

D R A F T

SUMMARY

Limits liability of school districts, union high schools, education service districts, public charter schools and community colleges for certain claims arising during COVID-19 emergency period.

Prohibits certain private employers from engaging in retaliatory conduct relating to protected activities taken by employee during COVID-19 emergency period.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to claims arising during the COVID-19 emergency period; creating
3 new provisions; amending 659A.200 and 659A.203; and declaring an emer-
4 gency.

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

6 **SECTION 1. As used in sections 1 to 3 of this 2020 third special**
7 **session Act:**

8 (1) **“COVID-19 emergency rule” means an executive order, order of**
9 **the Superintendent of Public Instruction, declaration, directive or**
10 **other state or federal authorization, policy, statement, guidance, rule**
11 **or regulation that creates a standard or waives, suspends or modifies**
12 **otherwise applicable state or federal law, regulations or standards re-**
13 **garding the rendering of education services.**

14 (2) **“Education program” means programs or activities operated on**
15 **school district property and any school district program or activity**
16 **operated on or off school district property.**

17 (3) **“School district” means a common school district, a union high**
18 **school district, an education service district, a public charter school**

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 or a community college district.

2 **SECTION 2. (1) A person may not bring a claim for damages related**
3 **to COVID-19 infection suffered as a result of acts or omissions per-**
4 **formed by a school district:**

5 (a) In the course of operating an education program; and

6 (b) When the school district is operating in compliance with
7 COVID-19 emergency rules in effect at the time of the act or omission.

8 (2) A person engaged in activities on school district property that
9 are not operated by a school district may not bring a claim against the
10 school district for damages related to COVID-19 infection.

11 (3) The immunity provided by this section does not apply to reck-
12 less, wanton or intentional misconduct.

13 (4) This section does not limit any other cause of action or remedy
14 available to an injured party, including but not limited to the following
15 claims:

16 (a) Claims subject to ORS chapter 654;

17 (b) Claims subject to ORS chapter 656;

18 (c) Claims under state and federal leave and wage and hour laws
19 and state and federal laws prohibiting discrimination and retaliation;
20 and

21 (d) Claims under state and federal specialized instruction laws.

22 **SECTION 3. (1) A school district may move at any time to strike a**
23 **claim in a civil action that is barred by section 2 of this 2020 third**
24 **special session Act. A motion to strike under this section shall be**
25 **treated as a motion to dismiss under ORCP 21 A but is not subject to**
26 **ORCP 21 F. Upon granting a motion under this section, the court shall**
27 **enter a judgment of dismissal without prejudice. If the court denies a**
28 **motion under this section, the court shall enter a limited judgment**
29 **denying the motion.**

30 (2)(a) A school district that moves to strike a claim under this
31 section has the initial burden of making a prima facie showing that

1 **the claim is barred under section 2 of this 2020 third special session**
2 **Act.**

3 **(b) If the school district meets the burden under paragraph (a) of**
4 **this subsection, the burden shifts to the plaintiff in the action to es-**
5 **tablish that a genuine issue of material fact exists that the claim is**
6 **not barred under section 2 of this 2020 third special session Act. If the**
7 **plaintiff meets the burden under this paragraph, the court shall deny**
8 **the motion.**

9 **(c) The court shall consider only the pleadings and supporting and**
10 **opposing affidavits in determining whether a genuine issue of material**
11 **fact exists. If the court determines that a genuine issue of material**
12 **fact exists:**

13 **(A) The fact that the determination has been made and the sub-**
14 **stance of the determination may not be admitted in evidence at any**
15 **later stage of the case; and**

16 **(B) The determination does not affect the burden of proof or**
17 **standard of proof that is applied in the proceeding.**

18 **SECTION 4.** ORS 659A.200 is amended to read:

19 659A.200. As used in ORS 659A.200 to 659A.224:

20 (1) "Disciplinary action" includes but is not limited to any discrimination,
21 dismissal, demotion, transfer, reassignment, supervisory reprimand, warning
22 of possible dismissal or withholding of work, whether or not the action af-
23 fects or will affect employee compensation.

24 (2) "Employee" means a person:

25 (a) Employed by or under contract with the state or any agency of or
26 political subdivision in the state;

27 (b) Employed by or under contract with any person authorized to act on
28 behalf of the state, or agency of the state or subdivision in the state, with
29 respect to control, management or supervision of any employee;

30 (c) Employed by the public corporation created under ORS 656.751;

31 (d) Employed by a contractor who performs services for the state, agency

1 or subdivision, other than employees of a contractor under contract to con-
2 struct a public improvement;

3 (e) Employed by or under contract with any person authorized by contract
4 to act on behalf of the state, agency or subdivision;

5 (f) Employed by a nonprofit organization; or

6 (g) Serving as a member of a board of directors of a nonprofit organiza-
7 tion who is not otherwise considered an employee.

8 (3) "Information" includes public and private records, documents and
9 electronically stored data.

10 (4) "Knowledge" means actual knowledge.

11 (5) "Nonprofit organization" or "nonprofit" means an organization or
12 group of organizations that:

13 (a) Receives public funds by way of grant or contract; and

14 (b) Is exempt from income tax under section 501(c)(3) of the Internal
15 Revenue Code.

16 (6) "Public employer" means:

17 (a) The state or any agency of or political subdivision in the state;

18 (b) Any person authorized to act on behalf of the state, or any agency of
19 or political subdivision in the state, with respect to control, management or
20 supervision of any employee; or

21 (c) An employer who employs an employee described in subsection (2)(a)
22 to (e) of this section.

23 **(7) "School district" has the meaning given that term in section 1**
24 **of this 2020 third special session Act.**

25 **(8) "School services employer" means a private employer that en-**
26 **ters into a contract with a school district to provide any of the fol-**
27 **lowing services to the district:**

28 **(a) Custodial or janitorial services;**

29 **(b) Nutrition services;**

30 **(c) Transportation services; or**

31 **(d) Any other education services that are customarily performed**

1 **by school district employees.**

2 **SECTION 5.** ORS 659A.203 is amended to read:

3 659A.203. (1) Subject to ORS 659A.206, except as provided in ORS 659A.200
4 to 659A.224, it is an unlawful employment practice for any public or
5 nonprofit employer to:

6 (a) Prohibit any employee from discussing, either specifically or generally
7 with any member of the Legislative Assembly, legislative committee staff
8 acting under the direction of a member of the Legislative Assembly, any
9 member of the elected governing body of a political subdivision in the state
10 or any elected auditor of a city, county or metropolitan service district, the
11 activities of:

12 (A) The state or any agency of or political subdivision in the state; or

13 (B) Any person authorized to act on behalf of the state or any agency of
14 or political subdivision in the state.

15 (b) Prohibit any employee from disclosing, or take or threaten to take
16 disciplinary action against an employee for the disclosure of any information
17 that the employee reasonably believes is evidence of:

18 (A) A violation of any federal, state or local law, rule or regulation by
19 the public or nonprofit employer;

20 (B) Mismanagement, gross waste of funds or abuse of authority or sub-
21 stantial and specific danger to public health and safety resulting from action
22 of the public or nonprofit employer; or

23 (C) Subject to ORS 659A.212 (2), the fact that a person receiving services,
24 benefits or assistance from the state or agency or subdivision, is subject to
25 a felony or misdemeanor warrant for arrest issued by this state, any other
26 state, the federal government, or any territory, commonwealth or govern-
27 mental instrumentality of the United States.

28 (c) Require any employee to give notice prior to making any disclosure
29 or engaging in discussion described in this section, except as allowed in ORS
30 659A.206 (1).

31 (d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere

1 with disclosure or discussions described in this section.

2 (2) A public or nonprofit employer may not invoke or impose any disci-
3 plinary action against an employee for employee activity described in sub-
4 section (1) of this section or ORS 659A.212.

5 **(3) It is an unlawful employment practice for any school services**
6 **employer to invoke or impose any disciplinary action against an em-**
7 **ployee for reporting or filing a complaint alleging a violation of any**
8 **law, regulation or standard pertaining to the COVID-19 pandemic.**

9 [(3)] (4) The remedies provided by this section are in addition to any
10 remedy provided to an employee under ORS 659A.199 or other remedy that
11 may be available to an employee for the conduct alleged as a violation of this
12 section.

13 [(4)] (5) A violation of this section is a Class A misdemeanor.

14 **SECTION 6. (1) Sections 1 to 3 of this 2020 third special session Act**
15 **apply to claims arising during the period in which any declaration of**
16 **a state of emergency related to COVID-19 and issued by the Governor**
17 **on March 8, 2020, and any extension of the declaration, is in effect.**

18 **(2) The amendments to ORS 659A.203 by section 5 of this 2020 third**
19 **special session Act apply to retaliatory conduct that occurs at any**
20 **time regarding protected employee activity described in ORS 659A.203**
21 **(3) that occurs during the period in which any declaration of a state**
22 **of emergency related to COVID-19 and issued by the Governor on**
23 **March 8, 2020, and any extension of the declaration, is in effect.**

24 **SECTION 7. This 2020 third special session Act being necessary for**
25 **the immediate preservation of the public peace, health and safety, an**
26 **emergency is declared to exist, and this 2020 third special session Act**
27 **takes effect on its passage.**

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