

# A-Engrossed House Bill 2005

Ordered by the House March 27  
Including House Amendments dated March 27

Sponsored by Representatives LININGER, BYNUM, LIVELY, Senator TAYLOR; Representatives ALONSO LEON, FAHEY, HERNANDEZ, KENY-GUYER, MARSH, MCLAIN, MEEK, PILUSO, POWER, SMITH WARNER, SOLLMAN

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides definitions relating to comparable work for purposes of pay equity provisions. Makes unlawful employment practice to discriminate in payment of wages against employee on basis of protected class. Makes unlawful employment practice to screen job applicants based on salary history, to base salary decision on salary history, **other than for internal hires**, and to seek salary history information from applicant for employment other than after making offer of employment. Requires employer to demonstrate business necessity for pay differentials that are not based on merit, seniority, piece-rate or production-based work.

Extends time limitation to bring certain pay equity claims by making each subsequent payroll action that is based on underlying pay equity violation actionable. Extends tort claim notice requirement from 180 days to one year for public employee to give notice of certain pay equity violations. Adds additional remedies for pay equity and wage-related violations that include right to jury trial and right to compensatory and punitive damages.

*[Protects seniority rights for employee who uses sick leave or medical leave.]*

## A BILL FOR AN ACT

1  
2 Relating to pay equity; amending ORS 652.210, 652.220, 652.230, 659A.875 and 659A.885.

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

4 **SECTION 1.** ORS 652.210 is amended to read:

5 652.210. As used in ORS 652.210 to 652.230, unless the context requires otherwise:

6 **(1) "Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity**  
7 **based compensation.**

8 *[(1)]* **(2)** "Employee" means any individual who, otherwise than as a copartner of the employer,  
9 as an independent contractor or as a participant in a work training program administered under the  
10 state or federal assistance laws, renders personal services wholly or partly in this state to an em-  
11 ployer who pays or agrees to pay such individual at a fixed rate. However, when services are ren-  
12 dered only partly in this state, an individual is not an employee unless the contract of employment  
13 of the employee has been entered into, or payments thereunder are ordinarily made or to be made,  
14 within this state.

15 *[(2)]* **(3)(a)** "Employer" means any person employing one or more employees, including the State  
16 of Oregon or any political subdivision thereof or any county, city, district, authority, public corpo-  
17 ration or entity and any of their instrumentalities organized and existing under law or charter.

18 **(b)** "Employer" does not include the federal government.

19 *[(3)]* **(4)(a)** "Rate" with reference to wages means the basis of compensation for services by an  
20 employee for an employer *[and]*.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       **(b) "Rate"** includes compensation based on the time spent in the performance of the services,  
2 on the number of operations accomplished or on the quantity produced or handled.

3       **(5) "Sexual orientation" has the meaning given that term in ORS 174.100.**

4       [(4)] **(6) "Unpaid wages"** means the difference between the wages actually paid to an employee  
5 and the wages required under ORS 652.220 to be paid to the employee.

6       [(5)] **(7)(a) "Wages"** means all compensation for performance of service by an employee for an  
7 employer, whether paid by the employer or another person[, *including*].

8       **(b) "Wages" includes the** cash value of all compensation paid in any medium other than cash.

9       **(8) "Work of comparable character" means work that requires substantially similar**  
10 **knowledge, skill, effort, responsibility and working conditions in the performance of work,**  
11 **regardless of job description or job title.**

12       **(9) "Working conditions" includes work environment, hours, time of day, physical sur-**  
13 **roundings and potential hazards encountered by an employee.**

14       **SECTION 2.** ORS 652.220 is amended to read:

15       652.220. (1) [*No employer shall*] **It is an unlawful employment practice under ORS chapter**  
16 **659A for an employer to:**

17       (a) In any manner discriminate between [*the sexes*] **employees or applicants on the basis of**  
18 **race, color, religion, sex, sexual orientation, national origin, marital status, disability or age**  
19 **in the payment of wages or other compensation** for work of comparable character, the perform-  
20 **ance of which requires comparable skills.**

21       (b) Pay wages **or other compensation** to any employee at a rate less than that at which the  
22 employer pays wages **or other compensation** to employees of [*the opposite sex*] **another race,**  
23 **color, religion, sex, sexual orientation, national origin, marital status, disability or age** for  
24 work of comparable character, the performance of which requires comparable skills.

25       **(c) Screen job applicants based on current or past compensation.**

26       **(d) Determine compensation for a position based on current or past compensation of a**  
27 **prospective employee. This paragraph is not intended to prevent an employer from consid-**  
28 **ering the compensation of a current employee of the employer during a transfer, move or**  
29 **hire of the employee to a new position with the same employer.**

30       **(e) Seek the salary history of an applicant or employee from a current or former em-**  
31 **ployer. This paragraph is not intended to prevent an employer from requesting from a pro-**  
32 **spective employee written authorization to confirm prior compensation after the employer**  
33 **makes an offer of employment to the employee that includes compensation.**

34       [(2) *Subsection (1) of this section does not apply where:*]

35       [(a) *Payment is made pursuant to a seniority or merit system which does not discriminate on the*  
36 *basis of sex.*]

37       [(b) *A differential in wages between employees is based in good faith on factors other than sex.*]

38       **(2) Notwithstanding subsection (1) of this section, an employer may pay employees in**  
39 **equivalent jobs at different compensation levels if the different compensation levels are based**  
40 **on:**

41       **(a) A seniority system;**

42       **(b) A merit system;**

43       **(c) A system that measures earnings by quantity of production, including piece-rate**  
44 **work; or**

45       **(d) A differential based on a bona fide factor other than race, color, religion, sex, sexual**

1 **orientation, national origin, marital status, disability or age, including education, training**  
2 **or experience, if the employer can demonstrate that the factor:**

3 **(A) Is not based on or derived from race, color, religion, sex, sexual orientation, national**  
4 **origin, marital status, disability or age;**

5 **(B) Is not based on perceptions of traditional or appropriate roles associated with race,**  
6 **color, religion, sex, sexual orientation, national origin, marital status, disability or age;**

7 **(C) Is job-related to the position in question;**

8 **(D) Is based on a business necessity; and**

9 **(E) Accounts for the entire compensation differential.**

10 (3) *[No employer shall]* **An employer may not** in any manner discriminate in the payment of  
11 wages **or compensation** against any employee because the employee has filed a complaint in a  
12 proceeding under ORS 652.210 to 652.230, or has testified, or is about to testify, or because the em-  
13 ployer believes that the employee may testify, in any investigation or proceedings pursuant to ORS  
14 652.210 to 652.230 or in a criminal action pursuant to ORS 652.210 to 652.230.

15 **(4) An employer may not reduce the compensation level of an employee to comply with**  
16 **the provisions of this section.**

17 **(5) Amounts owed to an employee because of the failure of the employer to comply with**  
18 **the requirements of this section are unpaid wages.**

19 **(6) An employee who asserts a violation under this section may file a complaint with the**  
20 **Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action**  
21 **as provided in ORS 659A.885.**

22 **SECTION 3.** ORS 652.230 is amended to read:

23 652.230. (1) Any employee whose compensation is at a rate that is in violation of ORS 652.220  
24 shall have a right of action against the employer for the recovery of:

25 (a) The amount of the unpaid wages to which the employee is entitled for the one year period  
26 preceding the commencement of the action; and

27 (b) An additional amount as liquidated damages equal to the amount referred to in paragraph  
28 (a) of this subsection.

29 (2) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under  
30 this section. The court may award reasonable attorney fees and expert witness fees incurred by a  
31 defendant who prevails in the action if the court determines that the plaintiff had no objectively  
32 reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse  
33 decision of a trial court.

34 (3) The action for the unpaid wages and liquidated damages may be maintained by one or more  
35 employees on behalf of themselves or other employees similarly situated.

36 (4) No agreement for compensation at a rate less than the rate to which such employee is enti-  
37 tled under ORS 652.210 to 652.230 is a defense to any action under ORS 652.210 to 652.230.

38 **(5) For the purpose of time limitations, a compensation practice that is unlawful under**  
39 **ORS 652.220 occurs each time compensation is paid pursuant to a discriminatory compen-**  
40 **sation decision or other practice.**

41 **(6) Notwithstanding ORS 30.275, notice of claim against a public body under ORS 652.220**  
42 **must be given within one year of discovery of the alleged loss or injury.**

43 **SECTION 4.** ORS 659A.875 is amended to read:

44 659A.875. (1) Except as provided in subsection (2) of this section, a civil action under ORS  
45 659A.885 alleging an unlawful employment practice must be commenced within one year after the

1 occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS  
2 659A.820.

3 (2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under  
4 ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880.  
5 This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145  
6 or 659A.421 or discrimination under federal housing law.

7 (3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must be commenced not later  
8 than two years after the occurrence or the termination of the unlawful practice, or within two years  
9 after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs  
10 last. The two-year period shall not include any time during which an administrative proceeding was  
11 pending with respect to the unlawful practice.

12 (4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS  
13 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful prac-  
14 tice.

15 (5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS  
16 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a  
17 public body as defined in ORS 30.260.

18 (6) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885 against a public body,  
19 as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS  
20 30.260, based on an unlawful employment practice must be commenced within one year after the  
21 occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS  
22 659A.820.

23 **(7) Notwithstanding ORS 30.275 (2)(b), notice of claim against a public body under ORS**  
24 **659A.355 must be given within one year of discovery of the alleged loss or injury.**

25 **(8) For the purpose of time limitations, a compensation practice that is unlawful under**  
26 **this chapter occurs each time compensation is paid pursuant to a discriminatory compen-**  
27 **sation decision or other practice.**

28 **SECTION 5.** ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, is amended  
29 to read:

30 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
31 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
32 the court may order injunctive relief and any other equitable relief that may be appropriate, in-  
33 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A  
34 court may order back pay in an action under this subsection only for the two-year period imme-  
35 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau  
36 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-  
37 year period immediately preceding the filing of the action. In any action under this subsection, the  
38 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
39 cept as provided in subsection (3) of this section:

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

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

43 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS  
44 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.233, 476.574, 652.355, 653.060, 653.601  
45 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,

1 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,  
2 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,  
3 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

4 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
5 **652.220, 652.355**, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to  
6 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318,  
7 **659A.355**, 659A.421, 653.547 or 653.549:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26