

House Bill 2010

Sponsored by Representative FAGAN (Pre-session 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**.

Authorizes employee of certain employers to request flexible, predictable or stable work schedule. Requires employer to engage in interactive process with employee to attempt to establish acceptable work schedule. Requires employer to provide alternate work schedule to certain employees.

Establishes unlawful employment practice of discharging or retaliating against employee who requests, discusses or files complaint related to work scheduling.

Requires employer to pay employee additional hour's wages for certain shift changes, being required to call employer to determine if employee is to report for scheduled shift or working a shift of nonconsecutive work hours.

A BILL FOR AN ACT

1
2 Relating to employee scheduling; creating new provisions; and amending ORS 653.060 and 659A.885.

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

4 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 653.010 to**
5 **653.261.**

6 **SECTION 2. (1)(a) An employee may request a flexible, predictable or stable work**
7 **schedule from the employee's employer.**

8 (b) If presented with a request for a flexible, predictable or stable work schedule from
9 an employee, the employer shall engage in a timely, interactive process with the employee
10 to attempt to agree upon a mutually acceptable work schedule.

11 (c) The employer is not obligated to provide an alternate work schedule for the employee
12 after engaging in the interactive process unless the employee has requested a flexible, pre-
13 dictable or stable work schedule because of:

14 (A) A serious health condition of the employee;

15 (B) Caregiving responsibilities for children or the elderly;

16 (C) A second job; or

17 (D) The employee's participation in educational or job-training programs.

18 (d) An employer is not required to provide an employee with an alternate work schedule
19 if there is a bona fide business reason for denying the request.

20 (2)(a) An employer in the retail, hospitality or food services industry shall provide each
21 employee with the employee's work schedule at least two weeks prior to the work schedule
22 becoming effective and, on or before a new employee's first day of employment, shall provide
23 the employee with the employee's work schedule and the number of hours the employee can
24 expect to work.

25 (b) After an employee in the retail, hospitality or food services industry has been pro-
26 vided notice of the employee's work schedule, if the employee's work schedule is changed by
27 the employer with less than 24 hours' prior notice, the employer shall pay the employee one
28 additional hour's wages at the employee's regular rate of pay for each shift changed unless

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 **the shift change was the result of unexpected availability of another employee.**

2 (c) **If an employee in the retail, hospitality or food services industry is required to call**
 3 **in to work less than 24 hours prior to the scheduled start of a work shift to ascertain if the**
 4 **employee is required to report for that shift, or if an employee is required to work a daily**
 5 **schedule in which the hours worked are not consecutive, the employer shall pay the em-**
 6 **ployee one additional hour's wages at the employee's regular rate of pay.**

7 (3) **Notwithstanding ORS 653.010, as used in this section "employer" means any person**
 8 **that employs more than 15 employees.**

9 **SECTION 3.** ORS 653.060 is amended to read:

10 653.060. (1) An employer may not discharge or in any other manner discriminate against an
 11 employee because:

12 (a) The employee has made complaint that the employee has not been paid wages in accordance
 13 with ORS 653.010 to 653.261.

14 (b) The employee has caused to be instituted or is about to cause to be instituted any pro-
 15 ceedings under or related to ORS 653.010 to 653.261.

16 (c) The employee has testified or is about to testify in any such proceedings.

17 (d) **The employee has requested or discussed a flexible, predictable or stable work**
 18 **schedule or has made a complaint that the employer has violated the provisions of section**
 19 **2 of this 2015 Act.**

20 (2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A
 21 person unlawfully discriminated against under this section may file a complaint under ORS 659A.820
 22 with the Commissioner of the Bureau of Labor and Industries.

23 **SECTION 4.** ORS 659A.885 is amended to read:

24 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 25 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 26 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 27 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 28 court may order back pay in an action under this subsection only for the two-year period imme-
 29 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 30 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 31 year period immediately preceding the filing of the action. In any action under this subsection, the
 32 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 33 cept as provided in subsection (3) of this section:

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

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

37 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 38 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
 39 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 40 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 41 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 42 659A.318, 659A.320 or 659A.421 **or section 2 of this 2015 Act.**

43 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 44 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 45 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

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

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

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

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

7 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
8 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
9 compensatory damages or \$200, whichever is greater.

10 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
11 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
12 of this section, compensatory damages or \$250, whichever is greater.

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

16 (7) Any individual against whom any distinction, discrimination or restriction on account of
17 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
18 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
19 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
20 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
21 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
22 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
23 section:

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

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

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

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

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

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

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

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

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

2 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
3 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
4 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
5 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
6 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
7 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
8 appealing an adverse decision of the trial court.

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

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

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

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

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

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