

Amendment requested 3/30  
Changes to Section 8 in RED

SB 828-3  
(LC 2753)  
3/29/17 (GES/ps)

Requested by SENATE COMMITTEE ON WORKFORCE

**PROPOSED AMENDMENTS TO  
SENATE BILL 828**

1 On page 1 of the printed bill, delete lines 4 through 22 and delete pages  
2 2 through 14 and insert:

3 **“SECTION 1. Sections 2 to 13 of this 2017 Act are added to and made**  
4 **a part of ORS chapter 653.**

5 **“SECTION 2. Definitions. As used in sections 2 to 13 of this 2017**  
6 **Act, unless the context requires otherwise:**

7 **“(1) ‘Aggrieved party’ means an employee who suffers tangible or**  
8 **intangible harm due to an employer’s violation of sections 2 to 13 of**  
9 **this 2017 Act.**

10 **“(2) ‘Bona fide business reason’ means:**

11 **“(a) An action that would cause an employer to violate a law, rule,**  
12 **ordinance or regulation;**

13 **“(b) A significant and identifiable burden of additional costs to an**  
14 **employer; or**

15 **“(c) A significant and identifiable detrimental effect on the**  
16 **employer’s ability to meet organizational demands, including:**

17 **“(A) A significant inability of the employer, despite the employer’s**  
18 **best efforts, to reorganize work among existing employees;**

19 **“(B) A significant detrimental effect on business performance;**

20 **“(C) A significant inability to meet customer needs or demands; or**

21 **“(D) A significant insufficiency of work during the periods an em-**

1 **ployee proposes to work.**

2 **“(3)(a) ‘Employee’ has the meaning given that term in ORS 652.310.**

3 **“(b) ‘Employee’ does not include a salaried employee described un-**  
4 **der ORS 653.020 (3).**

5 **“(4)(a) ‘Employer’ has the meaning given that term in ORS 652.310.**

6 **“(b) ‘Employer’ includes an employer’s successor.**

7 **“(5) ‘Food services establishment’ means the fixed point of sale lo-**  
8 **cation for establishments defined under the North American Industry**  
9 **Classification System as food services and drinking places.**

10 **“(6) ‘Franchise’ has the meaning provided in ORS 650.005.**

11 **“(7) ‘Franchisor’ has the meaning provided in ORS 650.005.**

12 **“(8) ‘Full service restaurant’ means a food services establishment**  
13 **that regularly provides table service to customers.**

14 **“(9) ‘Hospitality establishment’ has the meaning provided in the**  
15 **North American Industry Classification System for hotels and motels.**

16 **“(10) ‘Interactive process’ means a timely, good faith process that**  
17 **includes a discussion between the employer and the employee for the**  
18 **purpose of arriving at a mutually beneficial arrangement for a work**  
19 **schedule that meets the needs of the employee and the employer. The**  
20 **discussion may include the proposal of alternatives by the employee**  
21 **and the employer.**

22 **“(11) ‘On-call shift’ means any time that an employer requires an**  
23 **employee to be available to work or to contact the employer or wait**  
24 **to be contacted by the employer for the purpose of determining**  
25 **whether the employee must report to work. During the shift, on-call**  
26 **status applies regardless of whether the employee is located on or off**  
27 **the employer’s premises.**

28 **“(12) ‘Regular rate of pay’ means a regular hourly rate as defined**  
29 **by the Commissioner of the Bureau of Labor and Industries.**

30 **“(13) ‘Retail establishment’ means an employer that functions pri-**



1 marily in retail trade, as described in the North American Industry  
2 Classification System.

3 “(14) ‘Seasonal employment’ means a period of employment that is  
4 cyclical in nature, occurs at approximately the same time each year,  
5 often to accommodate a seasonal increase in business, and lasts for a  
6 duration of less than 12 months during any year.

7 “(15) ‘Successor’ means:

8 “(a) An entity that is substantially the same entity as the prede-  
9 cessor as determined by the following factors:

10 “(A) Substantial continuity of the same business operations;

11 “(B) Use of the same plant;

12 “(C) Continuity of the work force;

13 “(D) Similarity of jobs and working conditions;

14 “(E) Similarity of supervisory personnel;

15 “(F) Similarity in machinery, equipment and production methods;

16 “(G) Similarity of products or services; and

17 “(H) The ability of the predecessor to provide relief.

18 “(b) A determination of whether or not a successor in interest ex-  
19 ists is not determined by the application of any single criterion, but  
20 rather the entire circumstances are to be viewed in their totality.

21 “(16) ‘Time of hire’ means the period after an offer of employment  
22 and acceptance of the offer of employment and on or before the com-  
23 mencement of employment.

24 “(17) ‘Wages’ means all compensation for performance of service  
25 by an employee for an employer, whether paid by the employer or  
26 another person, including the cash value of all compensation paid in  
27 a medium other than cash.

28 “(18) ‘Work schedule’ means the hours, days and times, including  
29 regular work shifts and on-call shifts, when an employee is required  
30 by an employer to perform duties of employment for which the em-

1 **ployee will receive compensation.**

2 **“(19) ‘Work shift’ means the specific and consecutive hours the**  
3 **employer requires the employee to work or to be on call to work.**

4 **“(20) ‘Work week’ means a fixed period of time established by an**  
5 **employer that reflects a regularly recurring period of 168 hours or**  
6 **seven consecutive 24-hour periods. A work week may begin on any day**  
7 **of the week and any hour of the day and need not coincide with a**  
8 **calendar week.**

9 **“(21) ‘Written’ or ‘writing’ means a printed or printable communi-**  
10 **cation in physical or electronic format including a communication**  
11 **that is transmitted through electronic mail, text message or a com-**  
12 **puter system or is otherwise sent and stored electronically.**

13 **“(22) ‘Year’ means any fixed, consecutive 12-month period of time.**

14

15 **“LARGE EMPLOYER PROVISIONS**

16

17 **“SECTION 3. Large employers in certain employment sectors. (1)**  
18 **Sections 3 to 8 of this 2017 Act apply to an employee employed by an**  
19 **employer, and to an employer, that is one or more of the following:**

20 **“(a) A retail establishment that employs 25 or more employees in**  
21 **this state, including a chain, an integrated enterprise or a franchise**  
22 **associated with a franchisor or network of franchises that employs 25**  
23 **or more employees in aggregate in this state.**

24 **“(b) A hospitality establishment that employs 25 or more employees**  
25 **in this state, including a chain, an integrated enterprise or a franchise**  
26 **associated with a franchisor or network of franchises that employs 25**  
27 **or more employees in aggregate in this state.**

28 **“(c) A food services establishment, except for a full service restau-**  
29 **rant, that employs 25 or more employees in this state, including a**  
30 **chain, an integrated enterprise or a franchise associated with a**



1 franchisor or network of franchises that employs 25 or more employees  
2 in aggregate in this state.

3 “(d) A full service restaurant that:

4 “(A) Employs 25 or more employees in this state, including a chain,  
5 an integrated enterprise or a franchise associated with a franchisor  
6 or network of franchises that employs 25 or more employees in ag-  
7 gregate in this state; and

8 “(B) Has 40 or more full service restaurant locations nationwide,  
9 including locations that are a part of a chain, integrated enterprise,  
10 or franchise where the franchisor owns or operates 40 or more such  
11 establishments in aggregate.

12 “(2) To determine the number of employees employed by an em-  
13 ployer, the calculation shall be based upon the number of employees  
14 employed on each working day during each of 20 or more work weeks  
15 in the current calendar year or immediately preceding calendar year.

16 “(3) Separate entities that form an integrated enterprise are con-  
17 sidered a single employer under this section. Separate entities will be  
18 considered an integrated enterprise and a single employer under this  
19 section where a separate entity controls the operation of another en-  
20 tity. The factors to consider in determining whether separate entities  
21 form an integrated enterprise include, but are not limited to:

22 “(a) The degree of interrelation between the operations of multiple  
23 entities;

24 “(b) The degree to which the entities share common management;

25 “(c) The degree to which the entities have centralized control of  
26 labor relations; and

27 “(d) The degree of common ownership or financial control over the  
28 entities.

29 “SECTION 4. Good faith estimate of work schedule; large employ-  
30 ers. (1) An employer shall provide a new employee with a written good

1 faith estimate of the employee's work schedule at time of hire. The  
2 good faith estimate shall include the average number of hours the  
3 employee can expect to work each work week, and whether the em-  
4 ployee can expect to work on-call shifts.

5 “(2) The employer shall revise the good faith estimate for an em-  
6 ployee:

7 “(a) Once every year calculated from the point of the last good faith  
8 estimate; and

9 “(b) When there is a significant change to the employee's work  
10 schedule due to changes in the employee's availability or to the  
11 employer's business needs.

12 “(3) The employer shall initiate an interactive process with the  
13 employee to discuss any significant change from the good faith esti-  
14 mate and, if applicable, state a bona fide business reason for the  
15 change.

16 “(4) The employer shall include the good faith estimate in the lan-  
17 guage the employer typically uses to communicate with the employee.

18 **SECTION 5. Advance notice of work schedule; large employers.** (1)  
19 An employer shall provide an employee with a work schedule in writ-  
20 ing at least 14 calendar days before the first day of the work schedule.

21 “(2) The employer shall post the written work schedule in a con-  
22 spicuous and accessible location, in the language the employer typi-  
23 cally uses to communicate with the employee.

24 “(3) The employer shall provide a new employee at time of hire, or  
25 an existing employee upon returning to work after a leave of absence,  
26 with a written work schedule that runs through the last date of the  
27 posted work schedule in effect at time of hire or date of return to  
28 work.

29 “(4) The written work schedule shall include all regular and on-call  
30 shifts for the work period.



1       “(5) If the employee requests changes to the written work schedule  
2 after the advance notice required in this section, the employer shall  
3 provide the employee with timely notice of the change by in-person  
4 conversation, telephone call, electronic mail, text message or other  
5 accessible electronic or written format.

6       “(6) An employee may decline to work any hours not included in the  
7 employee’s written work schedule.

8       “SECTION 6. Right to rest between work shifts; large employers.

9 (1) Unless the employee requests or consents to work such hours, the  
10 employer shall not schedule or require the employee to work:

11       “(a) Less than 10 hours after the end of the previous calendar day’s  
12 work shift; or

13       “(b) Less than 10 hours following the end of a work shift that  
14 spanned two calendar days.

15       “(2) The employer shall compensate an employee who works hours  
16 described under subsection (1) of this section at one and one-half times  
17 the employee’s scheduled rate of pay for the hours worked in a shift  
18 that began less than 10 hours after the previous shift ended.

19       “(3) An employee compensated as described in subsection (2) of this  
20 section may not be additionally compensated under section 7 of this  
21 2017 Act for work schedule changes.

22       “SECTION 7. Compensation for work schedule changes; large em-  
23 ployers. (1) An employer shall compensate an employee for each  
24 employer-requested change to the employee’s written work schedule  
25 that occurs after the advance notice required in section 7 of this 2017  
26 Act, as provided for the following circumstances:

27       “(a) The employer shall compensate the employee with one hour of  
28 pay at the employee’s scheduled rate of pay, in addition to wages  
29 earned, for the following reasons:

30       “(A) Adding an hour or hours of work to any work shift; or

1       **“(B) Changing the date or start or end time of a work shift with**  
2 **no loss of hours.**

3       **“(b) The employer shall compensate the employee with no less than**  
4 **one-half times the employee’s scheduled rate of pay per hour for any**  
5 **scheduled hours the employee does not work for the following reasons:**

6       **“(A) Subtracting hours from a regular work shift before or after the**  
7 **employee reports for duty;**

8       **“(B) Changing the date or start or end time of a work shift result-**  
9 **ing in a loss of hours;**

10       **“(C) Canceling a work shift; or**

11       **“(D) Scheduling the employee for an on-call shift if the employee**  
12 **is not asked to perform work.**

13       **“(2) The requirements for additional compensation in this section**  
14 **do not apply to one or more of the following circumstances:**

15       **“(a) Mutually agreed-upon work shift swaps or coverage among**  
16 **employees. The employer may require that work shift swaps or cover-**  
17 **age be preapproved by the employer and may assist employees in**  
18 **finding such arrangements. Assistance shall be limited to helping an**  
19 **employee identify other employees who may be available to provide**  
20 **coverage or shift swap and does not include the employer arranging**  
21 **the shift swap or coverage.**

22       **“(b) Additional hours that the employee volunteers to work in re-**  
23 **sponse to a mass communication in writing from the employer about**  
24 **the availability of additional hours, provided that the mass communi-**  
25 **cation:**

26       **“(A) Is only used for additional hours that are the result of another**  
27 **employee being unable to work scheduled hours; and**

28       **“(B) Is clear that accepting the additional hours is voluntary and**  
29 **that the employee has the right to decline the hours.**

30       **“(c) Additional hours that an employer requests employees who are**



1 working at the time the request is made, through an in-person group  
2 communication, to work in order to address present and unanticipated  
3 customer needs, so long as the hours are consecutive to the hours that  
4 the employee is already working and the employee consents to take  
5 the hours.

6 “(d) Additional hours that the employee consents to work as the  
7 result of accepting an offer of work pursuant to section 8 of this 2017  
8 Act.

9 “(e) Employee-requested changes, including additional or subtracted  
10 hours, that the employee voluntarily makes to the employee’s work  
11 schedule and that the employee documents in writing.

12 “(f) Employee hours that are subtracted for disciplinary reasons for  
13 just cause, provided the employer documents in writing the incident  
14 leading to discipline.

15 “(g) An employee’s work shift cannot begin or continue due to  
16 threats to employees or property or due to the recommendation of a  
17 public official.

18 “(h) Operations cannot begin or continue because public utilities  
19 fail to supply electricity, water or gas or there is a failure in the public  
20 utilities or sewer system.

21 “(i) Operations cannot begin or continue due to natural disaster or  
22 a similar cause not within the employer’s control.

23 **SECTION 8. Access to hours for existing employees; large em-**  
24 **ployers.** (1) Before hiring a new employee from an external applicant  
25 pool or subcontractor, including hiring through the use of a temporary  
26 service or staffing agency, an employer must offer additional hours  
27 of work to existing employees when those hours become available at  
28 their place of work.

29 “(2) The employer:

30 “(a) Shall post written notice that contains the following informa-

1 **tion:**

2 **“(A) A description and title of the position;**

3 **“(B) The required qualifications for the position;**

4 **“(C) The total hours of work being offered;**

5 **“(D) A schedule of available work shifts;**

6 **“(E) Whether the available work shifts will occur at the same time**  
7 **each week; and**

8 **“(F) The length of time the employer anticipates requiring coverage**  
9 **of the additional hours.**

10 **“(b) Shall post written notice of available hours of work for at least**  
11 **three consecutive calendar days, ~~unless a shorter posting time is nec-~~**  
12 **~~essary in order for work to be timely performed.~~**

13 **“(c) Shall post the notice in a conspicuous and accessible location**  
14 **where employee notices are customarily posted. If the employer posts**  
15 **the notice in electronic format, all employees in the workplace must**  
16 **have access to the notice on site.**

17 **“(d) Shall post the notice described in the language or languages**  
18 **the employer typically uses to communicate with employees.**

19 **“(e) May post the notice concurrently to external candidates.**

20 **“(f) Shall offer additional hours of work to an existing employee**  
21 **who has responded to the offer of work, and who, to a reasonable**  
22 **employer acting in good faith, is qualified with the skills and experi-**  
23 **ence to perform the work in the following manner:**

24 **“(A) The employer shall give the employee at least two consecutive**  
25 **calendar days, starting on the date of the employer’s offer, to accept**  
26 **the additional hours of work, ~~unless a shorter posting time is neces-~~**  
27 **~~sary in order for work to be timely performed.~~**

28 **“(B) If more than one qualified employee responds to the offer of**  
29 **additional hours of work, the employer may distribute the hours**  
30 **among interested employees or may offer all of the available hours to**



1 one qualified employee. The employer may limit distribution of hours  
2 to full work shifts rather than parceling hours among employees. The  
3 employer may choose among qualified internal candidates following  
4 the employer's usual and customary procedures, provided that the  
5 employer's usual and customary procedure is nondiscriminatory and  
6 that hours are not distributed in a manner intended to avoid applica-  
7 tion of the Patient Protection and Affordable Care Act (P.L. 111-148),  
8 as amended by the Health Care and Education Reconciliation Act (P.L.  
9 111-152) and other subsequent amendments. This subparagraph does  
10 not prevent an employer from considering seniority in offering addi-  
11 tional hours of work under this section.

12 “(C) If the employee accepts additional hours of work for seasonal  
13 employment, the employer may reasonably delay scheduling such  
14 hours and permit new employees to start working for training pur-  
15 poses, provided that the employer follows the employer's usual and  
16 customary practices for training new employees and the employer  
17 provides the existing employee with a prospective start date for the  
18 additional hours.

19 “(D) The employer is encouraged to make reasonable efforts to offer  
20 employees training opportunities to gain the skills and experience to  
21 perform work for which the employer typically has additional needs.

22 “(3) The employer may immediately proceed with hiring a new em-  
23 ployee from an external applicant pool or subcontractor to work the  
24 additional hours if: <sup>(a)</sup> no employee <sup>responds to the written notice of add'l hours of work w/in 3 days or</sup> accepts an offer of additional hours  
25 <sup>within 2 days of responding to the notice</sup> ~~under subsection (2) of this section;~~ <sup>(b) The employer has a bona fide business</sup> or <sup>reason for immediately hiring an additional</sup>  
26 <sup>employee.</sup>

26 “(4) This section does not require the employer to offer employees  
27 work hours paid at the overtime premium or prohibit the employer  
28 from offering such work hours.

29 “(5) This section does not prevent an employer from considering  
30 seniority in offering additional hours of work to existing employees.

1       **“(6) The Commissioner of the Bureau of Labor and Industries shall**  
2 **create and distribute a model notice in English, Spanish and other**  
3 **languages that are necessary for an employer to comply with the no-**  
4 **tice requirements of this section.**

5  
6                               **“PROVISIONS FOR ALL EMPLOYERS**

7  
8       **“SECTION 9. Employee right to input into work schedule. (1) Sub-**  
9 **ject to section 12 of this 2017 Act, at time of hire and during employ-**  
10 **ment, an employee may identify any limitations or changes in work**  
11 **schedule availability. The employee has the right to request not to be**  
12 **scheduled for work shifts during certain times or at certain locations**  
13 **and the right to identify preferences for one or any combination of the**  
14 **following:**

15       **“(a) Specific hours of work;**

16       **“(b) Specific employer locations;**

17       **“(c) Changes in days of work or start or end times for the work day**  
18 **or a work shift;**

19       **“(d) A stable work schedule;**

20       **“(e) Permission to exchange work shifts with other employees;**

21       **“(f) Working from home;**

22       **“(g) Telecommuting or remote work;**

23       **“(h) Reduction or change in work duties;**

24       **“(i) Part-year employment;**

25       **“(j) Part-time employment;**

26       **“(k) Job sharing arrangements; or**

27       **“(L) Additional shifts or hours.**

28       **“(2)(a) An employer may require the employee to provide reasonable**  
29 **verification of the need for a request made under subsection (1) of this**  
30 **section.**



1       **“(b) If an employer suspects that an employee is abusing the right**  
2 **to make a request under subsection (1) of this section, the employer**  
3 **may require reasonable verification of a request made under sub-**  
4 **section (1) of this section.**

5       **“(c) The employer shall pay any reasonable costs for providing**  
6 **verification that is medical verification required under this subsection,**  
7 **including lost wages, that are not paid under a health benefit plan in**  
8 **which the employee is enrolled.**

9       **“(d) Nothing in this subsection is intended to limit the application**  
10 **of ORS 659A.306.**

11       **“SECTION 10. Notice and posting requirements. (1) The Commis-**  
12 **sioner of the Bureau of Labor and Industries shall create and distrib-**  
13 **ute a poster giving notice of the rights described in sections 2 to 13**  
14 **of this 2017 Act. The commissioner shall create and distribute the**  
15 **poster in English, Spanish, and any other languages that are necessary**  
16 **for employers to comply with this section.**

17       **“(2) An employer shall display the poster in a conspicuous and ac-**  
18 **cessible place at any workplace or job site where any of their employ-**  
19 **ees work. Employers shall display the poster in English and in the**  
20 **primary language or languages of the employees at the particular**  
21 **workplace. If display of the poster is not feasible, including situations**  
22 **when the employee works remotely or does not have a regular**  
23 **workplace or job site, the employer may provide the poster on an in-**  
24 **dividual basis in an employee’s primary language in physical or elec-**  
25 **tronic format that is reasonably conspicuous and accessible.**

26       **“SECTION 11. Employer recordkeeping. (1) An employer described**  
27 **under section 3 of this 2017 Act shall retain records including:**

28       **“(a) Good faith estimates of employee work schedules;**

29       **“(b) Original and modified work schedules;**

30       **“(c) Payroll records, including documentation of additional com-**

1 **pensation paid to an employee under section 6, 7 or 9 of this 2017 Act;**

2 **“(d) Mass communications that are provided to employees about the**  
3 **availability of additional hours;**

4 **“(e) Documentation of an incident leading to employee discipline**  
5 **that results in hours subtracted from the employee’s work schedule;**

6 **“(f) Notices for additional hours of work available for employees**  
7 **pursuant to section 8 of this 2017 Act;**

8 **“(g) Confirmation from an employee that the employee is not in-**  
9 **terested in accepting additional hours of work; and**

10 **“(2) The records listed in subsections (1) and (2) of this section shall**  
11 **be retained for a period of three years.**

12 **“(3) The employer’s failure to retain adequate records required by**  
13 **this section creates a rebuttable presumption that the employer vio-**  
14 **lated a provision in sections 2 to 13 of this 2017 Act for the employee**  
15 **for whom a record was not retained.**

16  
17 **“RETALIATION**  
18

19 **“SECTION 12. Retaliation prohibited. (1) It is an unlawful practice**  
20 **for an employer to:**

21 **“(a) Interfere with, restrain, deny, or attempt to deny the exercise**  
22 **of any right protected under sections 2 to 13 of this 2017 Act; or**

23 **“(b) Retaliate or in any way discriminate against an individual with**  
24 **respect to hire or tenure or any other term or condition of employ-**  
25 **ment because the individual has inquired about the provisions of**  
26 **sections 2 to 13 of this 2017 Act.**

27 **“(2) The protections afforded under this section apply to any person**  
28 **who mistakenly but in good faith and with an objectively reasonable**  
29 **belief asserts a right protected by sections 2 to 13 of this 2017 Act.**



1  
2  
3 **“ENFORCEMENT**

4 **“SECTION 13. Enforcement, right of action and administrative**  
5 **remedies. (1) An employee asserting a violation of section 12 of this**  
6 **2017 Act may file a complaint with the Commissioner of the Bureau**  
7 **of Labor and Industries under ORS 659A.820 or a civil action as pro-**  
8 **vided in ORS 659A.885.**

9 **“(2) The commissioner has the same enforcement powers with re-**  
10 **spect to the rights established under sections 2 to 13 of this 2017 Act**  
11 **as are established in ORS chapters 652 and 653.**

12 **“(3) In addition to any other damages provided by law, the com-**  
13 **missioner may assess a statutory penalty payable to the aggrieved**  
14 **party, as follows:**

15 **“(a) \$500 for the first violation of a provision in sections 2 to 13 of**  
16 **this 2017 Act.**

17 **“(b) \$1,000 for any subsequent violation that occurs within 10 years**  
18 **of the first violation of the provision in sections 2 to 13 of this 2017**  
19 **Act.**

20 **“(4) If the commissioner determines that the employer paid the full**  
21 **remedy due to an aggrieved party, not including any statutory penalty,**  
22 **within 14 days of service of an order, the commissioner shall waive 50**  
23 **percent of the amount of any statutory penalty imposed by order un-**  
24 **der this section.**

25 **“LIMITS TO LEGISLATIVE INTENT**

26  
27 **“SECTION 14. Nothing in sections 2 to 13 of this 2017 Act is intended**  
28 **to:**

29 **“(1) Limit employee rights or protections otherwise provided by law.**

30 **“(2) Create a contractual right for an at-will employee.**





1 injunctive relief and any other equitable relief that may be appropriate, in-  
2 cluding but not limited to reinstatement or the hiring of employees with or  
3 without back pay. A court may order back pay in an action under this sub-  
4 section only for the two-year period immediately preceding the filing of a  
5 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-  
6 bor and Industries, or if a complaint was not filed before the action was  
7 commenced, the two-year period immediately preceding the filing of the  
8 action. In any action under this subsection, the court may allow the pre-  
9 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
10 cept as provided in subsection (3) of this section:

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

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

16 “(2) An action may be brought under subsection (1) of this section alleg-  
17 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237  
18 (2), 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030,  
19 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103  
20 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,  
21 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,  
22 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320,  
23 659A.355, 659A.421, 653.547 or 653.549 **or section 12 of this 2017 Act.**

24 “(3) In any action under subsection (1) of this section alleging a violation  
25 of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,  
26 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,  
27 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or  
28 653.549:

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

1 greater, and punitive damages;

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

3 “(c) Upon appeal of any judgment finding a violation, the appellate court  
4 shall review the judgment pursuant to the standard established by ORS  
5 19.415 (1); and

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

7 “(4) In any action under subsection (1) of this section alleging a violation  
8 of ORS 652.355 or 653.060, the court may award, in addition to the relief  
9 authorized under subsection (1) of this section, compensatory damages or  
10 \$200, whichever is greater.

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

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

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

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



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

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

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

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

11       “(f) Upon any appeal of a judgment under this subsection, the appellate  
12 court shall review the judgment pursuant to the standard established by ORS  
13 19.415 (1).

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

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

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

26       “(9) In any action under subsection (1) of this section alleging a violation  
27 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing  
28 law, when the commissioner is pursuing the action on behalf of an aggrieved  
29 complainant, the court shall award reasonable attorney fees to the commis-  
30 sioner if the commissioner prevails in the action. The court may award rea-

1 sonable attorney fees and expert witness fees incurred by a defendant that  
2 prevails in the action if the court determines that the commissioner had no  
3 objectively reasonable basis for asserting the claim or for appealing an ad-  
4 verse decision of the trial court.

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

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

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

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

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

18 **“SECTION 17. Sections 2 to 13 of this 2017 Act shall be known and  
19 may be cited as the Fair Work Week Act.”.**

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