

House Bill 2169

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Business and Labor)

SUMMARY

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

Limits certain attorney fee awards to employee who prevails on claim against employer in wage and hour and employment cases.

A BILL FOR AN ACT

1
2 Relating to attorney fees for plaintiff employees; amending ORS 652.615, 653.055, 653.285 and
3 659A.885.

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

5 **SECTION 1.** ORS 652.615 is amended to read:

6 652.615. There is hereby created a private cause of action for a violation of ORS 652.610 (3) for
7 actual damages or \$200, whichever is greater. In any such action the court may award to the pre-
8 vailing *[party]* **plaintiff**, in addition to costs and disbursements, reasonable attorney fees.

9 **SECTION 2.** ORS 653.055 is amended to read:

10 653.055. (1) Any employer who pays an employee less than the wages to which the employee is
11 entitled under ORS 653.010 to 653.261 is liable to the employee affected:

12 (a) For the full amount of the wages, less any amount actually paid to the employee by the
13 employer; and

14 (b) For civil penalties provided in ORS 652.150.

15 (2) Any agreement between an employee and an employer to work at less than the wage rate
16 required by ORS 653.010 to 653.261 is no defense to an action under subsection (1) of this section.

17 (3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in
18 connection with a wage claim based on ORS 653.010 to 653.261 as the commissioner has under ORS
19 652.310 to 652.445 and in addition the commissioner may, without the necessity of assignments of
20 wage claims from employees, initiate suits against employers to enjoin future failures to pay re-
21 quired minimum wages or overtime pay and to require the payment of minimum wages and overtime
22 pay due employees but not paid as of the time of the filing of suit. The commissioner may join in a
23 single proceeding and in one cause of suit any number of wage claims against the same employer.
24 If the commissioner does not prevail in such action, the commissioner shall pay all costs and dis-
25 bursements from the Bureau of Labor and Industries Account.

26 (4) The court may award reasonable attorney fees to the prevailing *[party]* **plaintiff** in any
27 action brought by an employee under this section.

28 **SECTION 3.** ORS 653.285 is amended to read:

29 653.285. If an employee's trade equipment is damaged upon or stolen from premises under the
30 employer's control as a proximate cause of the employer's failure to comply with ORS 653.280 the
31 employee has a right to file an action against the employer, and the employer is liable, for financial

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 settlement as is needed to repair or replace the equipment. The court may award reasonable attor-
 2 ney fees to the prevailing *[party]* **plaintiff** in an action under this section.

3 **SECTION 4.** ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, is amended
 4 to read:

5 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 6 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 7 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 8 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 9 court may order back pay in an action under this subsection only for the two-year period imme-
 10 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 11 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 12 year period immediately preceding the filing of the action. In any action under this subsection, the
 13 court may allow the prevailing *[party]* **plaintiff** costs and reasonable attorney fees at trial and on
 14 appeal. Except as provided in subsection (3) of this section:

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

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

18 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 19 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
 20 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 21 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 22 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 23 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

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

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

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

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

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

33 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 34 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 35 compensatory damages or \$200, whichever is greater.

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

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

42 (7) Any individual against whom any distinction, discrimination or restriction on account of
 43 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 44 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 45 659A.400, by any employee or person acting on behalf of the place or by any person aiding or

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

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

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

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

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

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

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

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

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

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

28 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 29 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 30 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 31 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 32 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 33 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 34 appealing an adverse decision of the trial court.

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

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

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

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

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