

D R A F T

SUMMARY

Creates rebuttable presumption that person violated prohibition against retaliation or discrimination against employee or prospective employee if person takes certain action against employee or prospective employee within 60 days after employee or prospective employee has engaged in certain protected activities.

Provides that employee or prospective employee bears burden of proof when person takes certain action against employee or prospective employee more than 60 days after employee or prospective employee has engaged in protected activities.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to presumption of violation of certain prohibitions against protected activities regarding workplace safety; amending ORS 654.062; and declaring an emergency.

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

SECTION 1. ORS 654.062 is amended to read:

654.062. (1) Every employee should notify the employer of any violation of law, regulation or standard pertaining to safety and health in the place of employment when the violation comes to the knowledge of the employee.

(2) However, any employee or representative of the employee may complain to the Director of the Department of Consumer and Business Services or any authorized representatives of the director of any violation of law, regulation or standard pertaining to safety and health in the place of employment, whether or not the employee also notifies the employer.

(3) Upon receiving any employee complaint, the director shall make in-

quiries, inspections and investigations that the director considers reasonable and appropriate. When an employee or representative of the employee has complained in writing of an alleged violation and no resulting citation is issued to the employer, the director shall furnish to the employee or representative of the employee, upon written request, a statement of reasons for the decision.

(4) The director shall establish procedures for keeping confidential the identity of any employee who requests protection in writing. When a request has been made, neither a written complaint from an employee, or representative of the employee, nor a memorandum containing the identity of a complainant may be disclosed under ORS 192.311 to 192.478.

(5) It is an unlawful employment practice for any person to bar or discharge from employment or otherwise discriminate against any employee or prospective employee because the employee or prospective employee has:

(a) Opposed any practice forbidden by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780;

(b) Made any complaint or instituted or caused to be instituted any proceeding under or related to ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, or has testified or is about to testify in any such proceeding;

(c) Exercised on behalf of the employee, prospective employee or others any right afforded by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780; or

(d) In good faith reported an assault that occurred on the premises of a health care employer as defined in ORS 654.412 or in the home of a patient receiving home health care services.

(6)(a) Any employee or prospective employee alleging to have been barred or discharged from employment or otherwise discriminated against in compensation, or in terms, conditions or privileges of employment, in violation of subsection (5) of this section may, within 90 days after the employee or prospective employee has reasonable cause to believe that the violation has

1 occurred, file a complaint with the Commissioner of the Bureau of Labor and
2 Industries alleging discrimination under the provisions of ORS 659A.820.
3 Upon receipt of the complaint the commissioner shall process the complaint
4 under the procedures, policies and remedies established by ORS chapter 659A
5 and the policies established by ORS 654.001 to 654.295, 654.412 to 654.423 and
6 654.750 to 654.780 in the same way and to the same extent that the complaint
7 would be processed if the complaint involved allegations of unlawful em-
8 ployment practices under ORS 659A.030 (1)(f).

9 (b) Within 90 days after receipt of a complaint filed under this subsection,
10 the commissioner shall notify the complainant of the commissioner's deter-
11 mination.

12 (c) The affected employee or prospective employee may bring a civil
13 action in any circuit court of the State of Oregon against any person alleged
14 to have violated subsection (5) of this section. The civil action must be
15 commenced within one year after the employee or prospective employee has
16 reasonable cause to believe a violation has occurred, unless a complaint has
17 been timely filed under ORS 659A.820.

18 (d) The commissioner or the circuit court may order all appropriate relief
19 including rehiring or reinstatement to the employee's former position with
20 back pay.

21 **(7)(a) In any action brought under subsection (6) of this section,**
22 **there is a rebuttable presumption that a violation of subsection (5) of**
23 **this section has occurred if a person bars or discharges an employee**
24 **or prospective employee from employment or otherwise discriminates**
25 **against an employee or prospective employee within 60 days after the**
26 **employee or prospective employee has engaged in any of the protected**
27 **activities described in subsection (5)(a) to (d) of this section.**

28 **(b) If a person bars or discharges an employee or prospective em-**
29 **ployee from employment or otherwise discriminates against the em-**
30 **ployee or prospective employee more than 60 days after the employee**
31 **or prospective employee has engaged in any of the protected activities**

1 described under subsection (5)(a) to (d) of this section, such action
2 does not create a presumption that the person's action is justified
3 under that subsection. The burden of proof shall be on the employee
4 or prospective employee to demonstrate by a preponderance of the
5 evidence that a violation occurred.

6 SECTION 2. This 2021 Act being necessary for the immediate pres-
7 ervation of the public peace, health and safety, an emergency is de-
8 clared to exist, and this 2021 Act takes effect on its passage.
