

Requested by Representative MCLANE

**PROPOSED MINORITY REPORT AMENDMENTS TO  
HOUSE BILL 2005**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest  
2 of the line and line 3 and insert “creating new provisions; and amending ORS  
3 652.210, 652.220 and 652.230.”.

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) ‘Business necessity’ means an important and legitimate busi-**  
9 **ness purpose.**

10 **“(2) ‘Compensation’ includes wages, salary, bonuses, benefits, fringe**  
11 **benefits and equity-based compensation.**

12 “[~~(1)~~] **(3)** ‘Employee’ means any individual who, otherwise than as a  
13 copartner of the employer, as an independent contractor or as a participant  
14 in a work training program administered under the state or federal assist-  
15 ance laws, renders personal services wholly or partly in this state to an  
16 employer who pays or agrees to pay such individual at a fixed rate. However,  
17 when services are rendered only partly in this state, an individual is not an  
18 employee unless the contract of employment of the employee has been en-  
19 tered into, or payments thereunder are ordinarily made or to be made, within  
20 this state.

21 “[~~(2)~~] **(4)(a)** ‘Employer’ means any person employing one or more em-

1 ployees, including the State of Oregon or any political subdivision thereof  
2 or any county, city, district, authority, public corporation or entity and any  
3 of their instrumentalities organized and existing under law or charter.

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

5 “[3] (5)(a) ‘Rate’ with reference to wages means the basis of compen-  
6 sation for services by an employee for an employer *[and]*.

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

10 “(6) ‘Sexual orientation’ has the meaning given that term in ORS  
11 **174.100.**

12 “[4] ‘Unpaid wages’ means the difference between the wages actually paid  
13 to an employee and the wages required under ORS 652.220 to be paid to the  
14 employee.]

15 “(7) ‘Veteran’ has the meaning given that term in ORS 408.225.

16 “[5] (8) ‘Wages’ means *[all compensation]* **remuneration** for performance  
17 of service by an employee for an employer, whether paid by the employer or  
18 another person, *including cash value of all compensation paid in any medium*  
19 *other than cash*].

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

23 “(10) ‘Work of comparable character’ means work that requires  
24 substantially similar knowledge, skill, effort, responsibility and work-  
25 ing conditions in the performance of work, regardless of job de-  
26 scription or job title.

27 “**SECTION 2.** ORS 652.220 is amended to read:

28 “652.220. (1) *[No employer shall]* **It is an unlawful employment practice**  
29 **under ORS chapter 659A for an employer to:**

30 “(a) In any manner discriminate between *[the sexes]* **employees or ap-**

1 **plicants on the basis of race, color, religion, sex, sexual orientation,**  
2 **national origin, marital status, veteran status, disability or age** in the  
3 payment of wages **or other compensation** for work of comparable character,  
4 the performance of which requires comparable skills.

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

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

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

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

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

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

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

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

30 “(a) **A seniority system;**

1       **“(b) A merit system;**  
2       **“(c) A system that measures earnings by quantity or quality of**  
3 **production, including piece-rate work;**  
4       **“(d) Workplace locations;**  
5       **“(e) Travel, if travel is necessary and regular for the employee; or**  
6       **“(f) A bona fide factor other than race, color, religion, sex, sexual**  
7 **orientation, national origin, marital status, veteran status, disability**  
8 **or age, including education, training or experience, if the employer**  
9 **can reasonably demonstrate that the factor:**  
10       **“(A) Is not based on or derived from race, color, religion, sex, sex-**  
11 **ual orientation, national origin, marital status, veteran status, disa-**  
12 **bility or age;**  
13       **“(B) Is not based on perceptions of traditional or appropriate roles**  
14 **associated with race, color, religion, sex, sexual orientation, national**  
15 **origin, marital status, veteran status, disability or age;**  
16       **“(C) Is job-related for the position in question;**  
17       **“(D) Is based on a business necessity; and**  
18       **“(E) Accounts for the entire compensation differential.**  
19       **“(3) [No employer shall] An employer may not in any manner discrimi-**  
20 **nate in the payment of wages or compensation against any employee be-**  
21 **cause the employee has filed a complaint in a proceeding under ORS 652.210**  
22 **to 652.230, or has testified, or is about to testify, or because the employer**  
23 **believes that the employee may testify, in any investigation or proceedings**  
24 **pursuant to ORS 652.210 to 652.230 or in a criminal action pursuant to ORS**  
25 **652.210 to 652.230.**  
26       **“(4) An employer may not reduce the compensation level of an**  
27 **employee to comply with the provisions of this section.**  
28       **“(5) Amounts owed to an employee because of the failure of the**  
29 **employer to comply with the requirements of this section are unpaid**  
30 **wages.**

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

2       “652.230. (1) Any employee whose compensation is at a rate that is in vi-  
3       olation of ORS 652.220 shall have a right of action against the employer for  
4       the recovery of:

5       “(a) The [*amount of the unpaid*] wages to which the employee is entitled  
6       for the one year period preceding the commencement of the action; [*and*]

7       “(b) An additional amount as liquidated damages equal to the amount  
8       referred to in paragraph (a) of this subsection[.]; **and**

9       **“(c) Compensatory damages or \$250, whichever is greater.**

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

16       “(3) [*The*] **An** action [*for the unpaid wages and liquidated damages*] **under**  
17       **this section** may be maintained by one or more employees on behalf of  
18       themselves or other employees similarly situated.

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

22       **“(5) 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       **“(6)(a) Except as provided in paragraph (b) of this subsection, a**  
26       **complaint under this section must be filed no later than one year after**  
27       **the alleged unlawful practice.**

28       **“(b) For the purpose of time limitations, a compensation practice**  
29       **that is unlawful under ORS 652.220 occurs each time compensation is**  
30       **paid pursuant to a discriminatory compensation decision or other**

1 practice.

2 **“SECTION 4. Section 5 of this 2017 Act is added to and made a part**  
3 **of ORS 652.210 to 652.230.**

4 **“SECTION 5. (1) As used in this section, ‘self-evaluation’ means a**  
5 **system to evaluate and correct wage disparities among employees who**  
6 **perform comparable work.**

7 **“(2) It is an affirmative defense to all liability under ORS 652.230**  
8 **that the employer has, within three years before the date that an**  
9 **employee files a complaint:**

10 **“(a) Completed a self-evaluation of its pay practices in good faith**  
11 **that is:**

12 **“(A) Reasonable in detail and scope in light of the size of the em-**  
13 **ployer; or**

14 **“(B) Consistent with standards of the Oregon Department of Ad-**  
15 **ministrative Services; and**

16 **“(b) Demonstrated that reasonable progress has been made toward**  
17 **eliminating wage differentials based on race, color, religion, sex, sex-**  
18 **ual orientation, national origin, marital status, veteran status, disa-**  
19 **bility or age for comparable work, if necessary.**

20 **“(3) It is an affirmative defense to compensatory damages under**  
21 **ORS 652.230 (1)(c) that the employer has, within three years before the**  
22 **date that an employee files a complaint:**

23 **“(a) Completed a self-evaluation of its pay practices in good faith**  
24 **that did not meet the requirements of subsection (2)(a)(A) or (B) of**  
25 **this section; and**

26 **“(b) Demonstrated that reasonable progress has been made toward**  
27 **eliminating wage differentials based on race, color, religion, sex, sex-**  
28 **ual orientation, national origin, marital status, veteran status, disa-**  
29 **bility or age for comparable work, if necessary.**

30 **“(4) Evidence of a self-evaluation or remedial steps undertaken in**

1 **accordance with this section is inadmissible in any other proceeding.**

2 **“(5) An employer who has not completed a self-evaluation is not**  
3 **subject to an adverse inference in any proceeding.”.**

4

---