

A-Engrossed
House Bill 3060

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

Sponsored by Representatives LININGER, NOSSE, SANCHEZ, ALONSO LEON, POWER; Representatives BYNUM, CLEM, HERNANDEZ, LIVELY, Senator BURDICK

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.

Prohibits state contracting agency from entering into public contract with prospective contractor that has not certified that prospective contractor has policy and practice of preventing sexual harassment, sexual assault and discrimination against members of protected classes of workers. Specifies minimum elements that policy and practice must include **and method by which contractor may provide required notice**.

Requires public contract to require as material term that contractor have and maintain policy and practice to prevent sexual harassment, sexual assault and discrimination against members of protected classes.

Becomes operative on January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to requiring contractors in public procurements to have policies to prevent certain
3 discriminatory conduct; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 279A.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Discrimination" means conduct that has the purpose or effect of creating employ-**
8 **ment conditions for an individual that are intimidating, hostile or offensive or that evince**
9 **animosity, resentment, anger, prejudice or ill will in others primarily because of the**
10 **individual's identification with or membership in a protected class.**

11 (b) **"Protected class" means a group of people that state or federal law protects from**
12 **employment discrimination including, but not limited to, a group in which membership de-**
13 **pends on an ascribed association or identification, or an individual's voluntary association**
14 **or identification with other individuals, on the basis of one or more of these characteristics:**

15 (A) **Race, color or ethnicity;**

16 (B) **National origin;**

17 (C) **Sex;**

18 (D) **Gender, including actual or perceived gender identity;**

19 (E) **Sexual orientation;**

20 (F) **Disability;**

21 (G) **Age;**

22 (H) **Marital status; or**

23 (I) **Religion.**

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 (c) "Sexual assault" means any unwanted sexual contact, as defined in ORS 163.305.

2 (d) "Sexual harassment" means:

3 (A) A request or demand for sexual favors in an implicit or explicit exchange for an
4 employment-related benefit or as a means of avoiding an employment-related detriment; or

5 (B) Unwelcome conduct of a sexual nature that has the purpose or effect of interfering
6 with a person's ability to perform job duties or that creates an intimidating, offensive or
7 hostile work environment.

8 (2)(a) Except as provided in subsection (4) of this section, a state contracting agency may
9 not enter into a public contract with an anticipated contract price of \$150,000 or more with
10 a prospective contractor that does not certify in a signed writing that the prospective con-
11 tractor has a policy and practice of preventing sexual harassment, sexual assault and dis-
12 crimination against employees who are members of a protected class.

13 (b) A prospective contractor may not certify under paragraph (a) of this subsection that
14 the prospective contractor has a policy and practice of preventing sexual harassment, sexual
15 assault or discrimination against employees who are members of a protected class unless the
16 policy and practice includes, at a minimum:

17 (A) A written notice to each employee that clearly prohibits and specifies disciplinary
18 measures for conduct that constitutes sexual harassment, sexual assault or discrimination
19 against a member of a protected class.

20 (B) A clear process that:

21 (i) Enables an employee that experiences or witnesses conduct that constitutes sexual
22 harassment, sexual assault or discrimination against a member of a protected class to report
23 and stop the conduct; and

24 (ii) Guides the prospective contractor in responding to a report under sub-subparagraph
25 (i) of this subparagraph, resolving the issues identified in the report and disciplining em-
26 ployees who engage in prohibited conduct.

27 (C) A regular written procedure for submitting a report under subparagraph (B)(i) of this
28 paragraph that identifies the specific individuals to whom an employee may submit the re-
29 port and the individuals who have responsibility for resolving issues identified in the report.

30 (D) A practice of treating as confidential, to the extent permitted by law, any report that
31 an employee makes under subparagraph (B)(i) of this paragraph.

32 (E) A prohibition against retaliating against an employee who experiences or witnesses,
33 and reports, conduct that constitutes sexual harassment, sexual assault or discrimination
34 against a member of a protected class.

35 (F) A prohibition against discrimination in providing benefits to an employee or a de-
36 pendent of the employee based on the employee's membership in a protected class or the
37 membership of the employee's dependent in a protected class.

38 (G) A prohibition on denying benefits to an employee or a dependent of the employee
39 based solely on the employee's gender identity or the gender identity of the employee's de-
40 pendent, if the prospective contractor provides health insurance or health care benefits.

41 (c) A prospective contractor may provide the written notice described in paragraph (b)(A)
42 of this subsection by means of a printed or electronic employee handbook. The Oregon De-
43 partment of Administrative Services may develop and make available on the department's
44 website an electronic template to guide prospective contractors in meeting the notice re-
45 quirements set forth in paragraph (b)(A) of this subsection and may provide other guidance

1 to prospective contractors in meeting the requirements set forth in paragraph (b) of this
2 subsection.

3 (3) Every public contract described in subsection (2)(a) of this section that a state con-
4 tracting agency awards must require as a material term of the public contract that a con-
5 tractor certify that the contractor has a policy and practice that meets the requirements
6 described in subsection (2) of this section and will maintain the policy and practice in force
7 during the entire term of the public contract.

8 (4) A state contracting agency may enter into a public contract described in subsection
9 (2)(a) of this section with a prospective contractor that has not provided the certification
10 described in subsection (2) of this section if:

11 (a) The state contracting agency conducted the procurement under ORS 279B.075,
12 279B.080 or 279B.085; or

13 (b) Only one prospective contractor submitted a bid or proposal in response to the state
14 contracting agency's solicitation.

15 **SECTION 3.** Section 2 of this 2017 Act applies to procurements that a state contracting
16 agency advertises or otherwise solicits or, if the state contracting agency does not advertise
17 or solicit the procurement, to public contracts into which the state contracting agency en-
18 ters on or after the operative date specified in section 4 of this 2017 Act.

19 **SECTION 4.** (1) Section 2 of this 2017 Act becomes operative on January 1, 2018.

20 (2) The Attorney General, the Director of the Oregon Department of Administrative
21 Services, the Director of Transportation or a state contracting agency that adopts rules
22 under ORS 279A.065 may adopt rules and take any other action that is necessary to enable
23 the Attorney General, the director or the state contracting agency, on and after the opera-
24 tive date specified in subsection (1) of this section, to exercise all of the duties, functions and
25 powers conferred on the Attorney General, the director or the state contracting agency by
26 section 2 of this 2017 Act.

27 **SECTION 5.** This 2017 Act takes effect on the 91st day after the date on which the 2017
28 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

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