

House Bill 2181

Introduced and printed pursuant to House Rule 12.00. Pre-session 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**.

Creates rebuttable presumption against employer if employer takes certain adverse actions against employee within 90 days of employee's protected, wage-related activity. Requires employer, after termination of employee, to provide to employee, within 10 days of employee's written request, reason for termination of employee. Makes violation subject to punitive damages and provides right to jury trial.

A BILL FOR AN ACT

1
2 Relating to the protection of employee rights in the workplace; creating new provisions; and
3 amending ORS 652.355, 653.060 and 659A.885.

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

5 **SECTION 1.** ORS 652.355 is amended to read:

6 652.355. (1) An employer may not discharge or in any other manner discriminate against an
7 employee because:

8 (a) The employee has made a wage claim or discussed, inquired about or consulted an attorney
9 or agency about a wage claim.

10 (b) The employee has caused to be instituted any proceedings under or related to ORS 652.310
11 to 652.414.

12 (c) The employee has testified or is about to testify in any such proceedings.

13 **(2) An employer that discharges or in any other manner discriminates or retaliates**
14 **against an employee within 90 days of the employee's protected activity described in sub-**
15 **section (1) of this section creates a rebuttable presumption that the employer's action was**
16 **taken in violation of subsection (1) of this section.**

17 [(2)] (3) A violation of this section is an unlawful employment practice under ORS chapter 659A.
18 A person unlawfully discriminated against under this section may file a complaint under ORS
19 659A.820 with the Commissioner of the Bureau of Labor and Industries.

20 **SECTION 2.** ORS 653.060 is amended to read:

21 653.060. (1) An employer may not discharge or in any other manner discriminate against an
22 employee because:

23 (a) The employee has made a complaint that the employee has not been paid wages in accord-
24 ance with ORS 653.010 to 653.261.

25 (b) The employee has caused to be instituted or is about to cause to be instituted any pro-
26 ceedings under or related to ORS 653.010 to 653.261.

27 (c) The employee has testified or is about to testify in any such proceedings.

28 **(2) An employer that discharges or in any other manner discriminates or retaliates**
29 **against an employee within 90 days of the employee's protected activity described in sub-**

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 **section (1) of this section creates a rebuttable presumption that the employer's action was**
 2 **taken in violation of subsection (1) of this section.**

3 [(2)] (3) A violation of this section is an unlawful employment practice under ORS chapter 659A.
 4 A person unlawfully discriminated against under this section may file a complaint under ORS
 5 659A.820 with the Commissioner of the Bureau of Labor and Industries.

6 **SECTION 3. (1) Upon receipt of a written request from a terminated employee, an em-**
 7 **ployer shall provide to the employee a full, succinct and complete written statement of the**
 8 **reason or reasons for the termination of the employee. If an employer has terminated an**
 9 **at-will employee and did not have any reason for doing so, the employer may comply with**
 10 **the requirements of this subsection by providing a statement that the employee was an at-**
 11 **will employee and the employer had no particular reason for discharging the employee. The**
 12 **written statement provided under this subsection shall be provided to the employee within**
 13 **10 days after the request has been made.**

14 (2) Except by agreement between the employer and a terminated employee, an employer
 15 may not make or furnish to any person a statement with respect to the reason for the ter-
 16 mination of the employee that materially differs from the reason provided to the employee
 17 in the written statement required under subsection (1) of this section. Nothing in this sub-
 18 section prevents an employer from declining to provide a reason for termination of an em-
 19 ployee to third parties.

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

22 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 23 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 24 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 25 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 26 court may order back pay in an action under this subsection only for the two-year period imme-
 27 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 28 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 29 year period immediately preceding the filing of the action. In any action under this subsection, the
 30 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 31 cept as provided in subsection (3) of this section:

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

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

35 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 36 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
 37 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 38 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 39 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 40 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

41 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 42 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 43 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549:

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

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

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

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

4 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
5 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
6 compensatory damages or \$200, whichever is greater, **punitive damages and the right to a jury**
7 **trial.**

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

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

14 (7) Any individual against whom any distinction, discrimination or restriction on account of
15 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
16 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
17 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
18 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
19 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
20 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
21 section:

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

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

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

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

29 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
30 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
31 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
32 and
33

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

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

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

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

1 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
2 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
3 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
4 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
5 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
6 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
7 appealing an adverse decision of the trial court.

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

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

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

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

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

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