

Senate Bill 292

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Workforce)

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**.

Creates unlawful employment practice and violation of Oregon Safe Employment Act for creating or maintaining abusive work environment.

A BILL FOR AN ACT

1
2 Relating to workplace bullying; creating new provisions; and amending ORS 654.005 and 659A.885.

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

4 **SECTION 1.** ORS 654.005 is amended to read:

5 654.005. As used in this chapter, unless the context requires otherwise:

6 (1) **“Abusive conduct” means conduct that is sufficiently severe or pervasive to create a**
7 **hostile, intimidating or offensive work environment to an objectively reasonable and similarly**
8 **situated employee.**

9 (2) **“Abusive work environment” means a workplace in which an employee is subjected**
10 **to abusive conduct that causes physical harm or psychological harm to the employee.**

11 [(1)] (3) “Board” means the Workers’ Compensation Board created by ORS 656.712.

12 [(2)] (4) “Department” means the Department of Consumer and Business Services.

13 [(3)] (5) “Director” means the Director of the Department of Consumer and Business Services.

14 [(4)] (6) “Employee” includes:

15 (a) Any individual, including a minor whether lawfully or unlawfully employed, who engages to
16 furnish services for a remuneration, financial or otherwise, subject to the direction and control of
17 an employer.

18 (b) Salaried, elected and appointed officials of the state, state agencies, counties, cities, school
19 districts and other public corporations.

20 (c) Any individual who is provided with workers’ compensation coverage as a subject worker
21 pursuant to ORS chapter 656, whether by operation of law or by election.

22 [(5)] (7) “Employer” includes:

23 (a) Any person who has one or more employees.

24 (b) Any sole proprietor or member of a partnership who elects workers’ compensation coverage
25 as a subject worker pursuant to ORS 656.128.

26 (c) Any successor or assignee of an employer. As used in this paragraph, “successor” means a
27 business or enterprise that is substantially the same entity as the predecessor employer according
28 to criteria adopted by the department by rule.

29 [(6)] (8) “Owner” means every person having ownership, control or custody of any place of em-
30 ployment or of the construction, repair or maintenance of any place of 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 [(7)] (9) “Person” means one or more individuals, legal representatives, partnerships, joint ven-
 2 tures, associations, corporations (whether or not organized for profit), business trusts, any organized
 3 group of persons, the state, state agencies, counties, municipal corporations, school districts and
 4 other public corporations or subdivisions.

5 (10) **“Physical harm” is the material impairment of a person’s physical health or bodily**
 6 **integrity, as documented by a competent physician or related expert.**

7 [(8)(a)] (11) “Place of employment” includes:

8 (A) Every place, whether fixed or movable or moving, whether indoors or out or underground,
 9 and the premises and structures appurtenant thereto, where either temporarily or permanently an
 10 employee works or is intended to work; and

11 (B) Every place where there is carried on any process, operation or activity related, either di-
 12 rectly or indirectly, to an employer’s industry, trade, business or occupation, including a labor camp,
 13 wherever located, provided by an employer for employees or by another person engaged in providing
 14 living quarters or shelters for employees.

15 (b) “Place of employment” does not include:

16 (A) Any place where the only employment involves nonsubject workers employed in or about a
 17 private home; and

18 (B) Any corporate farm where the only employment involves the farm’s family members, includ-
 19 ing parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews
 20 or grandchildren.

21 (12) **“Psychological harm” means the material impairment of an employee’s mental**
 22 **health, as documented by a competent, certified mental health professional or related expert.**

23 **SECTION 2. Section 3 of this 2017 Act is added to and made a part of ORS 654.001 to**
 24 **654.295.**

25 **SECTION 3. (1) A place of employment that is unsafe or detrimental to health under ORS**
 26 **654.015 may include an abusive work environment that an employer knew or should have**
 27 **known existed and failed to take prompt and appropriate corrective action.**

28 (2) **An employer should have known of an abusive work environment unless the employer**
 29 **can demonstrate:**

30 (a) **That the employer exercised reasonable care to prevent and promptly correct an**
 31 **abusive work environment; and**

32 (b) **That the complaining employee or employees subjected to the abusive work environ-**
 33 **ment unreasonably failed to take advantage of any preventive or corrective opportunities**
 34 **provided by the employer or to otherwise avoid harm.**

35 **SECTION 4. Section 5 of this 2017 Act is added to and made a part of ORS chapter 659A.**

36 **SECTION 5. (1) As used in this section:**

37 (a) **“Abusive conduct” means conduct that is sufficiently severe or pervasive to create a**
 38 **hostile, intimidating or offensive work environment to an objectively reasonable and similarly**
 39 **situated employee.**

40 (b) **“Abusive work environment” means a workplace in which an employee is subjected**
 41 **to abusive conduct that causes physical harm or psychological harm to the employee.**

42 (c) **“Physical harm” is the material impairment of a person’s physical health or bodily**
 43 **integrity, as documented by a competent physician or related expert.**

44 (d) **“Psychological harm” means the material impairment of an employee’s mental health,**
 45 **as documented by a competent, certified mental health professional or related expert.**

1 **(2) It is an unlawful employment practice for an employer to create or maintain an abu-**
 2 **sive work environment that an employer knew or should have known existed and failed to**
 3 **take prompt and appropriate corrective action.**

4 **(3) An employer should have known of an abusive work environment unless the employer**
 5 **can demonstrate:**

6 **(a) That the employer exercised reasonable care to prevent and promptly correct an**
 7 **abusive work environment; and**

8 **(b) That the complaining employee or employees subjected to the abusive work environ-**
 9 **ment unreasonably failed to take advantage of any preventive or corrective opportunities**
 10 **provided by the employer or to otherwise avoid harm.**

11 **SECTION 6.** ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, is amended
 12 to read:

13 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 14 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 15 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 16 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 17 court may order back pay in an action under this subsection only for the two-year period imme-
 18 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 19 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 20 year period immediately preceding the filing of the action. In any action under this subsection, the
 21 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 22 cept as provided in subsection (3) of this section:

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

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

26 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 27 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
 28 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,
 29 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
 30 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
 31 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549 **or section 5 of this**
 32 **2017 Act.**

33 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 34 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 35 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549:

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

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

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

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

42 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 43 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 44 compensatory damages or \$200, whichever is greater.

45 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574

1 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this
2 section, compensatory damages or \$250, whichever is greater.

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

6 (7) Any individual against whom any distinction, discrimination or restriction on account of
7 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
8 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
9 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
10 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
11 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
12 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
13 section:

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

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

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

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

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

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

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

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

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

37 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
38 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
39 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
40 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
41 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
42 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
43 appealing an adverse decision of the trial court.

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

- 1 (a) “Aggrieved person” includes a person who believes that the person:
2 (A) Has been injured by an unlawful practice or discriminatory housing practice; or
3 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
4 occur.
5 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
6 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
7 tifies that the case is of general public importance. The court may allow an intervenor prevailing
8 party costs and reasonable attorney fees at trial and on appeal.
9 _____