

A-Engrossed
House Bill 2856

Ordered by the House April 13
Including House Amendments dated April 13

Sponsored by 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.

Creates Community Outreach and Labor Education Program within Bureau of Labor and Industries to promote awareness of employee rights. Appropriates moneys from General Fund to bureau for program outreach, education and technical assistance.

Enhances remedies for violations of certain employee rights.

[Declares emergency, effective July 1, 2017.]

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to employee rights in the workplace; creating new provisions; amending ORS 659A.885; and
3 prescribing an effective date.

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

5 **SECTION 1. (1) There is created the Community Outreach and Labor Education Program**
6 **within the division of the Bureau of Labor and Industries that enforces wage and hour laws,**
7 **as a grant program to fund outreach, education and technical assistance to Oregon workers**
8 **pertaining to employee rights in the workplace.**

9 **(2) Grants provided through the Community Outreach and Labor Education Program may**
10 **be used for activities including:**

- 11 **(a) Door-to-door outreach;**
- 12 **(b) Community-based education events;**
- 13 **(c) Training materials;**
- 14 **(d) Technical assistance;**
- 15 **(e) Counseling; and**
- 16 **(f) Referral services.**

17 **(3) When considering applications for grants, the program administrators shall give pri-**
18 **ority to pilot projects that provide services to:**

- 19 **(a) Low-wage workers;**
- 20 **(b) Women;**
- 21 **(c) Immigrant and refugee workers;**
- 22 **(d) Lesbian, gay, bisexual, non-binary or transgender individuals;**
- 23 **(e) Workers under 20 years of age;**
- 24 **(f) Disabled workers; and**
- 25 **(g) Workers of color.**

26 **(4) Grants will be distributed in a manner that ensures populations around the state will**

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 **be served and reached.**

2 **(5) Grant recipients must have experience serving the populations they propose serving**
3 **with grant funds.**

4 **SECTION 2. In addition to and not in lieu of any other appropriation, there is appropri-**
5 **ated to the Bureau of Labor and Industries, for the biennium beginning July 1, 2017, out of**
6 **the Wage Security Fund, the amount of \$2,000,000, for grants described in section 1 of this**
7 **2017 Act.**

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

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

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

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

23 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
24 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
25 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
26 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
27 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
28 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

29 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
30 **408.230, 408.237 (2), 652.355, 653.060, 653.601 to 653.661,** 659.852, 659A.030, 659A.040, 659A.043,
31 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, **659A.150 to 659A.186, 659A.194,** 659A.199,
32 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, **659A.277,** 659A.290, 659A.318, **659A.355,**
33 659A.421, 653.547 or 653.549:

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

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

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

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

40 *[(4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or*
41 *653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,*
42 *compensatory damages or \$200, whichever is greater.]*

43 *[(5)]* (4) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
44 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
45 of this section, compensatory damages or \$250, whichever is greater.

1 [(6)] (5) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or
2 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
3 a civil penalty in the amount of \$720.

4 [(7)] (6) Any individual against whom any distinction, discrimination or restriction on account
5 of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individ-
6 ual is 18 years of age or older, has been made by any place of public accommodation, as defined in
7 ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
8 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
9 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
10 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
11 section:

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

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

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

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

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

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

25 [(8)] (7) When the commissioner or the Attorney General has reasonable cause to believe that
26 a person or group of persons is engaged in a pattern or practice of resistance to the rights protected
27 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
28 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
29 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
30 manner as a person or group of persons may file a civil action under this section. In a civil action
31 filed under this subsection, the court may assess against the respondent, in addition to the relief
32 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

35 [(9)] (8) In any action under subsection (1) of this section alleging a violation of ORS 659A.145
36 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
37 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
38 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
39 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
40 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
41 appealing an adverse decision of the trial court.

42 [(10)] (9) In an action under subsection (1) or [(8)] (7) of this section alleging a violation of ORS
43 659A.145 or 659A.421 or discrimination under federal housing law:

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

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

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

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

7 **SECTION 4. Section 1 of this 2017 Act and the amendments to ORS 659A.885 by section**
8 **3 of this 2017 Act become operative January 1, 2018.**

9 **SECTION 5. The Commissioner of the Bureau of Labor and Industries may take any**
10 **action before the operative date specified in section 4 of this 2017 Act that is necessary to**
11 **enable the commissioner to carry out, on and after the operative date specified in section 4**
12 **of this 2017 Act, the duties imposed by section 1 of this 2017 Act and the amendments to ORS**
13 **659A.885 by section 3 of this 2017 Act.**

14 **SECTION 6. This 2017 Act takes effect on the 91st day after the date on which the 2017**
15 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

16