

Requested by Senator TAYLOR

**PROPOSED AMENDMENTS TO
SENATE BILL 1586**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating
2 new provisions; and”.

3 Delete lines 4 through 28 and delete pages 2 through 5 and insert:

4 **“SECTION 1.** ORS 659A.370 is amended to read:

5 “659A.370. (1) Except as provided in subsections (2) or (4) of this section,
6 it is an unlawful employment practice for an employer to enter into an
7 agreement with **a former, current** [*an employee*] or prospective employee,
8 as a condition of employment, continued employment, promotion, compen-
9 sation or the receipt of benefits, that contains a nondisclosure provision, a
10 nondisparagement provision or any other provision that has the purpose or
11 effect of preventing the employee from disclosing or discussing conduct:

12 “(a)(A) That constitutes discrimination prohibited by ORS 659A.030, in-
13 cluding conduct that constitutes sexual assault; or

14 “(B) That constitutes discrimination prohibited by ORS 659A.082 or
15 659A.112; and

16 “(b)(A) That occurred between employees or between an employer and an
17 employee in the workplace or at a work-related event that is off the em-
18 ployment premises and coordinated by or through the employer; or

19 “(B) That occurred between an employer and an employee off the em-
20 ployment premises.

21 “[2) *An employer may enter into a settlement, separation or severance*

1 *agreement that includes one or more of the following provisions only when an*
2 *employee claiming to be aggrieved by conduct described under subsection (1)*
3 *of this section requests to enter into the agreement:]*

4 **“(2)(a) Whenever an employer and a former, current or prospective**
5 **employee enter into an agreement, the terms of which release a claim**
6 **brought against the employer by an employee alleging the occurrence**
7 **of unlawful conduct described in subsection (1)(a) and (b) of this sec-**
8 **tion, the agreement may include one or more of the following pro-**
9 **visions only when the employee who is a party to the agreement**
10 **requests the inclusion of such provisions in the agreement:**

11 “[*a*] **(A)** A provision described in subsection (1) of this section;

12 “[*b*] *A provision that prevents the disclosure of factual information relating*
13 *to a claim of discrimination or conduct that constitutes sexual assault; or]*

14 **“(B) A provision that prevents the disclosure of the amount of or**
15 **fact of any settlement; or**

16 “[*c*] **(C)** A no-rehire provision that prohibits the employee from seeking
17 reemployment with the employer as a term or condition of the agreement.

18 **“(b) It is a violation of this subsection for an employer or former**
19 **employer to:**

20 **“(A) Make an offer of settlement conditional upon a request to in-**
21 **clude in the agreement the provisions described in paragraph (a) of**
22 **this subsection.**

23 **“(B) Fail to provide a person with whom the employer seeks to en-**
24 **ter into the agreement a copy of the policy described in ORS 659A.375.**

25 **“(3)(a)** An agreement entered into under subsection (2) of this section
26 must provide that the employee has at least seven days after executing the
27 agreement to revoke the agreement.

28 **“(b)** The agreement may not become effective until after the revocation
29 period has expired.

30 **“(4) The prohibitions under subsection (1) of this section do not ap-**

1 **ply to agreements entered into between an employer and a former,**
2 **current or prospective employee** if an employer makes a good faith de-
3 termination that [*an*] **the** employee has engaged in conduct prohibited by
4 ORS 659A.030, including sexual assault, conduct prohibited by ORS 659A.082
5 or 659A.112 or conduct prohibited by this section[, *the employer may enter*
6 *into a settlement, separation or severance agreement that includes one or more*
7 *of the following provisions:*]

8 “[*(a) A provision described in subsection (1) of this section;*]

9 “[*(b) A provision that prevents the disclosure of factual information that*
10 *relates to a claim of discrimination or conduct that conduct that constitutes*
11 *sexual assault; or*]

12 “[*(c) A no-rehire provision that prohibits the employee from seeking reem-*
13 *ployment with the employer as a term or condition of the agreement*].

14 “(5) An employee may file a complaint under ORS 659A.820 for violations
15 of this section and may bring a civil action under ORS 659A.885 and recover
16 **a civil penalty of up to \$5,000 and** relief as provided by ORS 659A.885 (1)
17 to (3).

18 “(6) This section does not apply to an employee who is tasked by law to
19 receive confidential or privileged reports of discrimination, sexual assault
20 or harassment.

21 “(7) **Except to the extent provided under subsections (2) and (4) of**
22 **this section, provisions included in an agreement in violation of this**
23 **section are void and unenforceable.**

24 “(8) **Nothing in this section prohibits an employer from enforcing**
25 **a nondisclosure or nondisparagement agreement that is unrelated to**
26 **the conduct described in subsection (1) of this section.**

27 “[~~(7)~~] (9) As used in this section, ‘sexual assault’ means unwanted conduct
28 of a sexual nature that is inflicted upon a person or compelled through the
29 use of physical force, manipulation, threat or intimidation.

30 “**SECTION 2. For purposes of mediation related to claims or**

1 **allegations of the unlawful conduct described under ORS 659A.370**
2 **(1)(a) and (b), a mediator in the mediation shall provide a person who**
3 **is a party to the mediation and who is not represented by an attorney**
4 **with a copy of the model procedures and policies made available by the**
5 **Bureau of Labor and Industries under ORS 659A.375.**

6 **“SECTION 3.** ORS 659A.375 is amended to read:

7 “659A.375. (1) Every employer in this state shall adopt a written policy
8 containing procedures and practices for the reduction and prevention of dis-
9 crimination prohibited by ORS 659A.030, including sexual assault, as defined
10 in ORS 659A.370, and discrimination prohibited by ORS 659A.082 and
11 659A.112.

12 “(2) At a minimum, the policy must:

13 “(a) Provide a process for an employee to report prohibited conduct;

14 “(b) Identify the individual designated by the employer who is responsible
15 for receiving reports of prohibited conduct, including an individual desig-
16 nated as an alternate to receive such reports;

17 “(c) Include the statute of limitations period applicable to an employee’s
18 right of action for alleging unlawful conduct described in subsection (1) of
19 this section;

20 “(d) Include a statement that an employer may not require or coerce an
21 employee to enter into a nondisclosure or nondisparagement agreement, in-
22 cluding a description of the meaning of those terms;

23 “(e) Include an explanation that an employee claiming to be aggrieved by
24 conduct described in subsection (1) of this section may voluntarily request
25 to enter into an agreement described in ORS 659A.370 (2), including a state-
26 ment that explains that the employee has at least seven days to revoke the
27 agreement; and

28 “(f) Include a statement that advises employers and employees to docu-
29 ment any incidents involving conduct prohibited by ORS 659A.030, including
30 sexual assault as defined in ORS 659A.370, or conduct prohibited by ORS

1 659A.082 and 659A.112.

2 “(3) An employer shall:

3 “(a) Make the policy available to employees within the workplace;

4 “(b) Provide a copy of the policy to each employee at the time of hire;

5 [*and*]

6 “(c) **Provide to each person with whom the employer seeks to enter**
7 **into an agreement, as described in ORS 659A.370 (2), a copy of the**
8 **policy in the language the employer typically uses to communicate**
9 **with the person; and**

10 “[*c*)] (d) Require any individual who is designated by the employer to
11 receive complaints to provide a copy of the policy to an employee at the time
12 that the employee discloses information regarding prohibited discrimination
13 or harassment.

14 “(4) The Bureau of Labor and Industries shall make available on the
15 bureau’s website model procedures or policies that employers may use as
16 guidance to establish the policy described in this section.

17 “(5) Nothing in this section is intended to relieve an employer of liability
18 for engaging in conduct that is prohibited under ORS chapter 659A.

19 “**SECTION 4.** ORS 243.323 is amended to read:

20 “243.323. (1) Except as provided in subsection (2) or (4) of this section, it
21 is an unlawful employment practice under ORS chapter 659A for a public
22 employer to enter into an agreement with **a former, current** [*an employee*]
23 or prospective employee, as a condition of employment, continued employ-
24 ment, promotion, compensation or the receipt of benefits, that contains a
25 nondisclosure provision, a nondisparagement provision or any other pro-
26 vision that has the purpose or effect of preventing the employee from dis-
27 closing or discussing workplace harassment:

28 “(a) That occurred between employees or between an employer and an
29 employee in the workplace or at a work-related event that is off the em-
30 ployment premises and coordinated by or through the employer; or

1 “(b) That occurred between an employer and an employee off the em-
2 ployment premises.

3 “[*(2) A public employer may enter into a settlement, separation or severance*
4 *agreement that includes one or more of the following provisions only when an*
5 *employee claiming to be aggrieved by workplace harassment described under*
6 *subsection (1) of this section requests to enter into the agreement:*]

7 “**(2) Whenever a public employer and a former, current or prospec-**
8 **tive employee enter into an agreement, the terms of which release a**
9 **claim brought against the employer by an employee alleging workplace**
10 **harassment described under subsection (1) of this section, the agree-**
11 **ment may include one or more of the following provisions only when**
12 **the employee who is a party to the agreement requests the inclusion**
13 **of such provisions in the agreement:**

14 “(a) A provision described in subsection (1) of this section;

15 “[*(b) A provision that prevents the disclosure of factual information relating*
16 *to the claim of discrimination or conduct that constitutes sexual assault; or]*

17 “**(b) A provision that prevents the disclosure of the amount of or**
18 **fact of any settlement; or**

19 “(c) A no-rehire provision that prohibits the employee from seeking re-
20 employment with the employer as a term or condition of the agreement.

21 “(3)(a) An agreement entered into under subsection (2) of this section
22 must provide that the employee has at least seven days after executing the
23 agreement to revoke the agreement.

24 “(b) The agreement may not become effective until after the revocation
25 period has expired.

26 “(4) **The prohibitions in subsection (1) of this section do not apply**
27 **to agreements entered into between a public employer and a former,**
28 **current or prospective employee if [an] the public employer makes a good**
29 **faith determination that [an] the employee has engaged in workplace**
30 **harassment described under subsection (1) of this section[, the employer may**

1 enter into a settlement, separation or severance agreement that includes one
2 or more of the following provisions:]

3 “[a) A provision described in subsection (1) of this section;]

4 “[b) A provision that prevents the disclosure of factual information that
5 relates to the workplace harassment; or]

6 “[c) A no-rehire provision that prohibits the employee from seeking reem-
7 ployment with the employer as a term or condition of the agreement].

8 “(5) An employee may file a complaint under ORS 659A.820 for violations
9 of this section and may bring a civil action under ORS 659A.885 and recover
10 **a civil penalty of up to \$5,000 and** relief as provided by ORS 659A.885 (1)
11 to (3).

12 “(6) This section does not apply to an employee who is tasked by law to
13 receive confidential or privileged reports of discrimination, sexual assault
14 or harassment.

15 **“(7) Except to the extent provided under subsections (2) and (4) of**
16 **this section, provisions included in an agreement in violation of this**
17 **section are void and unenforceable.**

18 **“(8) Nothing in this section prohibits a public employer from en-**
19 **forcing a nondisclosure or nondisparagement agreement that is unre-**
20 **lated to workplace harassment described in subsection (1) of this**
21 **section.**

22 **“SECTION 5. Section 6 of this 2022 Act is added to and made a part**
23 **of ORS 243.317 to 243.323.**

24 **“SECTION 6. For purposes of a mediation related to claims or**
25 **allegations of workplace harassment, a mediator in the mediation**
26 **shall provide a person who is a party to the mediation and who is not**
27 **represented by an attorney with a copy of the policy described in ORS**
28 **243.319.**

29 **“SECTION 7. ORS 243.319 is amended to read:**

30 **“243.319. (1) A public employer shall establish and adopt a written policy**

1 that seeks to prevent workplace harassment that occurs between employees
2 or between an employer and an employee in the workplace or at a work-
3 related event that is off the employment premises and coordinated by or
4 through the employer, or between an employer and an employee off the em-
5 ployment premises.

6 “(2) The policy must include:

7 “(a) A statement prohibiting workplace harassment;

8 “(b) Information explaining that a victim of workplace harassment has a
9 right to seek redress through the employer’s internal process provided under
10 ORS 243.321, through the Bureau of Labor and Industries’ complaint resolu-
11 tion process under ORS 659A.820 to 659A.865 or under any other available
12 law, whether civil or criminal, including:

13 “(A) The timeline under which relief may be sought;

14 “(B) Any available administrative or judicial remedies; and

15 “(C) The advance notice of claim against a public body that a claimant
16 must provide as required under ORS 30.275;

17 “(c) A statement that a person who reports workplace harassment has the
18 right to be protected from retaliation;

19 “(d) A statement of the scope of the policy, including that the policy ap-
20 plies to elected public officials, volunteers and interns;

21 “(e) An explanation that a victim of workplace harassment may volun-
22 tarily disclose information regarding an incident of workplace harassment
23 that involves the victim;

24 “(f) Information to connect a victim of workplace harassment with legal
25 resources and counseling and support services, including any available em-
26 ployee assistance services;

27 “(g) A statement that an employer may not require or coerce an employee
28 to enter into a nondisclosure or nondisparagement agreement, including a
29 description of the meaning of those terms;

30 “(h) An explanation that an employee claiming to be aggrieved by

1 workplace harassment may voluntarily request to enter into an agreement
2 described in ORS 243.323 (2), including a statement that explains that the
3 employee has at least seven days to revoke the agreement; and

4 “(i) A statement that advises employers and employees to document any
5 incidents of workplace harassment.

6 “(3) A public employer shall provide a copy of the policies described in
7 this section to each employee and shall include a copy of the policies in any
8 orientation materials that are provided to new employees at the time of hire.

9 “(4) If an employee discloses any concerns about workplace harassment
10 to a supervisor of the employer, or to a designated individual as described
11 in ORS 243.321 (3), the supervisor or designated individual shall, at the time
12 of the disclosure, provide to the employee a copy of the policy described in
13 this section.

14 “(5) **A public employer shall provide to each person with whom the**
15 **employer seeks to enter into an agreement, as described under ORS**
16 **243.323 (2), a copy of the policies described in this section in the lan-**
17 **guage that the employer typically uses to communicate with the per-**
18 **son.**

19 “[5] (6) A policy established under this section must comply with the
20 requirements for a written policy provided under ORS 659A.375.”

21
