

Requested by Senator TAYLOR

**PROPOSED AMENDMENTS TO
SENATE BILL 123**

1 On page 1 of the printed bill, line 2, after the first semicolon delete the
2 rest of the line and delete line 3 and insert “amending ORS 652.210, 652.220
3 and 652.235.”.

4 Delete lines 5 through 28 and delete page 2 and insert:

5 **“SECTION 1.** ORS 652.210, as amended by section 1, chapter 197, Oregon
6 Laws 2017, is amended to read:

7 “652.210. As used in ORS 652.210 to 652.235, unless the context requires
8 otherwise:

9 “(1) ‘Compensation’ includes wages, salary, bonuses, benefits, fringe ben-
10 efits and equity-based compensation.

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

19 “(3)(a) ‘Employer’ means any person employing one or more employees,
20 including the State of Oregon or any political subdivision thereof or any
21 county, city, district, authority, public corporation or entity and any of their

1 instrumentalities organized and existing under law or charter.

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

3 “(4) ‘Equal-pay analysis’ means an evaluation process to assess and cor-
4 rect wage disparities among employees who perform work of comparable
5 character.

6 “(5) ‘Protected class’ means a group of persons distinguished by race,
7 color, religion, sex, sexual orientation, national origin, marital status, vet-
8 eran status, disability or age.

9 “(6) ‘Rate’ with reference to wages means:

10 “(a) The basis of compensation for services by an employee for an em-
11 ployer; and

12 “(b) Compensation based on the time spent in the performance of the
13 services, on the number of operations accomplished or on the quantity
14 produced or handled.

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

16 **“(8) ‘System’ means a consistent and verifiable method in use at the**
17 **time that a violation is alleged under ORS 652.220.**

18 “[8] (9) ‘Unpaid wages’ means the difference between the wages actually
19 paid to an employee and the wages required under ORS 652.220 to be paid
20 to the employee.

21 “[9] (10) ‘Veteran status’ means an individual is a veteran as defined in
22 ORS 408.225.

23 “[10] (11) ‘Wages’ means all compensation for performance of service by
24 an employee for an employer, whether paid by the employer or another per-
25 son, or paid in cash or any medium other than cash.

26 “[11] (12) ‘Working conditions’ includes work environment, hours, time
27 of day, physical surroundings and potential hazards encountered by an em-
28 ployee.

29 “[12] (13) ‘Work of comparable character’ means work that requires
30 substantially similar knowledge, skill, effort, responsibility and working

1 conditions in the performance of work, regardless of job description or job
2 title.

3 **SECTION 2.** ORS 652.220, as amended by section 2, chapter 197, Oregon
4 Laws 2017, is amended to read:

5 “652.220. (1) It is an unlawful employment practice under ORS chapter
6 659A for an employer to:

7 “(a) In any manner discriminate between employees on the basis of a
8 protected class in the payment of wages or other compensation for work of
9 comparable character.

10 “(b) Pay wages or other compensation to any employee at a rate greater
11 than that at which the employer pays wages or other compensation to em-
12 ployees of a protected class for work of comparable character.

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

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

19 “(2) Notwithstanding subsection (1) of this section, an employer may pay
20 employees for work of comparable character at different compensation levels
21 if all of the difference in compensation levels is based on a bona fide factor
22 that is related to the position in question and is based on:

23 “(a) A seniority system;

24 “(b) A merit system;

25 “(c) A system that measures earnings by quantity or quality of pro-
26 duction, including piece-rate work;

27 “(d) Workplace locations;

28 “(e) Travel, if travel is necessary [*and regular*] for the employee;

29 “(f) Education;

30 “(g) Training;

1 “(h) Experience; or

2 “(i) Any combination of the factors described in this subsection, if the
3 combination of factors accounts for the entire compensation differential.

4 “(3) An employer may not in any manner discriminate in the payment of
5 wages or other compensation against any employee because the employee has
6 filed a complaint under ORS 659A.820 or in a proceeding under ORS 652.210
7 to 652.235 or 659A.885 or has testified, or is about to testify, or because the
8 employer believes that the employee may testify, in any investigation or
9 proceedings pursuant to ORS 652.210 to 652.235, 659A.830 or 659A.885 or in
10 a criminal action pursuant to ORS 652.210 to 652.235.

11 “(4)(a) An employer may not reduce the compensation level of an em-
12 ployee to comply with the provisions of this section.

13 “(b) **Holding an employee’s compensation level constant until the**
14 **compensation level that is paid to other employees who perform work**
15 **of comparable character aligns with the employee whose compensation**
16 **is held constant does not constitute a reduction in the compensation**
17 **level paid to the employee.**

18 “(5) **This section does not apply to compensation paid:**

19 “(a) **To an employee pursuant to a claim for a compensable injury**
20 **under ORS chapter 656 or compensation that is otherwise paid to an**
21 **employee during the time that the employee is assigned light duty**
22 **assignments or is performing modified work as authorized by a physi-**
23 **cian licensed under ORS chapter 677 prior to the employee becoming**
24 **medically stationary as that term is defined in ORS 656.005; or**

25 “(b) **For work schedule changes under ORS 653.455.**

26 “(6) **An employer that pays a prevailing rate of wage under a con-**
27 **tract for public works, as defined in ORS 279C.800, complies with the**
28 **provisions of this section if the employer pays the prevailing rate of**
29 **wage for work of a comparable character within the trade, occupation**
30 **or locality to which the prevailing rate of wage applies, notwithstand-**

1 **ing that the prevailing rate of wage does not apply to work of a com-**
2 **parable character that workers who are not employed under a contract**
3 **for public works perform in the same trade, occupation or locality.**

4 “[5] (7) Amounts owed to an employee because of the failure of the em-
5 ployer to comply with the requirements of this section are unpaid wages.

6 “[6] (8) An employee who asserts a violation under this section may file
7 a complaint with the Commissioner of the Bureau of Labor and Industries
8 under ORS 659A.820, a civil action under ORS 652.230 or a civil action under
9 659A.885.

10 “[7] (9) An employer shall post a notice of the requirements of this
11 section in every establishment where employees work. The Bureau of Labor
12 and Industries shall make available to employers a template that meets the
13 required notice provisions of this section.

14 **“SECTION 3.** ORS 652.235 is amended to read:

15 “652.235. (1) In a civil action under ORS 652.230 or 659A.885 (1) alleging
16 a violation of ORS 652.220, the employer may file a motion to disallow an
17 award of compensatory and punitive damages. The court shall grant the
18 motion if the employer demonstrates, by a preponderance of the evidence,
19 that the employer:

20 “(a) Completed, within three years before the date that the employee filed
21 the action, an equal-pay analysis of the employer’s pay practices in good
22 faith that *[was]*:

23 “(A) **Was** reasonable in detail and in scope in light of the size of the
24 employer; and

25 “(B) *[Related to the protected class asserted by the plaintiff in the action]*
26 **Included a review of any practices implemented by the employer that**
27 **are designed to hold an employee’s compensation level constant until**
28 **the compensation level paid to other employees who perform work of**
29 **comparable character aligns with the compensation level paid to the**
30 **employee whose compensation level is held constant; and**

1 “(b) [*Eliminated the wage differentials for the plaintiff and*] Has made
2 reasonable and substantial progress toward eliminating **unlawful** wage dif-
3 ferentials for **the employer’s employees** [*the protected class asserted by the*
4 *plaintiff*].

5 “(2)(a) If the court grants the motion filed under this section, the court
6 may award back pay only for the two-year period immediately preceding the
7 filing of the action and may allow the prevailing plaintiff costs and reason-
8 able attorney fees, but may not award compensatory or punitive damages.

9 “(b) **An award under this subsection shall include an order directing**
10 **the employer to eliminate the wage differential for the plaintiff who**
11 **filed the action.**

12 “(3)(a) Evidence of an equal-pay analysis undertaken in accordance with
13 subsection (1) of this section is inadmissible in any other proceeding.

14 “(b) **Evidence that an employer has increased an employee’s pay as**
15 **a result of conducting an equal pay analysis under this section may**
16 **not be considered as an admission of liability in a civil action alleging**
17 **a violation of ORS 652.220.**

18 “(4) Information that an employer has not completed an equal-pay analy-
19 sis may not be used as evidence of a violation of ORS 652.220 in an action
20 under ORS 652.230 or 659A.885 alleging a violation of ORS 652.220.”.

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