

# House Bill 4402

Sponsored by Representative KOTEK (at the request of Joint Committee on the Third Special Session of 2020)

## 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**.

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 new provisions; amend-  
3 ing 659A.200 and 659A.203; and declaring an emergency.

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

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

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

11 (2) **"Education program" means programs or activities operated on school district prop-**  
12 **erty and any school district program or activity operated on or off school district property.**

13 (3) **"School district" means a common school district, a union high school district, an**  
14 **education service district, a public charter school or a community college district.**

15 **SECTION 2. (1) A person may not bring a claim for damages related to COVID-19 in-**  
16 **fection suffered as a result of acts or omissions performed by a school district:**

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

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

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

23 (3) **The immunity provided by this section does not apply to reckless, wanton or inten-**  
24 **tional misconduct.**

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

27 (a) **Claims subject to ORS chapter 654;**

28 (b) **Claims subject to ORS chapter 656;**

29 (c) **Claims under state and federal leave and wage and hour laws and state and federal**  
30 **laws prohibiting discrimination and retaliation; and**

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

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

8 (2)(a) A school district that moves to strike a claim under this section has the initial  
 9 burden of making a prima facie showing that the claim is barred under section 2 of this 2020  
 10 third special session Act.

11 (b) If the school district meets the burden under paragraph (a) of this subsection, the  
 12 burden shifts to the plaintiff in the action to establish that a genuine issue of material fact  
 13 exists that the claim is not barred under section 2 of this 2020 third special session Act. If  
 14 the plaintiff meets the burden under this paragraph, the court shall deny the motion.

15 (c) The court shall consider only the pleadings and supporting and opposing affidavits in  
 16 determining whether a genuine issue of material fact exists. If the court determines that a  
 17 genuine issue of material fact exists:

18 (A) The fact that the determination has been made and the substance of the determi-  
 19 nation may not be admitted in evidence at any later stage of the case; and

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

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

23 659A.200. As used in ORS 659A.200 to 659A.224:

24 (1) "Disciplinary action" includes but is not limited to any discrimination, dismissal, demotion,  
 25 transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work,  
 26 whether or not the action affects or will affect employee compensation.

27 (2) "Employee" means a person:

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

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

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

34 (d) Employed by a contractor who performs services for the state, agency or subdivision, other  
 35 than employees of a contractor under contract to construct a public improvement;

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

38 (f) Employed by a nonprofit organization; or

39 (g) Serving as a member of a board of directors of a nonprofit organization who is not otherwise  
 40 considered an employee.

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

42 (4) "Knowledge" means actual knowledge.

43 (5) "Nonprofit organization" or "nonprofit" means an organization or group of organizations  
 44 that:

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

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

2 (6) "Public employer" means:

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

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

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

7 (7) "School district" has the meaning given that term in section 1 of this 2020 third spe-  
8 cial session Act.

9 (8) "School services employer" means a private employer that enters into a contract with  
10 a school district to provide any of the following services to the district:

11 (a) Custodial or janitorial services;

12 (b) Nutrition services;

13 (c) Transportation services; or

14 (d) Any other education services that are customarily performed by school district em-  
15 ployees.

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

17 659A.203. (1) Subject to ORS 659A.206, except as provided in ORS 659A.200 to 659A.224, it is  
18 an unlawful employment practice for any public or nonprofit employer to:

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

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

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

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

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

31 (B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific dan-  
32 ger to public health and safety resulting from action of the public or nonprofit employer; or

33 (C) Subject to ORS 659A.212 (2), the fact that a person receiving services, benefits or assistance  
34 from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest  
35 issued by this state, any other state, the federal government, or any territory, commonwealth or  
36 governmental instrumentality of the United States.

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

39 (d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or dis-  
40 cussions described in this section.

41 (2) A public or nonprofit employer may not invoke or impose any disciplinary action against an  
42 employee for employee activity described in subsection (1) of this section or ORS 659A.212.

43 (3) **It is an unlawful employment practice for any school services employer to invoke or**  
44 **impose any disciplinary action against an employee for reporting or filing a complaint alleg-**  
45 **ing a violation of any law, regulation or standard pertaining to the COVID-19 pandemic.**

1        [(3)] (4) The remedies provided by this section are in addition to any remedy provided to an  
2 employee under ORS 659A.199 or other remedy that may be available to an employee for the conduct  
3 alleged as a violation of this section.

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

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

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

14        **SECTION 7.** This 2020 third special session Act being necessary for the immediate pres-  
15 ervation of the public peace, health and safety, an emergency is declared to exist, and this  
16 2020 third special session Act takes effect on its passage.

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