

A-Engrossed
Senate Bill 823

Ordered by the Senate April 17
Including Senate Amendments dated April 17

Sponsored by COMMITTEE ON HEALTH CARE

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.

[Makes it unlawful employment practice for health care employer to retaliate against employee who makes good faith report of assault that occurred on premises of health care provider or in home of patient receiving home health care services.]

[Requires health care employer to hire security personnel to provide security services, at all times, in emergency care department of hospital.]

Requires health care employer to conduct comprehensive security and safety evaluation using state or nationally recognized workplace violence prevention toolkit. Requires employer to conduct evaluation by June 30, 2021. Requires employer to report to Director of Department of Consumer and Business Services by December 31, 2021, as to whether employer has conducted evaluation. Requires director to compile report summarizing employer compliance and submit report to committees of Legislative Assembly related to health care by March 22, 2022. Sunsets provisions June 30, 2022.

Makes unlawful employment practice for person to discriminate against employee or prospective employee because employee or prospective employee has reported in good faith assault that occurred on premises of health care employer or in home of patient receiving home health care services.

Requires health care employer to establish, in coordination with health care employer's workplace safety committee, process by which committee shall review health care employer's assault prevention and protection program.

Requires health care employer to generate and make available to [public] requesting employee or workplace safety committee [annual] report that summarizes information regarding [records of] assaults committed against employees and regarding work-related injuries and illnesses. [Requires health care employer to submit report to Director of Department of Consumer and Business Services no later than December 31 of each year.]

[Requires health care employer that has information regarding assault committed by patient on premises of health care employer to include in patient's medical record description of assault and any other information relating to patient's high risk for assaultive behavior.]

A BILL FOR AN ACT

1
2 Relating to violence against health care employees; creating new provisions; and amending ORS
3 654.062, 654.414 and 654.416.

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

5 **SECTION 1. (1)(a) Not later than June 30, 2021, a health care employer shall conduct a**
6 **comprehensive security and safety evaluation to identify factors that may cause violence**
7 **committed against employees on the premises of a health care employer.**

8 **(b) The health care employer shall conduct the evaluation using a state or nationally**
9 **recognized workplace violence prevention toolkit designed to reduce violence against health**
10 **care employees.**

11 **(2)(a) Not later than December 31, 2021, each health care employer in this state shall**
12 **report to the Director of the Department of Consumer and Business Services as to whether**
13 **the employer has conducted the evaluation required under subsection (1) of this section.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **(b) Not later than March 22, 2022, the director shall compile the reports submitted by**
2 **each health care employer and submit a report summarizing health care employer compli-**
3 **ance with this section to the committees of the Legislative Assembly related to health care.**

4 **(3) As used in this section, “health care employer” has the meaning given that term in**
5 **ORS 654.412.**

6 **SECTION 2. Section 1 of this 2019 Act is repealed on June 30, 2022.**

7 **SECTION 3.** ORS 654.062 is amended to read:

8 654.062. (1) Every employee should notify the employer of any violation of law, regulation or
9 standard pertaining to safety and health in the place of employment when the violation comes to the
10 knowledge of the employee.

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

15 (3) Upon receiving any employee complaint, the director shall make inquiries, inspections and
16 investigations that the director considers reasonable and appropriate. When an employee or repre-
17 sentative of the employee has complained in writing of an alleged violation and no resulting citation
18 is issued to the employer, the director shall furnish to the employee or representative of the em-
19 ployee, upon written request, a statement of reasons for the decision.

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

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

27 (a) Opposed any practice forbidden by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to
28 654.780;

29 (b) Made any complaint or instituted or caused to be instituted any proceeding under or related
30 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
31 testify in any such proceeding; *[or]*

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

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

37 (6)(a) Any employee or prospective employee alleging to have been barred or discharged from
38 employment or otherwise discriminated against in compensation, or in terms, conditions or privileges
39 of employment, in violation of subsection (5) of this section may, within 90 days after the employee
40 or prospective employee has reasonable cause to believe that the violation has occurred, file a
41 complaint with the Commissioner of the Bureau of Labor and Industries alleging discrimination un-
42 der the provisions of ORS 659A.820. Upon receipt of the complaint the commissioner shall process
43 the complaint under the procedures, policies and remedies established by ORS chapter 659A and the
44 policies established by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 in the same
45 way and to the same extent that the complaint would be processed if the complaint involved

1 allegations of unlawful employment practices under ORS 659A.030 (1)(f).

2 (b) Within 90 days after receipt of a complaint filed under this subsection, the commissioner
3 shall notify the complainant of the commissioner's determination.

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

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

11 **SECTION 4.** ORS 654.414 is amended to read:

12 654.414. (1) A health care employer shall:

13 (a) Conduct periodic security and safety assessments to identify existing or potential hazards for
14 assaults committed against employees;

15 (b) Develop and implement an assault prevention and protection program for employees based
16 on assessments conducted under paragraph (a) of this subsection; and

17 (c) Provide assault prevention and protection training on a regular and ongoing basis for em-
18 ployees.

19 (2) An assessment conducted under subsection (1)(a) of this section shall include, but need not
20 be limited to:

21 (a) A measure of the frequency of assaults committed against employees that occur on the
22 premises of a health care employer or in the home of a patient receiving home health care services
23 during the preceding five years or for the years that records are available if fewer than five years
24 of records are available; and

25 (b) An identification of the causes and consequences of assaults against employees.

26 (3) An assault prevention and protection program developed and implemented by a health care
27 employer under subsection (1)(b) of this section shall be based on an assessment conducted under
28 subsection (1)(a) of this section and shall address security considerations related to the following:

29 (a) Physical attributes of the health care setting;

30 (b) Staffing plans, including security staffing;

31 (c) Personnel policies;

32 (d) First aid and emergency procedures;

33 (e) Procedures for reporting assaults; and

34 (f) Education and training for employees.

35 (4)(a) Assault prevention and protection training required under subsection (1)(c) of this section
36 shall address the following topics:

37 (A) General safety and personal safety procedures;

38 (B) Escalation cycles for assaultive behaviors;

39 (C) Factors that predict assaultive behaviors;

40 (D) Techniques for obtaining medical history from a patient with assaultive behavior;

41 (E) Verbal and physical techniques to de-escalate and minimize assaultive behaviors;

42 (F) Strategies for avoiding physical harm and minimizing use of restraints;

43 (G) Restraint techniques consistent with regulatory requirements;

44 (H) Self-defense, including:

45 (i) The amount of physical force that is reasonably necessary to protect the employee or a third

1 person from assault; and

2 (ii) The use of least restrictive procedures necessary under the circumstances, in accordance
3 with an approved behavior management plan, and any other methods of response approved by the
4 health care employer;

5 (I) Procedures for documenting and reporting incidents involving assaultive behaviors;

6 (J) Programs for post-incident counseling and follow-up;

7 (K) Resources available to employees for coping with assaults; and

8 (L) The health care employer's workplace assault prevention and protection program.

9 (b) A health care employer shall provide assault prevention and protection training to a new
10 employee within 90 days of the employee's initial hiring date.

11 (c) A health care employer may use classes, video recordings, brochures, verbal or written
12 training or other training that the employer determines to be appropriate, based on an employee's
13 job duties, under the assault prevention and protection program developed by the employer.

14 **(5) At least once every two years, a health care employer shall establish, in coordination**
15 **with the health care employer's workplace safety committee as described in ORS 654.176, a**
16 **process by which the committee shall review the health care employer's assault prevention**
17 **and protection program developed and implemented under subsection (1)(b) of this section in**
18 **order to evaluate the efficacy of the program and consider any changes to the program.**

19 **SECTION 5.** ORS 654.416 is amended to read:

20 654.416. (1) A health care employer shall maintain a record of assaults committed against em-
21 ployees that occur on the premises of the health care employer or in the home of a patient receiving
22 home health care services. The record shall include, but need not be limited to, the following:

23 (a) The name and address of the premises on which each assault occurred;

24 (b) The date, time and specific location where the assault occurred;

25 (c) The name, job title and department or ward assignment of the employee who was assaulted;

26 (d) A description of the person who committed the assault as a patient, visitor, employee or
27 other category;

28 (e) A description of the assaultive behavior as:

29 (A) An assault with mild soreness, surface abrasions, scratches or small bruises;

30 (B) An assault with major soreness, cuts or large bruises;

31 (C) An assault with severe lacerations, a bone fracture or a head injury; or

32 (D) An assault with loss of limb or death;

33 (f) An identification of the physical injury;

34 (g) A description of any weapon used;

35 (h) The number of employees, **including nursing staff as defined in ORS 441.179**, in the im-
36 mediate area of the assault when it occurred; and

37 (i) A description of actions taken by the employees and the health care employer in response
38 to the assault.

39 (2) A health care employer shall maintain the record of assaults described in subsection (1) of
40 this section for no fewer than five years following a reported assault.

41 **(3)(a) Upon the request of an employee or of a workplace safety committee conducting a**
42 **review pursuant to ORS 654.414, the health care employer shall generate and make available**
43 **to the requesting party a report summarizing:**

44 **(A) The information in the record required under subsection (1) of this section; and**

45 **(B) Information regarding work-related injuries and illnesses recorded by the health care**

1 **employer to comply with applicable federal health and safety recordkeeping requirements.**

2 **(b) A report made available under this subsection:**

3 **(A) May not include any personally identifiable information; and**

4 **(B) May be used only for the purposes of conducting a review of the assault prevention**
5 **and protection program under ORS 654.414 or for other purposes that are related to im-**
6 **proving the program.**

7 ~~[(3)]~~ (4) The Director of the Department of Consumer and Business Services shall adopt by rule
8 a common recording form for the purposes of this section.

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