

Requested by Representative BARRETO

**PROPOSED AMENDMENTS TO
HOUSE BILL 2005**

1 On page 1 of the printed bill, line 2, delete “, 653.606, 659A.171, 659A.875
2 and”.

3 In line 3, delete “659A.885”.

4 Delete lines 5 through 24 and delete pages 2 through 9 and insert:

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
7 otherwise:

8 **“(1) ‘Compensation’ includes wages, salary, bonuses, benefits, fringe
9 benefits and equity based compensation.**

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

19 “[2] **(3)(a)** ‘Employer’ means any person employing one or more em-
20 ployees, including the State of Oregon or any political subdivision thereof
21 or any county, city, district, authority, public corporation or entity and any

1 of their instrumentalities organized and existing under law or charter.

2 “(b) ‘Employer’ does not include the federal government.

3 “[3] (4)(a) ‘Rate’ with reference to wages means the basis of compen-
4 sation for services by an employee for an employer. [and]

5 “(b) ‘Rate’ includes compensation based on the time spent in the per-
6 formance of the services, on the number of operations accomplished or on the
7 quantity produced or handled.

8 “[4] (5) ‘Unpaid wages’ means the difference between the wages actually
9 paid to an employee and the wages required under ORS 652.220 to be paid
10 to the employee.

11 “[5] (6)(a) ‘Wages’ means all compensation for performance of service
12 by an employee for an employer, whether paid by the employer or another
13 person.[, including]

14 “(b) ‘Wages’ includes the cash value of all compensation paid in any
15 medium other than cash.

16 “(7) ‘Work of comparable character’ means work that requires
17 substantially similar knowledge, skill, effort, responsibility and work-
18 ing conditions in the performance of work, regardless of job de-
19 scription or job title.

20 “(8) ‘Working conditions’ includes work environment, hours, time
21 of day, physical surroundings and potential hazards encountered by
22 an employee.

23 “SECTION 2. ORS 652.220 is amended to read:

24 “652.220. (1) [No employer shall] **It is an unlawful employment practice**
25 **under ORS chapter 659A for an employer to:**

26 “(a) In any manner discriminate between [the sexes] **employees or ap-**
27 **plicants on the basis of race, gender or age** in the payment of wages or
28 **other compensation** for work of comparable character, the performance of
29 which requires comparable skills.

30 “(b) Pay wages **or other compensation** to any employee at a rate less

1 than that at which the employer pays wages **or other compensation** to
2 employees of [*the opposite sex*] **another race, gender or age** for work of
3 comparable character, the performance of which requires comparable skills.

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

5 **“(d) Determine compensation for a position based on current or**
6 **past compensation of a prospective employee. This paragraph is not**
7 **intended to prevent an employer from considering the compensation**
8 **of a current employee of the employer during a transfer, move or hire**
9 **of the employee to a new position with the same employer.**

10 **“(e) Seek the salary history of an applicant or employee from a**
11 **current or former employer. This paragraph is not intended to prevent**
12 **an employer from requesting from a prospective employee written**
13 **authorization to confirm prior compensation after the employer makes**
14 **an offer of employment to the employee that includes compensation.**

15 *“(2) Subsection (1) of this section does not apply where:]*

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

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

20 **“(2) Notwithstanding subsection (1) of this section, an employer**
21 **may pay employees in equivalent jobs at different compensation levels**
22 **if the different compensation levels are based on:**

23 **“(a) A seniority system;**

24 **“(b) A merit system;**

25 **“(c) A system that measures earnings by quantity of production,**
26 **including piece-rate work; or**

27 **“(d) A differential based on a bona fide factor other than race,**
28 **gender or age, including education, training or experience, if the em-**
29 **ployer can demonstrate that the factor:**

30 **“(A) Is not based on or derived from race, gender or age;**

1 **“(B) Is not based on perceptions of traditional or appropriate roles**
2 **associated with race, gender or age;**

3 **“(C) Is job-related to the position in question; and**

4 **“(D) Is based on a business necessity.**

5 **“(3) [No employer shall] An employer may not** in any manner discrimi-
6 nate in the payment of wages **or compensation** against any employee be-
7 cause the employee has filed a complaint in a proceeding under ORS 652.210
8 to 652.230, or has testified, or is about to testify, or because the employer
9 believes that the employee may testify, in any investigation or proceedings
10 pursuant to ORS 652.210 to 652.230 or in a criminal action pursuant to ORS
11 652.210 to 652.230.

12 **“(4) An employer may not reduce the compensation level of an**
13 **employee to comply with the provisions of this section.**

14 **“(5) Amounts owed to an employee because of the failure of the**
15 **employer to comply with the requirements of this section are unpaid**
16 **wages.**

17 **“(6) An employee who asserts a violation under this section may file**
18 **a complaint with the Commissioner of the Bureau of Labor and In-**
19 **dustries under ORS 659A.820 or a civil action as provided in ORS**
20 **659A.885.**

21 **“SECTION 3.** ORS 652.230 is amended to read:

22 “652.230. (1) Any employee whose compensation is at a rate that is in vi-
23 olation of ORS 652.220 shall have a right of action against the employer for
24 the recovery of:

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

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

29 “(2) The court shall award reasonable attorney fees to the prevailing
30 plaintiff in an action under this section. The court may award reasonable

1 attorney fees and expert witness fees incurred by a defendant who prevails
2 in the action if the court determines that the plaintiff had no objectively
3 reasonable basis for asserting a claim or no objectively reasonable basis for
4 appealing an adverse decision of a trial court.

5 “(3) The action for the unpaid wages and liquidated damages may be
6 maintained by one or more employees on behalf of themselves or other em-
7 ployees similarly situated.

8 “(4) No agreement for compensation at a rate less than the rate to which
9 such employee is entitled under ORS 652.210 to 652.230 is a defense to any
10 action under ORS 652.210 to 652.230.

11 **“(5) For the purpose of time limitations, a compensation practice**
12 **that is unlawful under ORS 652.220 occurs each time compensation is**
13 **paid pursuant to a discriminatory compensation decision or other**
14 **practice.**

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

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

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

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