

Senate Bill 477

Sponsored by Senator TAYLOR (Presession filed.)

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**.

Provides that plaintiff need not prove that alleged unlawful conduct is sufficiently severe or pervasive, that plaintiff was treated less favorably than another similarly situated employee or that plaintiff complied with employer's internal reporting or complaint procedures concerning unlawful conduct in order to prevail in action alleging unlawful discrimination.

A BILL FOR AN ACT

1
2 Relating to proof standards to prevail in an action alleging unlawful discrimination; creating new
3 provisions; and amending ORS 659A.030.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 659A.**

6 **SECTION 2. In order to prevail in an action under ORS 659A.885 alleging unlawful con-**
7 **duct in violation of ORS 659A.030 or 659A.112, a plaintiff need not prove that:**

8 (1) **The conduct giving rise to the action was sufficiently severe or pervasive so as to**
9 **alter the employee's terms or conditions of employment.**

10 (2) **The plaintiff was treated less favorably than another similarly situated employee who**
11 **is outside of the relevant protected class to which plaintiff belongs.**

12 (3) **Prior to commencing the action, the plaintiff followed an employer's internal person-**
13 **nel policies or procedures to report or complain about the occurrence of the underlying**
14 **conduct giving rise to the action.**

15 **SECTION 3. ORS 659A.030 is amended to read:**

16 659A.030. (1) It is an unlawful employment practice:

17 (a) For an employer, because of an individual's race, color, religion, sex, sexual orientation, na-
18 tional origin, marital status, **familial status** or age if the individual is 18 years of age or older, or
19 because of the race, color, religion, sex, sexual orientation, national origin, marital status, **familial**
20 **status** or age of any other person with whom the individual associates, or because of an individual's
21 juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to refuse to hire
22 or employ the individual or to bar or discharge the individual from employment. However, discrim-
23 ination is not an unlawful employment practice if the discrimination results from a bona fide occu-
24 pational qualification reasonably necessary to the normal operation of the employer's business.

25 (b) For an employer, because of an individual's race, color, religion, sex, sexual orientation, na-
26 tional origin, marital status, **familial status** or age if the individual is 18 years of age or older, or
27 because of the race, color, religion, sex, sexual orientation, national origin, marital status, **familial**
28 **status** or age of any other person with whom the individual associates, or because of an individual's
29 juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to discriminate
30 against the individual in compensation or in terms, conditions or privileges 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 (c) For a labor organization, because of an individual's race, color, religion, sex, sexual orien-
2 tation, national origin, marital status, **familial status** or age if the individual is 18 years of age or
3 older, or because of an individual's juvenile record that has been expunged pursuant to ORS
4 419A.260 and 419A.262, to exclude or to expel from its membership the individual or to discriminate
5 in any way against the individual or any other person.

6 (d) For any employer or employment agency to print or circulate or cause to be printed or cir-
7 culated any statement, advertisement or publication, or to use any form of application for employ-
8 ment or to make any inquiry in connection with prospective employment that expresses directly or
9 indirectly any limitation, specification or discrimination as to an individual's race, color, religion,
10 sex, sexual orientation, national origin, marital status, **familial status** or age if the individual is
11 18 years of age or older, or on the basis of an expunged juvenile record, or any intent to make any
12 such limitation, specification or discrimination, unless based upon a bona fide occupational quali-
13 fication. Identification of prospective employees according to race, color, religion, sex, sexual ori-
14 entation, national origin, marital status, **familial status** or age does not violate this section unless
15 the Commissioner of the Bureau of Labor and Industries, after a hearing conducted pursuant to ORS
16 659A.805, determines that the designation expresses an intent to limit, specify or discriminate on the
17 basis of race, color, religion, sex, sexual orientation, national origin, marital status, **familial status**
18 or age.

19 (e) For an employment agency, because of an individual's race, color, religion, sex, sexual ori-
20 entation, national origin, marital status, **familial status** or age if the individual is 18 years of age
21 or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital
22 status, **familial status** or age of any other person with whom the individual associates, or because
23 of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262,
24 to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to
25 discriminate against the individual. However, it is not an unlawful employment practice for an
26 employment agency to classify or refer for employment an individual when the classification or re-
27 ferral results from a bona fide occupational qualification reasonably necessary to the normal oper-
28 ation of the employer's business.

29 (f) For any person to discharge, expel or otherwise discriminate against any other person be-
30 cause that other person has opposed any unlawful practice, or because that other person has filed
31 a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so.

32 (g) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce
33 the doing of any of the acts forbidden under this chapter or to attempt to do so.

34 (2) The provisions of this section apply to an apprentice under ORS 660.002 to 660.210, but the
35 selection of an apprentice on the basis of the ability to complete the required apprenticeship train-
36 ing before attaining the age of 70 years is not an unlawful employment practice. The commissioner
37 shall administer this section with respect to apprentices under ORS 660.002 to 660.210 equally with
38 regard to all employees and labor organizations.

39 (3) The compulsory retirement of employees required by law at any age is not an unlawful em-
40 ployment practice if lawful under federal law.

41 (4)(a) It is not an unlawful employment practice for an employer or labor organization to provide
42 or make financial provision for child care services of a custodial or other nature to its employees
43 or members who are responsible for a minor child.

44 (b) As used in this subsection, "responsible for a minor child" means having custody or legal
45 guardianship of a minor child or acting in loco parentis to the child.

1 (5) This section does not prohibit an employer from enforcing an otherwise valid dress code or
2 policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of
3 an individual based on the health and safety needs of the individual.

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