

Requested by Representative LININGER

**PROPOSED AMENDMENTS TO
HOUSE BILL 2005**

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

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

3 **“SECTION 1. ORS 652.210 is amended to read:**

4 “652.210. As used in ORS 652.210 to 652.230, unless the context requires
5 otherwise:

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

8 “[1] (2) ‘Employee’ means any individual who, otherwise than as a
9 copartner of the employer, as an independent contractor or as a participant
10 in a work training program administered under the state or federal assist-
11 ance laws, renders personal services wholly or partly in this state to an
12 employer who pays or agrees to pay such individual at a fixed rate. However,
13 when services are rendered only partly in this state, an individual is not an
14 employee unless the contract of employment of the employee has been en-
15 tered into, or payments thereunder are ordinarily made or to be made, within
16 this state.

17 “[2] (3)(a) ‘Employer’ means any person employing one or more em-
18 ployees, including the State of Oregon or any political subdivision thereof
19 or any county, city, district, authority, public corporation or entity and any
20 of their instrumentalities organized and existing under law or charter.

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

1 “[3] (4)(a) ‘Rate’ with reference to wages means the basis of compen-
2 sation for services by an employee for an employer [*and*].

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

6 “(5) ‘Sexual orientation’ has the meaning given that term in ORS
7 **174.100.**

8 “[4] (6) ‘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] (7)(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 “(8) ‘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 “(9) ‘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, color, religion, sex, sexual orientation,**
28 **national origin, marital status, disability or age** in the payment of wages
29 **or other compensation** for work of comparable character, the performance
30 of which requires comparable skills.

1 “(b) Pay wages **or other compensation** to any employee at a rate less
2 than that at which the employer pays wages **or other compensation** to
3 employees of [*the opposite sex*] **another race, color, religion, sex, sexual**
4 **orientation, national origin, marital status, disability or age** for work
5 of comparable character, the performance of which requires comparable
6 skills.

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

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

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

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

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

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

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

26 “(a) **A seniority system;**

27 “(b) **A merit system;**

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

30 “(d) **A differential based on a bona fide factor other than race,**

1 **color, religion, sex, sexual orientation, national origin, marital status,**
2 **disability or age, including education, training or experience, if the**
3 **employer can demonstrate that the factor:**

4 **“(A) Is not based on or derived from race, color, religion, sex, sex-**
5 **ual orientation, national origin, marital status, disability or age;**

6 **“(B) Is not based on perceptions of traditional or appropriate roles**
7 **associated with race, color, religion, sex, sexual orientation, national**
8 **origin, marital status, disability or age;**

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

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

11 **“(E) Accounts for the entire compensation differential.**

12 **“(3) [No employer shall] An employer may not** in any manner discrimi-
13 **nate in the payment of wages or compensation** against any employee be-
14 **cause the employee has filed a complaint in a proceeding under ORS 652.210**
15 **to 652.230, or has testified, or is about to testify, or because the employer**
16 **believes that the employee may testify, in any investigation or proceedings**
17 **pursuant to ORS 652.210 to 652.230 or in a criminal action pursuant to ORS**
18 **652.210 to 652.230.**

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

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

24 **“(6) An employee who asserts a violation under this section may file**
25 **a complaint with the Commissioner of the Bureau of Labor and In-**
26 **dustries under ORS 659A.820 or a civil action as provided in ORS**
27 **659A.885.**

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

29 **“652.230. (1) Any employee whose compensation is at a rate that is in vi-**
30 **olation of ORS 652.220 shall have a right of action against the employer for**

1 the recovery of:

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

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

6 “(2) The court shall award reasonable attorney fees to the prevailing
7 plaintiff in an action under this section. The court may award reasonable
8 attorney fees and expert witness fees incurred by a defendant who prevails
9 in the action if the court determines that the plaintiff had no objectively
10 reasonable basis for asserting a claim or no objectively reasonable basis for
11 appealing an adverse decision of a trial court.

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

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

18 “(5) **For the purpose of time limitations, a compensation practice**
19 **that is unlawful under ORS 652.220 occurs each time compensation is**
20 **paid pursuant to a discriminatory compensation decision or other**
21 **practice.**

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

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

26 “659A.875. (1) Except as provided in subsection (2) of this section, a civil
27 action under ORS 659A.885 alleging an unlawful employment practice must
28 be commenced within one year after the occurrence of the unlawful employ-
29 ment practice unless a complaint has been timely filed under ORS 659A.820.

30 “(2) A person who has filed a complaint under ORS 659A.820 must com-

1 mence a civil action under ORS 659A.885 within 90 days after a 90-day notice
2 is mailed to the complainant under ORS 659A.880. This subsection does not
3 apply to a complainant alleging an unlawful practice under ORS 659A.145
4 or 659A.421 or discrimination under federal housing law.

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

11 “(4) A civil action under ORS 659A.885 alleging an unlawful practice in
12 violation of ORS 659A.403 or 659A.406 must be commenced within one year
13 of the occurrence of the unlawful practice.

14 “(5) The notice of claim required under ORS 30.275 must be given in any
15 civil action under ORS 659A.885 against a public body, as defined in ORS
16 30.260, or any officer, employee or agent of a public body as defined in ORS
17 30.260.

18 “(6) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885
19 against a public body, as defined in ORS 30.260, or any officer, employee or
20 agent of a public body as defined in ORS 30.260, based on an unlawful em-
21 ployment practice must be commenced within one year after the occurrence
22 of the unlawful employment practice unless a complaint has been timely filed
23 under ORS 659A.820.

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

27 “(8) **For the purpose of time limitations, a compensation practice**
28 **that is unlawful under this chapter occurs each time compensation is**
29 **paid pursuant to a discriminatory compensation decision or other**
30 **practice.**

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

3 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
4 tice specified in subsection (2) of this section may file a civil action in cir-
5 cuit court. In any action under this subsection, the court may order
6 injunctive relief and any other equitable relief that may be appropriate, in-
7 cluding but not limited to reinstatement or the hiring of employees with or
8 without back pay. A court may order back pay in an action under this sub-
9 section only for the two-year period immediately preceding the filing of a
10 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
11 bor and Industries, or if a complaint was not filed before the action was
12 commenced, the two-year period immediately preceding the filing of the
13 action. In any action under this subsection, the court may allow the pre-
14 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
15 cept as provided in subsection (3) of this section:

16 “(a) The judge shall determine the facts in an action under this sub-
17 section; and

18 “(b) Upon any appeal of a judgment in an action under this subsection,
19 the appellate court shall review the judgment pursuant to the standard es-
20 tablished by ORS 19.415 (3).

21 “(2) An action may be brought under subsection (1) of this section alleg-
22 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
23 (2), 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030,
24 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103
25 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
26 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,
27 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320,
28 659A.355, 659A.421, 653.547 or 653.549.

29 “(3) In any action under subsection (1) of this section alleging a violation
30 of ORS 25.337, 25.424, **652.220, 652.355**, 659.852, 659A.030, 659A.040, 659A.043,

1 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203,
2 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, **659A.355**,
3 659A.421, 653.547 or 653.549:

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

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

8 “(c) Upon appeal of any judgment finding a violation, the appellate court
9 shall review the judgment pursuant to the standard established by ORS
10 19.415 (1); and

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

12 “(4) In any action under subsection (1) of this section alleging a violation
13 of ORS 652.355 or 653.060, the court may award, in addition to the relief
14 authorized under subsection (1) of this section, compensatory damages or
15 \$200, whichever is greater.

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

20 “(6) In any action under subsection (1) of this section alleging a violation
21 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
22 thorized under subsection (1) of this section, a civil penalty in the amount
23 of \$720.

24 “(7) Any individual against whom any distinction, discrimination or re-
25 striction on account of race, color, religion, sex, sexual orientation, national
26 origin, marital status or age, if the individual is 18 years of age or older,
27 has been made by any place of public accommodation, as defined in ORS
28 659A.400, by any employee or person acting on behalf of the place or by any
29 person aiding or abetting the place or person in violation of ORS 659A.406
30 may bring an action against the operator or manager of the place, the em-

1 ployee or person acting on behalf of the place or the aider or abettor of the
2 place or person. Notwithstanding subsection (1) of this section, in an action
3 under this subsection:

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

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

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

10 “(d) The court shall award reasonable attorney fees to a prevailing
11 plaintiff;

12 “(e) The court may award reasonable attorney fees and expert witness fees
13 incurred by a defendant who prevails only if the court determines that the
14 plaintiff had no objectively reasonable basis for asserting a claim or no
15 reasonable basis for appealing an adverse decision of a trial court; and

16 “(f) Upon any appeal of a judgment under this subsection, the appellate
17 court shall review the judgment pursuant to the standard established by ORS
18 19.415 (1).

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

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

30 “(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
2 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing
3 law, when the commissioner is pursuing the action on behalf of an aggrieved
4 complainant, the court shall award reasonable attorney fees to the commis-
5 sioner if the commissioner prevails in the action. The court may award rea-
6 sonable attorney fees and expert witness fees incurred by a defendant that
7 prevails in the action if the court determines that the commissioner had no
8 objectively reasonable basis for asserting the claim or for appealing an ad-
9 verse decision of the trial court.

10 “(10) In an action under subsection (1) or (8) of this section alleging a
11 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
12 ing 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
15 practice; or

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

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

23
