

House Bill 2193

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

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**.

Requires employer to pay employee equivalent of at least four hours of work if employee is scheduled or called in to work but, due to employer, does not work entire shift. Prohibits employer from retaliating against employee who requests preferred work schedule.

Requires large employers in specified industries to engage in interactive process toward resolution of schedule conflicts and to grant preferred schedule request to employee unless employer has bona fide business reason not to do so. Requires large employers in specified industries to provide new employee with estimated work schedule and to provide current employee with two weeks' notice of employee work schedule. Prohibits large employers in specified industries from scheduling work shifts that do not allow sufficient break time in between shifts unless employee earns 1.5 times scheduled rate of pay. Requires large employers in specified industries to pay penalty wage if employer changes scheduled shift with less than two weeks' notice. Requires large employers in specified industries to consider internal applicant before hiring outside applicant.

Requires all employers to maintain records relating to compliance for three years. Makes unlawful employment practice for all employers to interfere with employee rights or retaliate against employee for exercising rights granted to employee under Act. Allows for administrative or civil cause of action and escalating statutory penalties for each violation.

A BILL FOR AN ACT

Relating to employee work schedules; creating new provisions; and amending ORS 659A.885.

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

SECTION 1. Sections 2 to 17 of this 2017 Act are added to and made a part of ORS chapter 653.

SECTION 2. Definitions. As used in sections 2 to 16 of this 2017 Act, unless the context requires otherwise:

(1) "Aggrieved party" means an employee who suffers tangible or intangible harm due to an employer's violation of sections 2 to 16 of this 2017 Act.

(2) "Bona fide business reason" means:

(a) An action that would cause an employer to violate a law, rule, ordinance or regulation;

(b) A significant and identifiable burden of additional costs to an employer; or

(c) A significant and identifiable detrimental effect on the employer's ability to meet organizational demands, including:

(A) A significant inability of the employer, despite the employer's best efforts, to reorganize work among existing employees;

(B) A significant detrimental effect on business performance;

(C) A significant inability to meet customer needs or demands; or

(D) A significant insufficiency of work during the periods an employee proposes to work.

(3) "Career-related educational or training program" means:

(a) An educational or training program that relates to an employee's employment;

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) A pre-apprenticeship or apprenticeship program; or**

2 **(c) A program of study offered by a public, private or nonprofit career and technical ed-**
3 **ucation school, an institution of higher education or other entity that provides academic**
4 **education, career and technical education or training, including but not limited to remedial**
5 **education or English as a second language.**

6 **(4) “Caregiving responsibilities” means the responsibility of providing:**

7 **(a) Ongoing care or education, including the responsibility for securing the ongoing care**
8 **of a child; or**

9 **(b) Ongoing care for, including the responsibility for securing the ongoing care of, an**
10 **individual with a serious health condition who is dependent on an employee for support and**
11 **care.**

12 **(5)(a) “Employee” has the meaning given that term in ORS 652.310.**

13 **(b) “Employee” does not include a salaried employee described under ORS 653.020 (3).**

14 **(6)(a) “Employer” has the meaning given that term in ORS 652.310.**

15 **(b) “Employer” includes an employer’s successor.**

16 **(7) “Family member” has the meaning given that term in ORS 659A.150.**

17 **(8) “Food services establishment” means the fixed point of sale location for establish-**
18 **ments defined under the North American Industry Classification System as food services and**
19 **drinking places.**

20 **(9) “Franchise” has the meaning provided in ORS 650.005.**

21 **(10) “Franchisor” has the meaning provided in ORS 650.005.**

22 **(11) “Hospitality establishment” has the meaning provided in the North American In-**
23 **dustry Classification System for hotels and motels.**

24 **(12) “Interactive process” means a timely, good faith process that includes a discussion**
25 **between the employer and the employee for the purpose of arriving at a mutually beneficial**
26 **arrangement for a work schedule that meets the needs of the employee and the employer.**
27 **The discussion may include the proposal of alternatives by the employee and the employer.**

28 **(13) “On-call shift” means any time that an employer requires an employee to be avail-**
29 **able to work or to contact the employer or wait to be contacted by the employer for the**
30 **purpose of determining whether the employee must report to work. During the shift, on-call**
31 **status applies regardless of whether the employee is located on or off the employer’s prem-**
32 **ises.**

33 **(14) “Regular rate of pay” means a regular hourly rate as defined by the Commissioner**
34 **of the Bureau of Labor and Industries.**

35 **(15) “Retail establishment” has the meaning provided in the North American Industry**
36 **Classification System for retail trade.**

37 **(16) “Seasonal employment” means a period of employment that is cyclical in nature,**
38 **occurs at approximately the same time each year, often to accommodate a seasonal increase**
39 **in business, and lasts for a duration of less than 12 months during any year.**

40 **(17) “Serious health condition” has the meaning provided in ORS 659A.150.**

41 **(18) “Successor” means:**

42 **(a) An entity that is substantially the same entity as the predecessor as determined by**
43 **the following factors:**

44 **(A) Substantial continuity of the same business operations;**

45 **(B) Use of the same plant;**

- 1 (C) Continuity of the work force;
- 2 (D) Similarity of jobs and working conditions;
- 3 (E) Similarity of supervisory personnel;
- 4 (F) Similarity in machinery, equipment and production methods;
- 5 (G) Similarity of products or services; and
- 6 (H) The ability of the predecessor to provide relief.

7 (b) A determination of whether or not a successor in interest exists is not determined
8 by the application of any single criterion, but rather the entire circumstances are to be
9 viewed in their totality.

10 (19) "Time of hire" means the period after an offer of employment and acceptance of the
11 offer of employment and on or before the commencement of employment.

12 (20) "Wages" means all compensation for performance of service by an employee for an
13 employer, whether paid by the employer or another person, including the cash value of all
14 compensation paid in a medium other than cash.

15 (21) "Work schedule" means the hours, days and times, including regular work shifts and
16 on-call shifts, when an employee is required by an employer to perform duties of employment
17 for which the employee will receive compensation.

18 (22) "Work shift" means the specific and consecutive hours the employer requires the
19 employee to work or to be on call to work.

20 (23) "Work week" means a fixed period of time established by an employer that reflects
21 a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A work week
22 may begin on any day of the week and any hour of the day and need not coincide with a
23 calendar week.

24 (24) "Written" or "writing" means a printed or printable communication in physical or
25 electronic format including a communication that is transmitted through electronic mail,
26 text message or a computer system or is otherwise sent and stored electronically.

27 (25) "Year" means any fixed, consecutive 12-month period of time.

28
29 **PROVISIONS FOR ALL EMPLOYERS**

30
31 **SECTION 3. On-call pay.** (1) An employer is required to pay an employee for a minimum
32 of four hours or the number of hours in the employee's scheduled work shift, whichever is
33 less, at the employee's regular rate of pay, on any day that the employee:

34 (a) Is scheduled or called to work and reports for duty but, due to the employer, does
35 not work the employee's scheduled shift in its entirety; or

36 (b) Is notified less than 24 hours before a shift that the employee does not need to report
37 to work or that the hours in the shift have been reduced.

38 (2) An employee who invokes rights under this section and section 9 of this 2017 Act for
39 the same set of underlying facts may collect the wages described under either this section
40 or section 9 of this 2017 Act.

41
42 **SMALL EMPLOYER PROVISIONS**

43
44 **SECTION 4. Employee right to input into work schedule.** (1) This section does not apply
45 to employees who are employed by an employer described in section 5 of this 2017 Act.

1 (2) Subject to section 15 of this 2017 Act, at time of hire and during employment, an
 2 employee may identify any limitations or changes in work schedule availability. The employee
 3 has the right to request not to be scheduled for work shifts during certain times or at cer-
 4 tain locations and the right to identify preferences for one or any combination of the fol-
 5 lowing:

- 6 (a) Specific hours of work;
- 7 (b) Specific employer locations;
- 8 (c) Changes in days of work or start or end times for the work day or a work shift;
- 9 (d) A stable work schedule;
- 10 (e) Permission to exchange work shifts with other employees;
- 11 (f) Working from home;
- 12 (g) Telecommuting or remote work;
- 13 (h) Reduction or change in work duties;
- 14 (i) Part-year employment;
- 15 (j) Part-time employment;
- 16 (k) Job sharing arrangements; or
- 17 (L) Additional shifts or hours.

18 (3)(a) An employer may require the employee to provide reasonable verification of the
 19 need for a request made under subsection (2) of this section.

20 (b) If an employer suspects that an employee is abusing the right to make a request
 21 under subsection (2) of this section, the employer may require reasonable verification of any
 22 request made under subsection (2) of this section.

23 (c) The employer shall pay any reasonable costs for providing verification that is medical
 24 verification required under this subsection, including lost wages, that are not paid under a
 25 health benefit plan in which the employee is enrolled.

26 (d) An employer may not require that the verification required under this subsection
 27 explain the nature of a health condition or illness or details related to domestic violence,
 28 sexual assault, harassment or stalking that is the reason for the employee's request.

29
 30 **LARGE EMPLOYER PROVISIONS**

31
 32 **SECTION 5. Large employers in certain employment sectors.** (1) Sections 6 to 12 of this
 33 2017 Act apply to an employee employed by an employer, and to an employer, that is one or
 34 more of the following:

35 (a) A retail establishment that employs 100 or more employees in the United States re-
 36 gardless of where those employees are employed and 25 or more employees in this state, in-
 37 cluding but not limited to a chain, an integrated enterprise or a franchise associated with a
 38 franchisor or network of franchises that employ more than 100 employees in aggregate na-
 39 tionwide and 25 or more employees in aggregate in this state.

40 (b) A hospitality establishment that employs 100 or more employees in the United States
 41 regardless of where those employees are employed and 25 or more employees in this state,
 42 including but not limited to a chain, an integrated enterprise or a franchise associated with
 43 a franchisor or network of franchises that employ more than 100 employees in aggregate
 44 nationwide and 25 or more employees in aggregate in this state.

45 (c) A food services establishment that employs 100 or more employees in the United

1 States regardless of where those employees are employed and 25 or more employees in this
 2 state, including but not limited to a chain, an integrated enterprise, or a franchise associated
 3 with a franchisor or network of franchises that employ more than 100 employees in aggregate
 4 nationwide and 25 or more employees in aggregate in this state. In addition to employing
 5 100 or more employees nationwide and 25 employees in this state, a food service establish-
 6 ment that is a full service restaurant also must have 40 or more full service restaurant lo-
 7 cations nationwide, including but not limited to locations that are a part of a chain,
 8 integrated enterprise, or franchise where the franchisor owns or operates 40 or more such
 9 establishments in aggregate.

10 (2) To determine the number of employees employed by an employer, the calculation shall
 11 be based upon the number of employees employed on each working day during each of 20 or
 12 more work weeks in the current calendar year or immediately preceding calendar year.

13 (3) Separate entities that form an integrated enterprise are considered a single employer
 14 under this section. Separate entities will be considered an integrated enterprise and a single
 15 employer under this section where a separate entity controls the operation of another entity.
 16 The factors to consider in determining whether separate entities form an integrated enter-
 17 prise include, but are not limited to:

- 18 (a) The degree of interrelation between the operations of multiple entities;
- 19 (b) The degree to which the entities share common management;
- 20 (c) The degree to which the entities have centralized control of labor relations; and
- 21 (d) The degree of common ownership or financial control over the entities.

22 **SECTION 6. Right to input into work schedule; large employers.** (1) Subject to section
 23 15 of this 2017 Act, at time of hire and during employment, an employee may identify any
 24 limitations or changes in work schedule availability. The employee has the right to request
 25 not to be scheduled for work shifts during certain times or at certain locations and the right
 26 to identify preferences for one or any combination of the following:

- 27 (a) Specific hours of work;
- 28 (b) Specific employer locations;
- 29 (c) Changes in days of work or start or end times for the work day or a work shift;
- 30 (d) A stable work schedule;
- 31 (e) Permission to exchange work shifts with other employees;
- 32 (f) Working from home;
- 33 (g) Telecommuting or remote work;
- 34 (h) Reduction or change in work duties;
- 35 (i) Part-year employment;
- 36 (j) Part-time employment;
- 37 (k) Job sharing arrangements; or
- 38 (L) Additional shifts or hours.

39 (2) The employer and employee shall engage in an interactive process to discuss requests
 40 made under subsection (1) of this section.

41 (3) Unless the employer has a bona fide business reason not to grant an employee's re-
 42 quest made under subsection (1)(a) to (L) of this section, the request shall be granted if the
 43 employee makes the request based on:

- 44 (a) A serious health condition of the employee;
- 45 (b) The employee's caregiving responsibilities for a family member;

1 (c) An additional employment commitment of the employee;

2 (d) Changes in the employee's access to the workplace due to changes in the employee's
3 transportation or housing arrangements; or

4 (e) The employee's participation in a career-related educational or training program.

5 (4) The employee shall make reasonable efforts make a request under subsection (1) of
6 this section in writing. The employer shall document all requests made by an employee under
7 subsection (1) of this section, regardless of whether the request is oral or written, pursuant
8 to section 14 of this 2017 Act.

9 (5) If a request made under this section is denied based on a bona fide business reason,
10 the employer shall provide a written response to the request explaining the complete or
11 partial denial of the request, and the bona fide business reason for the decision.

12 (6) If a request made under this section is not based on circumstances identified under
13 subsection (3) of this section, the employer may grant or deny the request for any reason
14 that is not unlawful.

15 (7)(a) An employer may require the employee to provide reasonable verification of the
16 need for a request described in subsection (3) of this section.

17 (b) If an employer suspects that an employee is abusing the right to make a request
18 under subsection (2) of this section, the employer may require reasonable verification of any
19 request made under subsection (2) of this section.

20 (c) The employer shall pay any reasonable costs for providing verification that is medical
21 verification required under this subsection, including lost wages, that are not paid under a
22 health benefit plan in which the employee is enrolled.

23 (d) An employer may not require that the verification required under this subsection
24 explain the nature of a health condition or illness or details related to domestic violence,
25 sexual assault, harassment or stalking that is the reason for the employee's request.

26 **SECTION 7. Good faith estimate of work schedule; large employers.** (1) An employer shall
27 provide a new employee with a written good faith estimate of the employee's work schedule
28 at time of hire. The good faith estimate shall include the average number of hours the em-
29 ployee can expect to work each work week, and whether the employee can expect to work
30 on-call shifts.

31 (2) The employer shall revise the good faith estimate for an employee:

32 (a) Once every year calculated from the point of the last good faith estimate; and

33 (b) When there is a significant change to the employee's work schedule due to changes
34 in the employee's availability or to the employer's business needs.

35 (3) The employer shall initiate an interactive process with the employee to discuss any
36 significant change from the good faith estimate and, if applicable, state a bona fide business
37 reason for the change.

38 (4) The employer shall include the good faith estimate in English and in the employee's
39 primary language.

40 **SECTION 8. Advance notice of work schedule; large employers.** (1) An employer shall
41 provide an employee with a work schedule in writing at least 14 calendar days before the first
42 day of the work schedule.

43 (2) The employer shall post the written work schedule in a conspicuous and accessible
44 location, in English and in the predominant language or languages of the employees at the
45 particular workplace.

1 (3) The employer shall provide a new employee at time of hire, or an existing employee
2 upon returning to work after a leave of absence, with a written work schedule that runs
3 through the last date of the posted work schedule in effect at time of hire or date of return
4 to work.

5 (4) The written work schedule shall include all regular and on-call shifts for the work
6 period.

7 (5) If the employee requests changes to the written work schedule after the advance
8 notice required in this section:

9 (a) The employer shall provide the employee with timely notice of the change by in-
10 person conversation, telephone call, electronic mail, text message or other accessible elec-
11 tronic or written format; and

12 (b) The employee may decline to work any hours not included in the employee's written
13 work schedule.

14 **SECTION 9. Right to rest between work shifts; large employers.** (1) Unless the employee
15 requests or consents to work such hours, the employer shall not schedule or require the
16 employee to work:

17 (a) Less than 10 hours after the end of the previous calendar day's work shift; or

18 (b) Less than 10 hours following the end of a work shift that spanned two calendar days.

19 (2) The employer shall compensate an employee who works hours described under sub-
20 section (1) of this section at one and one-half times the employee's scheduled rate of pay for
21 the hours worked in a shift that began less than 10 hours after the previous shift ended.

22 (3) An employee compensated as described in subsection (2) of this section may not be
23 additionally compensated under section 10 of this 2017 Act for work schedule changes.

24 **SECTION 10. Compensation for work schedule changes; large employers.** (1) An employer
25 shall compensate an employee for each employer-requested change to the employee's written
26 work schedule that occurs after the advance notice required in section 8 of this 2017 Act,
27 as provided for the following circumstances:

28 (a) The employer shall compensate the employee with one hour of pay at the employee's
29 scheduled rate of pay, in addition to wages earned, for the following reasons:

30 (A) Adding an hour or hours of work to any work shift; or

31 (B) Changing the date or start or end time of a work shift with no loss of hours.

32 (b) The employer shall compensate the employee with no less than one-half times the
33 employee's scheduled rate of pay per hour for any scheduled hours the employee does not
34 work for the following reasons:

35 (A) Subtracting hours from a regular work shift before or after the employee reports for
36 duty;

37 (B) Changing the date or start or end time of a work shift resulting in a loss of hours;

38 (C) Canceling a work shift; or

39 (D) Scheduling the employee for an on-call shift if the employee is not asked to perform
40 work.

41 (2) The requirements for additional compensation in this section do not apply to one or
42 more of the following circumstances:

43 (a) Mutually agreed-upon work shift swaps or coverage among employees. The employer
44 may require that work shift swaps or coverage be preapproved by the employer and may
45 assist employees in finding such arrangements. Assistance shall be limited to helping an

1 employee identify other employees who may be available to provide coverage or shift swap
2 and does not include the employer arranging the shift swap or coverage.

3 (b) Additional hours that the employee volunteers to work in response to a mass com-
4 munication in writing from the employer about the availability of additional hours, provided
5 that the mass communication:

6 (A) Is only used for additional hours that are the result of another employee being unable
7 to work scheduled hours; and

8 (B) Is clear that accepting the additional hours is voluntary and that the employee has
9 the right to decline the hours.

10 (c) Additional hours that an employer requests employees who are working at the time
11 the request is made, through an in-person group communication, to work in order to address
12 present and unanticipated customer needs, so long as the hours are consecutive to the hours
13 that the employee is already working and the employee consents to take the hours.

14 (d) Additional hours that the employee consents to work as the result of accepting an
15 offer of work pursuant to section 12 of this 2017 Act.

16 (e) Employee-requested changes, including additional or subtracted hours, that the em-
17 ployee voluntarily makes to the employee's work schedule and that the employee documents
18 in writing.

19 (f) Employee hours that are subtracted for disciplinary reasons for just cause, provided
20 the employer documents in writing the incident leading to discipline.

21 (g) An employee's workshift cannot begin or continue due to threats to employees or
22 property or due to the recommendation of a public official.

23 (h) Operations cannot begin or continue because public utilities fail to supply electricity,
24 water or gas or there is a failure in the public utilities or sewer system.

25 (i) Operations cannot begin or continue due to natural disaster or a similar cause not
26 within the employer's control.

27 SECTION 11. Pattern or practice of underscheduling; large employers. An employer may
28 not engage in a systemic pattern or practice of significant underscheduling where the hours
29 that employees actually work are significantly above the hours in the written work schedule
30 required by section 8 of this 2017 Act.

31 SECTION 12. Access to hours for existing employees; large employers. (1) Before hiring
32 new employees from an external applicant pool or subcontractors, including hiring through
33 the use of temporary services or staffing agencies, an employer must offer additional hours
34 of work to existing employees when those hours become available at their place of work.

35 (2) The employer:

36 (a) Shall post written notice that contains the following information:

37 (A) A description and title of the position;

38 (B) The required qualifications for the position;

39 (C) The total hours of work being offered;

40 (D) A schedule of available work shifts;

41 (E) Whether the available work shifts will occur at the same time each week; and

42 (F) The length of time the employer anticipates requiring coverage of the additional
43 hours.

44 (b) Shall post written notice of available hours of work for at least three consecutive
45 calendar days.

1 (c) Shall post the notice in a conspicuous and accessible location where employee notices
2 are customarily posted. If the employer posts the notice in electronic format, all employees
3 in the workplace must have access to the notice on site.

4 (d) Shall post the notice described in English and in the primary language of the em-
5 ployee at the workplace.

6 (e) May post the notice concurrently to external candidates.

7 (f) Shall offer additional hours of work to an existing employee who has responded to the
8 offer of work, and who, to a reasonable employer acting in good faith, is qualified with the
9 skills and experience to perform the work in the following manner:

10 (A) The employer shall give the employee at least two consecutive calendar days, starting
11 on the date of the employer's offer, to accept the additional hours of work.

12 (B) If more than one qualified employee responds to the offer of additional hours of work,
13 the employer may distribute the hours among interested employees or may offer all of the
14 available hours to one qualified employee. The employer may limit distribution of hours to
15 full work shifts rather than parceling hours among employees. The employer may choose
16 among qualified internal candidates following the employer's usual and customary proce-
17 dures, provided that the employer's usual and customary procedure is nondiscriminatory and
18 that hours are not distributed in a manner intended to avoid application of the Patient Pro-
19 tection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education
20 Reconciliation Act (P.L. 111-152) and other subsequent amendments.

21 (C) If the employee accepts additional hours of work for seasonal employment, the em-
22 ployer may reasonably delay scheduling such hours and permit new employees to start
23 working for training purposes, provided that the employer follows the employer's usual and
24 customary practices for training new employees and the employer provides the existing em-
25 ployee with a prospective start date for the additional hours.

26 (D) The employer is encouraged to make reasonable efforts to offer employees training
27 opportunities to gain the skills and experience to perform work for which the employer typ-
28 ically has additional needs.

29 (4) If no employee responds to the written notice of additional hours of work within three
30 consecutive calendar days of posting or accepts an offer of additional hours within two con-
31 secutive calendar days of responding to the notice, the employer may immediately proceed
32 with hiring new employees from an external applicant pool or subcontractors to work the
33 additional hours.

34 (5) This section does not require the employer to offer employees work hours paid at the
35 overtime premium or prohibit the employer from offering such work hours.

36 (6) The Commissioner of the Bureau of Labor and Industries shall create and distribute
37 a model notice in English, Spanish and other languages that are necessary for an employer
38 to comply with the notice requirements of this section.

39
40 **NOTICE AND RECORDKEEPING REQUIREMENTS**
41 **FOR ALL EMPLOYERS**

42
43 **SECTION 13. Notice and posting requirements.** (1) The Commissioner of the Bureau of
44 Labor and Industries shall create and distribute a poster giving notice of the rights described
45 in sections 2 to 16 of this 2017 Act. The commissioner shall create and distribute the poster

1 in English, Spanish, and any other languages that are necessary for employers to comply
2 with this section.

3 (2) An employer shall display the poster in a conspicuous and accessible place at any
4 workplace or job site where any of their employees work. Employers shall display the poster
5 in English and in the primary language or languages of the employees at the particular
6 workplace. If display of the poster is not feasible, including situations when the employee
7 works remotely or does not have a regular workplace or job site, the employer may provide
8 the poster on an individual basis in an employee's primary language in physical or electronic
9 format that is reasonably conspicuous and accessible.

10 **SECTION 14. Employer recordkeeping.** (1) An employer shall retain records that docu-
11 ment the employer's compliance with sections 2 to 16 of this 2017 Act, as applicable to the
12 employer.

13 (2) Each employer shall retain records including:

14 (a) Payroll records, including documentation of additional compensation paid to an em-
15 ployee under section 3 of this 2017 Act; and

16 (b) Other records that are substantially related to compliance with sections 2 to 16 of this
17 2017 Act, as applicable to the employer.

18 (3) An employer other than an employer described in section 5 of this 2017 Act shall re-
19 tain records including:

20 (a) An employee's requested changes to the employee's work schedule under section 4
21 of this 2017 Act; and

22 (b) Other records that are substantially related to compliance with sections 2 to 16 of this
23 2017 Act.

24 (4) An employer described under section 5 of this 2017 Act shall retain records including:

25 (a) Good faith estimates of employee work schedules;

26 (b) The employer's bona fide business reason for denying an employee request for a lim-
27 itation or change in work schedule under section 6 of this 2017 Act;

28 (c) Original and modified work schedules;

29 (d) Payroll records, including documentation of additional compensation paid to an em-
30 ployee under section 3, 9 or 10 of this 2017 Act;

31 (e) Mass communications that are provided to employees about the availability of addi-
32 tional hours;

33 (f) Documentation of an incident leading to employee discipline that results in hours
34 subtracted from the employee's work schedule;

35 (g) Notices for additional hours of work available for employees pursuant to section 12
36 of this 2017 Act;

37 (h) Confirmation from an employee that the employee is not interested in accepting ad-
38 ditional hours of work; and

39 (i) Other records that are substantially related to compliance with sections 2 to 16 of this
40 2017 Act.

41 (5) The records listed in subsections (1) to (4) of this section shall be retained for a period
42 of three years.

43 (6) The employer's failure to retain adequate records required by this section creates a
44 rebuttable presumption that the employer violated a provision in sections 2 to 16 of this 2017
45 Act for the employee for whom a record was not retained.

RETALIATION

SECTION 15. Retaliation prohibited. (1) It is an unlawful practice for an employer to:

(a) Interfere with, restrain, deny, or attempt to deny the exercise of any right protected under sections 2 to 16 of this 2017 Act; or

(b) Retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions of sections 2 to 16 of this 2017 Act.

(2) The protections afforded under this section apply to any person who mistakenly but in good faith and with an objectively reasonable belief asserts a right protected by sections 2 to 16 of this 2017 Act.

ENFORCEMENT

SECTION 16. Enforcement, right of action and administrative remedies. (1) An employee asserting a violation of section 15 of this 2017 Act may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action as provided in ORS 659A.885.

(2) The commissioner has the same enforcement powers with respect to the rights established under sections 2 to 16 of this 2017 Act as are established in ORS chapters 652 and 653.

(3) In addition to any other damages provided by law, the commissioner may assess a statutory penalty payable to the aggrieved party, as follows:

(a) \$500 for the first violation of a provision in sections 2 to 16 of this 2017 Act.

(b) \$1000 for any subsequent violation that occurs within 10 years of the first violation of the provision in sections 2 to 16 of this 2017 Act.

(4) If the commissioner determines that the employer paid the full remedy due to an aggrieved party, not including any statutory penalty, within 14 days of service of an order, the commissioner shall waive 50 percent of the amount of any statutory penalty imposed by order under this section.

LIMITS TO LEGISLATIVE INTENT

SECTION 17. Nothing in sections 2 to 16 of this 2017 Act is intended to:

(1) Limit employee rights or protections otherwise provided by law;

(2) Create a contractual right for an at-will employee; or

(3) Create an additional remedy for an employee if a remedy equal to or better than a remedy in section 3, 9 or 10 of this 2017 Act is required by a collective bargaining agreement or other contract.

CAPTIONS

SECTION 18. The section and unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

ACTION FOR RETALIATION

SECTION 19. ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549 **or section 15 of this 2017 Act.**

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.

(7) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS

1 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 2 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 3 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 4 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 5 section:

6 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 7 compensatory and punitive damages;

8 (b) The operator or manager of the place of public accommodation, the employee or person
 9 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
 10 damages awarded in the action;

11 (c) At the request of any party, the action shall be tried to a jury;

12 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

13 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
 14 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
 15 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
 16 and

17 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
 18 judgment pursuant to the standard established by ORS 19.415 (1).

19 (8) When the commissioner or the Attorney General has reasonable cause to believe that a
 20 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
 21 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
 22 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
 23 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 24 manner as a person or group of persons may file a civil action under this section. In a civil action
 25 filed under this subsection, the court may assess against the respondent, in addition to the relief
 26 authorized under subsections (1) and (3) of this section, a civil penalty:

27 (a) In an amount not exceeding \$50,000 for a first violation; and

28 (b) In an amount not exceeding \$100,000 for any subsequent violation.

29 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
 30 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 31 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 32 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 33 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 34 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 35 appealing an adverse decision of the trial court.

36 (10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145
 37 or 659A.421 or discrimination under federal housing law:

38 (a) "Aggrieved person" includes a person who believes that the person:

39 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

40 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
 41 occur.

42 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
 43 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
 44 tifies that the case is of general public importance. The court may allow an intervenor prevailing
 45 party costs and reasonable attorney fees at trial and on appeal.

