

Senate Bill 752

Sponsored by Senators DEMBROW, TAYLOR, Representatives LININGER, BYNUM, LIVELY; Representatives ALONSO LEON, 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 **as introduced**.

Provides definitions relating to comparable work for purposes of pay equity provisions. Makes unlawful employment practice to discriminate in the 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 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, 653.606, 659A.171, 659A.875 and
3 659A.885.

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

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

6 652.210. As used in ORS 652.210 to 652.230, unless the context requires otherwise:

7 (1) **“Compensation” includes wages, salary, bonuses, benefits, fringe benefits and stock**
8 **options.**

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

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

19 (b) “Employer” does not include the federal government.

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

22 (b) **“Rate”** includes compensation based on the time spent in the performance of the services,
23 on the number of operations accomplished or on the quantity produced or handled.

24 (5) **“Sexual orientation” has the meaning given that term in ORS 174.100.**

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

3 [(5)] **(7)(a)** “Wages” means all compensation for performance of service by an employee for an
 4 employer, whether paid by the employer or another person[, *including*].

5 **(b) “Wages” includes the** cash value of all compensation paid in any medium other than cash.

6 **(8) “Work of comparable character” means work that is substantially similar based on**
 7 **the needs of the employer, the value of the work to the employer and the level of knowledge,**
 8 **composite skill, effort, responsibility and working conditions required in the performance of**
 9 **the work, regardless of job description or job title.**

10 **(9) “Working conditions” includes work environment, hours, time of day, physical sur-**
 11 **roundings and potential hazards encountered by an employee.**

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

13 652.220. (1) [*No employer shall*] **It is an unlawful employment practice under ORS chapter**
 14 **659A for an employer to:**

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

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

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

24 **(d) Determine compensation for a position based on current or past compensation of a**
 25 **prospective employee or employee.**

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

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

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

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

34 **(2) Notwithstanding subsection (1) of this section, an employer may pay employees in**
 35 **equivalent jobs at different wage rates if the different wage rates are based on:**

36 **(a) A seniority system;**

37 **(b) A merit system;**

38 **(c) A system that measures earnings by quantity of production, such as piece-rate work;**
 39 **or**

40 **(d) A differential based on a bona fide factor other than race, color, religion, sex, sexual**
 41 **orientation, national origin, marital status or age, such as education, training or experience,**
 42 **if the employer can demonstrate that the factor:**

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

45 **(B) Is not based on perceptions of traditional or appropriate roles associated with race,**

1 **color, religion, sex, sexual orientation, national origin, marital status or age;**

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

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

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

5 (3) *[No employer shall]* **An employer may not** in any manner discriminate in the payment of
6 wages **or compensation** against any employee because the employee has filed a complaint in a
7 proceeding under ORS 652.210 to 652.230, or has testified, or is about to testify, or because the em-
8 ployer believes that the employee may testify, in any investigation or proceedings pursuant to ORS
9 652.210 to 652.230 or in a criminal action pursuant to ORS 652.210 to 652.230.

10 **(4) An employer may not reduce the wage rate of an employee to comply with the pro-**
11 **visions of this section.**

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

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

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

18 652.230. (1) Any employee whose compensation is at a rate that is in violation of ORS 652.220
19 shall have a right of action against the employer for the recovery of:

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

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

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

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

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

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

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

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

39 659A.875. (1) Except as provided in subsection (2) of this section, a civil action under ORS
40 659A.885 alleging an unlawful employment practice must be commenced within one year after the
41 occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS
42 659A.820.

43 (2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under
44 ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880.
45 This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145

1 or 659A.421 or discrimination under federal housing law.

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

7 (4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS
8 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful prac-
9 tice.

10 (5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS
11 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a
12 public body as defined in ORS 30.260.

13 (6) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885 against a public body,
14 as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS
15 30.260, based on an unlawful employment practice must be commenced within one year after the
16 occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS
17 659A.820.

18 **(7) Notwithstanding ORS 30.275 (2)(b), notice of claim against a public body under ORS**
19 **659A.355 must be given within one year of discovery of the alleged loss or injury.**

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

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

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

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

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

38 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
39 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
40 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
41 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
42 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
43 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

44 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
45 **652.220, 652.355, 659A.355,** 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082,

1 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290,
2 659A.318, 659A.421, 653.547 or 653.549:

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

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

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

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

9 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
10 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
11 compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

1 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

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

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

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

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

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

21 **SECTION 6.** ORS 653.606 is amended to read:

22 653.606. (1)(a) Employers that employ at least 10 employees working anywhere in this state shall
23 implement a sick time policy that allows an employee to earn and use up to 40 hours of paid sick
24 time per year. Paid sick time shall accrue at the rate of at least one hour of paid sick time for every
25 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

26 (b) Employers that employ fewer than 10 employees working anywhere in this state shall im-
27 plement a sick time policy that allows an employee to earn and use up to 40 hours of unpaid sick
28 time per year. Unpaid sick time shall accrue at the rate of at least one hour of unpaid sick time for
29 every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

30 (c) Employers that employ at least 10 employees working anywhere in this state and front-load
31 for employees at least 40 hours of paid sick time or paid time off at the beginning of each year used
32 to calculate the accrual and usage of sick time or time off need not comply with subsections (1)(a)
33 and (3) of this section.

34 (d) Employers that employ fewer than 10 employees working anywhere in this state and front-
35 load for employees at least 40 hours of unpaid sick time or unpaid time off at the beginning of each
36 year used to calculate the accrual and usage of sick time or time off need not comply with sub-
37 sections (1)(b) and (3) of this section.

38 (2)(a) The number of employees employed by an employer shall be ascertained by determining
39 that the per-day average number of employees is 10 or greater for each of 20 workweeks in the
40 calendar year or the fiscal year of the employer immediately preceding the year in which the leave
41 is to be taken.

42 (b) If the business of the employer was not in existence for the entire year preceding the de-
43 termination made under paragraph (a) of this subsection, the number of employees shall be based
44 on any 20 workweeks preceding the request for sick time, which may include workweeks in the
45 current year, the preceding year or a combination of workweeks in the current year and the pre-

1 ceding year.

2 (3) An employee shall begin to earn and accrue sick time on the first day of employment with
3 an employer. The employee may carry over up to 40 hours of unused sick time from one year to a
4 subsequent year. However, an employer may adopt a policy that limits:

5 (a) An employee to accruing no more than 80 hours of sick time; or

6 (b) An employee to using no more than 40 hours of sick time in a year.

7 (4)(a) An employer is not required to carry over unused sick time if, by mutual consent, the
8 employer and an employee agree that:

9 (A) If the employer has 10 or more employees working anywhere in this state, the employee will
10 be paid for all unused paid sick time at the end of the year in which the sick time is accrued and
11 the employer will credit the employee with an amount of paid sick time that meets the requirements
12 of this section on the first day of the immediately subsequent year; or

13 (B) If the employer has fewer than 10 employees working anywhere in this state, the employer
14 will credit the employee with an amount of sick time that meets the requirements of this section
15 on the first day of the immediately subsequent year.

16 (b) The Commissioner of the Bureau of Labor and Industries shall adopt rules for the determi-
17 nation of the number of employees employed by an employer.

18 (5)(a) An employee is eligible to use sick time beginning on the 91st calendar day of employment
19 with the employer and may use sick time as it is accrued.

20 (b) An employer may authorize an employee to use accrued sick time prior to the 91st calendar
21 day of employment.

22 (c)(A) An employer that employs 10 or more employees working anywhere in this state shall pay
23 an employee for accrued sick time used at the regular rate of pay of the employee.

24 (B) For an employee employed on a commission or piece-rate basis by an employer that employs
25 10 or more employees working anywhere in this state, the employer shall pay the employee for ac-
26 cused sick time used at the employee's regular rate of pay. If the employee is paid on a commission
27 or piece-rate basis and does not have a previously established regular rate of pay, the employer shall
28 pay the employee at a rate equal to at least the minimum wage specified in ORS 653.025.

29 (6) An employee who is exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the
30 federal Fair Labor Standards Act of 1938 is presumed to work 40 hours in each workweek for the
31 purpose of accrual of sick time unless the actual workweek of the employee is less than 40 hours,
32 in which case sick time accrues based on the actual workweek of the employee.

33 (7) Nothing in ORS 653.601 to 653.661 requires an employer to compensate an employee for ac-
34 cused unused sick time upon the employee's termination, resignation, retirement or other separation
35 from employment.

36 (8) An employer may not require an employee to:

37 (a) Search for or find a replacement worker as a condition of the employee's use of accrued sick
38 time; or

39 (b) Work an alternate shift to make up for the use of sick time.

40 (9) Upon mutual consent by the employee and the employer, an employee may work additional
41 hours or shifts to compensate for hours or shifts during which the employee was absent from work
42 without using accrued sick time for the hours or shifts missed. However, the employer may not
43 require the employee to work additional hours or shifts authorized by this subsection. If the em-
44 ployee works additional hours or shifts, the employer must comply with any applicable federal, state
45 or local laws regarding overtime pay.

1 **(10) An employer shall restore an employee to the employee's position upon return from**
 2 **use of sick time without loss of seniority.**

3 [(10)] **(11)** An employee retains accrued sick time if the employer sells, transfers or otherwise
 4 assigns the business or an interest in the business to another employer.

5 [(11)(a)] **(12)(a)** An employer shall restore previously accrued unused sick time to an employee
 6 who is reemployed by that employer within 180 days of separation from employment with the em-
 7 ployer.

8 (b) If an employee leaves employment with an employer before the 91st day of employment and
 9 subsequently is reemployed by that employer within 180 days of separation from employment, the
 10 employer shall restore the accrued sick time balance the employee had when the employee left the
 11 employment of the employer and the employee may use accrued sick time after the combined total
 12 of days of employment with the employer exceeds 90 calendar days.

13 [(12)] **(13)** If an employee is transferred to a separate division, entity or location of the employer
 14 but remains employed by that same employer, the employee is entitled to use all sick time accrued
 15 while working at the former division, entity or location of the employer and is entitled to retain or
 16 use all sick time as provided by ORS 653.601 to 653.661.

17 [(13)] **(14)** Employers located in a city with a population exceeding 500,000 shall comply with
 18 ORS 653.601 to 653.661, except that:

19 (a) If an employer located in a city with a population exceeding 500,000 employs at least six
 20 employees working anywhere in this state, the employer shall implement a policy consistent with
 21 this section as it applies to employers with at least 10 employees working anywhere in this state.

22 (b) If an employer located in a city with a population exceeding 500,000 employs fewer than six
 23 employees working anywhere in this state, the employer shall implement a policy consistent with
 24 this section as it applies to employers with fewer than 10 employees working anywhere in this state.

25 **SECTION 7.** ORS 659A.171 is amended to read:

26 659A.171. (1) After returning to work after taking family leave under the provisions of ORS
 27 659A.150 to 659A.186, an eligible employee is entitled to be restored to the position of employment
 28 held by the employee when the leave commenced if that position still exists, without regard to
 29 whether the employer filled the position with a replacement worker during the period of family
 30 leave. If the position held by the employee at the time family leave commenced no longer exists, the
 31 employee is entitled to be restored to any available equivalent position with equivalent employment
 32 benefits, pay and other terms and conditions of employment. If an equivalent position is not avail-
 33 able at the job site of the employee's former position, the employee may be offered an equivalent
 34 position at a job site located within 20 miles of the job site of the employee's former position.

35 (2) Except for employee benefits used during the period of leave, the taking of family leave under
 36 ORS 659A.150 to 659A.186 shall not result in the loss of **seniority or** any employment benefit ac-
 37 crued before the date on which the leave commenced.

38 (3) This section does not entitle any employee to:

39 (a) Any accrual of [*seniority or*] employment benefits during a period of family leave; or

40 (b) Any right, benefit or position of employment other than the rights, benefits and position that
 41 the employee would have been entitled to had the employee not taken the family leave.

42 (4)(a) Before restoring an employee to a position under subsection (1) of this section, an em-
 43 ployer may require that the employee receive certification from the employee's health care provider
 44 that the employee is able to resume work. Certification under this subsection may only be required
 45 pursuant to a uniformly applied practice or policy of the employer.

1 (b) This subsection does not affect the ability of an employer to require an employee during a
 2 period of family leave to report periodically to the employer on the employee's status and on the
 3 employee's intention to return to work.

4 (5)(a) Except as provided in paragraph (b) of this subsection, benefits are not required to con-
 5 tinue to accrue during a period of family leave unless continuation or accrual is required under an
 6 agreement of the employer and the employee, a collective bargaining agreement or an employer
 7 policy.

8 (b) If the employee is provided group health insurance, the employee is entitled to the contin-
 9 uation of group health insurance coverage during the period of family leave on the same terms as
 10 if the employee had continued to work. If family member coverage is provided to the employee,
 11 family member coverage must be maintained during the period of family leave. The employee must
 12 continue to make any regular contributions to the cost of the health insurance premiums.

13 (c) Notwithstanding ORS 652.610 (3) and except as provided in paragraph (b) of this subsection,
 14 if the employer is required or elects to pay any part of the costs of providing disability, life or other
 15 insurance coverage for an employee during the period of family leave that should have been paid
 16 by the employee, the employer may deduct from the employee's pay such amounts upon the
 17 employee's return to work until the amount the employer advanced toward the payments is paid. In
 18 no event may the total amount deducted for insurance under the provisions of this subsection exceed
 19 10 percent of the employee's gross pay each pay period.

20 (6) Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of health, disa-
 21 bility, life or other insurance coverage for an employee under the provisions of subsection (5) of this
 22 section, and the employee does not return to employment with the employer after taking family
 23 leave, the employer may deduct amounts paid by the employer from any amounts owed by the em-
 24 ployer to the employee, or may seek to recover those amounts by any other legal means, unless the
 25 employee fails to return to work because of:

26 (a) A continuation, reoccurrence or onset of a serious health condition that would entitle the
 27 employee to leave for one of the purposes specified by ORS 659A.159 (1)(b) or (c); or

28 (b) Other circumstances beyond the control of the employee.

29