State of
25 Oregon may not guarantee any rate of return or any interest rate on
26 any contribution to an account. The plan, the board, each board
27 member and the State of Oregon may not be liable for any loss in-
28 curred by any person as a result of participating in the plan.

29 “SECTION 25. Rules for Oregon Sick Time and Retirement Savings
30 Plan. The Oregon Sick Time and Retirement Savings Board shall adopt

1 **rules that:**

2 **“(1) Establish the process for enrollment in the plan developed un-**
3 **der section 23 of this 2015 Act, including procedures for automatic en-**
4 **rollment of employees and for employees to opt out of the plan.**

5 **“(2) Establish the process for account owners to make the default**
6 **contributions to plan accounts and to adjust the contribution levels.**

7 **“(3) Establish the process for allowing employees to opt out of en-**
8 **rollment in the plan.**

9 **“(4) Establish the process for account owners to make nonpayroll**
10 **contributions to plan accounts.**

11 **“(5) Set minimum, maximum and default contribution levels in ac-**
12 **cordance with limits established by the Internal Revenue Code.**

13 **“(6) Establish the process for withdrawals from plan accounts for**
14 **sick time or retirement.**

15 **“(7) Establish the process and requirements for an employer to ob-**
16 **tain an exemption from offering the plan if the employer offers alter-**
17 **native sick time and retirement savings plans to its employees that**
18 **meet requirements prescribed by the board by rule.**

19 **“SECTION 26. Confidentiality of account information. Individual**
20 **account information for accounts under the plan developed under**
21 **section 23 of this 2015 Act, including but not limited to names, ad-**
22 **resses, telephone numbers, personal identification information,**
23 **amounts contributed and earnings on amounts contributed, is confi-**
24 **dential and must be maintained as confidential:**

25 **“(1) Except to the extent necessary to administer the plan developed**
26 **under section 23 of this 2015 Act in a manner consistent with sections**
27 **21 to 29 of this 2015 Act, the tax laws of this state and the Internal**
28 **Revenue Code; or**

29 **“(2) Unless the person who provides the information or is the sub-**
30 **ject of the information expressly agrees in writing that the informa-**

1 tion may be disclosed.

2 **“SECTION 27. Oregon Sick Time and Retirement Savings Plan Ad-**
3 **ministrative Fund.** (1) The Oregon Sick Time and Retirement Savings
4 Plan Administrative Fund is established in the State Treasury, sepa-
5 rate and distinct from the General Fund. Interest earned by the
6 Oregon Sick Time and Retirement Savings Plan Administrative Fund
7 shall be credited to the fund. Moneys in the fund are continuously
8 appropriated to the Oregon Sick Time and Retirement Savings Board.

9 **“(2) The Oregon Sick Time and Retirement Savings Plan Adminis-**
10 **trative Fund consists of:**

11 **“(a) Moneys appropriated to the fund by the Legislative Assembly;**

12 **“(b) Moneys transferred to the fund from the federal government,**
13 **other state agencies or local governments;**

14 **“(c) Moneys from the payment of fees and the payment of other**
15 **moneys due the board;**

16 **“(d) Any gifts or donations made to the State of Oregon for deposit**
17 **in the fund; and**

18 **“(e) Earnings on moneys in the fund.**

19 **“(3) The board may use the moneys in the fund to pay the admin-**
20 **istrative costs and expenses of the board and the plan developed under**
21 **section 23 of this 2015 Act and for any other purpose described in**
22 **sections 21 to 29 of this 2015 Act.**

23 **“SECTION 28. Prerequisites to establishment of Oregon Sick Time**
24 **and Retirement Savings Plan.** Before establishing a plan developed
25 under section 23 of this 2015 Act, the Oregon Sick Time and Retire-
26 ment Savings Board shall:

27 **“(1) Obtain legal advice regarding the applicability of the Employee**
28 **Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq., and the**
29 **Internal Revenue Code to the plan.**

30 **“(2) Conduct a market analysis to determine:**

1 “(a) The feasibility of the plan.

2 “(b) Whether and to what extent plans with the characteristics de-
3 scribed in section 23 of this 2015 Act currently exist in the private
4 market.

5 “(3) Investigate whether employers that are not required to partic-
6 ipate in the plan can make the plan available to their employees.

7 “(4) Investigate whether employers may voluntarily contribute to
8 the plan without converting the plan into an employee benefit plan
9 under the Employee Retirement Income Security Act of 1974.

10 “(5) Investigate how to allow individuals who are not automatically
11 enrolled in the plan to opt in to the plan and make contributions to
12 an account, either through payroll contributions or another method
13 of contribution.

14 “SECTION 29. Annual reports. The Oregon Sick Time and Retire-
15 ment Savings Board shall report in each calendar year to the Governor
16 and to an appropriate committee or interim committee of the Legis-
17 lative Assembly detailing the board’s activities.

18 “SECTION 30. The Oregon Sick Time and Retirement Savings Board
19 shall report to an appropriate committee or interim committee of the
20 Legislative Assembly on or before December 31, 2016. The report must
21 include:

22 “(1) The results of the market analysis sought by the board under
23 section 28 of this 2015 Act.

24 “(2) The findings from legal advice obtained by the board under
25 section 28 of this 2015 Act.

26 “(3) An analysis of potential costs to employers, including admin-
27 istrative costs, associated with providing automatic payroll deductions
28 for participation in the plan developed under section 23 of this 2015
29 Act, and recommendations on how to eliminate or reduce those costs
30 through incentives, tax credits or other means.

1 “(4) A draft of the request for proposals to solicit bids from plan
2 administrators.

3 “(5) A timeline for implementation of the plan developed under
4 section 23 of this 2015 Act.

5 “(6) An overview of any contracts entered into by the board in the
6 performance of its duties.

7 “SECTION 31. (1) Except as provided in subsection (2) of this sec-
8 tion, the Oregon Sick Time and Retirement Savings Board shall es-
9 tablish the sick time and retirement savings plan developed under
10 section 23 of this 2015 Act so that individuals may begin making con-
11 tributions to the plan no later than July 1, 2017.

12 “(2) If the board determines that the plan developed by the board
13 under section 23 of this 2015 Act would qualify as an employee benefit
14 plan under the Employee Retirement Income Security Act of 1974, 29
15 U.S.C. 1001 et seq., the board may not establish the plan.

16 “SECTION 32. (1) The Governor, the President of the Senate and the
17 Speaker of the House of Representatives shall first make appointments
18 to the Oregon Sick Time and Retirement Savings Board for terms of
19 office beginning on September 1, 2015.

20 “(2) Notwithstanding the term of office specified by section 21 of
21 this 2015 Act, of the members first appointed to the Oregon Sick Time
22 and Retirement Savings Board by the Governor:

23 “(a) One shall serve for a term ending August 31, 2017.

24 “(b) One shall serve for a term ending August 31, 2018.

25 “(c) Two shall serve for terms ending August 31, 2019.

26 “SECTION 33. The section captions used in this 2015 Act are pro-
27 vided only for the convenience of the reader and do not become part
28 of the statutory law of this state or express any legislative intent in
29 the enactment of this 2015 Act.”.

30