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.

Expands definition of “family member” for purposes of family and medical leave.

Makes family and medical leave requirements applicable to all employers, regardless of size of employer.

Reduces number of days and hours employee must work for employer in order to become eligible employee.

Extends length of leave employee may take for bereavement.

Extends length of leave employee may take for family and medical leave.

Requires employer to grant family leave with pay.

Allows employee to determine order in which accrued leave is to be used when more than one type of accrued leave is available to employee.

Allows employee who separates employment with employer to automatically reestablish eligibility to take family and medical leave if certain conditions are met.

Allows recovery of compensatory and punitive damages for civil action brought alleging violation of family and medical leave requirements.

A BILL FOR AN ACT

United States Code.

SECTION 2. ORS 659A.150 is amended to read:

659A.150. As used in ORS 659A.150 to 659A.186:

(1) “Activities of daily living” has the meaning given that term in ORS 410.600.

(1) (2) “Covered employer” means an employer described in ORS 659A.153.

(2) (3) “Eligible employee” means any employee of a covered employer other than those employees exempted under (the provisions of) ORS 659A.156.

(3) (4) “Family leave” means a leave of absence described in ORS 659A.159, except that “family leave” does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.

(4) (5) “Family member” means:

(a) The spouse of an employee, the biological, adoptive or foster parent, stepparent or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis;

(b) An individual who is biologically related to the employee;

(c) An individual who is legally recognized under the laws of the state as related to the employee;

(d) An individual for whom the employee is responsible for providing health care, assistance in accessing or managing medical treatment or support with the activities of daily living;

(e) An individual who lives with the employee and with whom the employee shares responsibility for each other’s common welfare; or

(f) Any other individual whose close association with the employee is equivalent to a family relationship as evidenced by a nexus of factors including, but not limited to:

(A) A shared responsibility for financial obligations;

(B) Signs of intent to marry;

(C) Children in common;

(D) The length of the personal relationship between the individual and the employee; or

(E) Common ownership of real or personal property.

(5) (6) “Health care provider” means:

(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person’s professional license or certificate and who is:

(A) A physician licensed under ORS chapter 677;

(B) A physician assistant licensed under ORS 677.505 to 677.525;

(C) A dentist licensed under ORS 679.090;

(D) A psychologist licensed under ORS 675.030;

(E) An optometrist licensed under ORS 683.070;

(F) A naturopath licensed under ORS 685.080;

(G) A registered nurse licensed under ORS 678.050;

(H) A nurse practitioner certified under ORS 678.375;

(I) A direct entry midwife licensed under ORS 687.420;

(J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;

(K) A regulated social worker authorized to practice regulated social work under ORS 675.510
to 675,600; or

(L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic
physician provides treatment consisting of manual manipulation of the spine to correct a subluxation
demonstrated to exist by X-rays.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family
member of an eligible employee solely through spiritual means, including but not limited to a
Christian Science practitioner.

(7) “Medical treatment” has the meaning given that term in ORS 109.572.

[(6)] (8) “Serious health condition” means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care
in a hospital, hospice or residential medical care facility;

(b) An illness, disease or condition that in the medical judgment of the treating health care
provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility
of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy, or period of absence for prenatal care.

SECTION 3. ORS 659A.153 is amended to read:

659A.153. (1) The requirements of ORS 659A.150 to 659A.186 apply only to employers who em-
ploy [25 or more] one or more persons in the State of Oregon for each working day during each
of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year im-
mediately preceding the year in which the leave is to be taken.

(2) The requirements of ORS 659A.150 to 659A.186 do not apply to any employer who offers to
an eligible employee a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal
Revenue Code of 1986, providing, as one of its options, employee leave at least as generous as the
leave required by ORS 659A.150 to 659A.186.

SECTION 4. ORS 659A.156 is amended to read:

659A.156. (1) All employees of a covered employer are eligible to take leave for one of the pur-
poses specified in ORS 659A.159 [(1)(b) to (e)] (1) except:

[(a)] an employee who was employed by the covered employer for fewer than [180] 30 days im-
mediately before the date on which the family leave would commence.

[(b) An employee who worked an average of fewer than 25 hours per week for the covered employer
during the 180 days immediately preceding the date on which the family leave would commence.]

[(2) All employees of a covered employer are eligible to take leave for the purpose specified in ORS
659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days
immediately before the date on which the family leave would commence.]

(2) If an employee is rehired by a covered employer after separation of employment with
the employer, the employee is immediately considered an eligible employee on the date of
rehire if the employee:

(a) Was an eligible employee at the time of the separation of employment; and

(b) Is rehired within 180 days after the separation of employment.

SECTION 5. ORS 659A.162 is amended to read:

659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee
is entitled to up to a total of [12] 24 weeks of family leave within any one-year period.

[(2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to
a total of two weeks of family leave for the purposes described in ORS 659A.159 (1)(e).]

[(b)(2)(a) An eligible employee is entitled to [the period of leave described in paragraph (a) of]
family leave for the purposes described in ORS 659A.159 (1)(e) upon the death of each family member of the employee within any one-year period, except that leave taken as provided by this subsection may not exceed the total period of family leave authorized by subsection (1) of this section.

(b) A covered employer may not require an eligible employee to take multiple periods of leave described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies during the one-year period.

(c) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted toward the total period of family leave authorized by subsection (1) of this section.

(d) In addition to the 24 weeks of family leave authorized by subsection (1) of this section, a female eligible employee may take a total of 24 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the covered employer.

(e) An eligible employee who takes 24 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 24 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

(f) When two or more family members work for the same covered employer, the eligible employees may take concurrent family leave unless:

(a) One employee needs to care for another employee who is a family member and who is suffering from a serious health condition;

(b) One employee needs to care for a child who has a serious health condition while another employee who is a family member is also suffering from a serious health condition; or

(c) The employees are taking leave described in ORS 659A.159 (1)(e).

(g) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(h) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

(i) A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.

(j) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an eligible employee or a family member of the eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek does not result in the loss of an eligible employee’s exempt status under the federal Fair Labor Standards Act.

(k) The commissioner shall adopt rules governing when family leave for the purposes described in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis does not result in the loss of an eligible employee’s exempt status under the federal Fair Labor Standards Act.

SECTION 6. ORS 659A.165 is amended to read:

659A.165. (1) Except as provided in subsection (2) of this section, a covered employer may require an eligible employee to give the employer written notice at least 30 days before commencing family leave. The employer may require the employee to include an explanation of the need for the
leave in the notice.

(2) An eligible employee may commence taking family leave without prior notice under the following circumstances:

(a) An unexpected serious health condition of an employee or family member of an employee;
(b) An unexpected illness, injury or condition of a child of the employee that requires home care;
(c) A premature birth, unexpected adoption or unexpected foster placement; or
(d) The death of a family member.

(3) If an employee commences leave without prior notice under subsection (2) of this section, the employee must give oral notice to the employer within 24 hours of the commencement of the leave, and must provide the written notice required by subsection (1) of this section within three days after the employee returns to work. The oral notice required by this subsection may be given by any other person on behalf of the employee taking the leave.

(4) Except as provided in this subsection, if the employee fails to give notice as required by subsections (1) and (3) of this section, the employer may reduce the total period of family leave authorized by ORS 659A.162 by three weeks, and the employee may be subject to disciplinary action under a uniformly applied policy or practice of the employer. A reduction of family leave under this subsection may not limit leave described in ORS 659A.159 (1)(e).

SECTION 7. ORS 659A.174 is amended to read:

659A.174. (1) Except as provided in subsection (2) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, or an employer policy, family leave must be granted with pay at the employee's regular rate of pay.

(2) An employee taking family leave is entitled to use any paid accrued sick leave or any paid accrued vacation leave during the period of family leave, or to use any other paid leave that is offered by the employer in lieu of vacation leave during the period of family leave.

SECTION 8. ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

(a) The judge shall determine the facts in an action under this subsection; and
(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:
HB 3140

2 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

4 (a) The court may award, in addition to the relief authorized under subsection (1) of this section, 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 judgment pursuant to the standard established by ORS 19.415 (1); and
7 (d) Any attorney fee agreement shall be subject to approval by the court.

4 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:
5 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or
6 (b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

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

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

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

8 (8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:
9 (a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;
10 (b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;
(c) At the request of any party, the action shall be tried to a jury;

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

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

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

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

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

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

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

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) “Aggrieved person” includes a person who believes that the person:

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

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

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

SECTION 9. ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

(a) The judge shall determine the facts in an action under this subsection; and
(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
   652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
   659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
   659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
   659A.318, 659A.320, 659A.355, 659A.357 or 659A.421; or
(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
652.220, 652.355, 653.547, 653.549, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
659A.082, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230,
659A.250 to 659A.262, 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421:
(a) The court may award, in addition to the relief authorized under subsection (1) of this section,
   compensatory damages or $200, whichever is greater, and punitive damages;
(b) At the request of any party, the action shall be tried to a jury;
(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
   ment pursuant to the standard established by ORS 19.415 (1); and
(d) Any attorney fee agreement shall be subject to approval by the court.
(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-
   olation of ORS 652.220, the court may award punitive damages if:
   (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
      with malice or acted with willful and wanton misconduct; or
   (b) An employer was previously adjudicated in a proceeding under this section or under ORS
      659A.850 for a violation of ORS 652.220.
(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the
court may award, in addition to the relief authorized under subsection (1) of this section,
compensatory damages or $200, whichever is greater.
(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574
or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this
section, compensatory damages or $250, whichever is greater.
(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
penalty in the amount of $720.
(8) Any individual against whom any distinction, discrimination or restriction on account of
race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
659A.400, by any employee or person acting on behalf of the place or by any person aiding or
abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
section:

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

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

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

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

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

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

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

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

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

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

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) “Aggrieved person” includes a person who believes that the person:

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

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

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