

Enrolled House Bill 2005

Sponsored by Representatives LININGER, BYNUM, LIVELY, HACK, Senators DEMBROW, FERRIOLI, KNOPP, TAYLOR; Representatives ALONSO LEON, BUEHLER, EVANS, FAHEY, GOMBERG, HERNANDEZ, KENY-GUYER, MARSH, MCLAIN, MEEK, NOBLE, PARRISH, PILUSO, POWER, SMITH WARNER, SOLLMAN, Senators BAERTSCHIGER JR, BOQUIST, BURDICK, COURTNEY, DEBOER, DEVLIN, FREDERICK, GELSER, GIROD, HANSELL, HASS, JOHNSON, KRUSE, LINTHICUM, MANNING JR, MONNES ANDERSON, MONROE, OLSEN, PROZANSKI, RILEY, ROBLAN, STEINER HAYWARD, THATCHER, THOMSEN, WINTERS

CHAPTER

AN ACT

Relating to pay equity; creating new provisions; amending ORS 652.210, 652.220, 652.230, 659A.820, 659A.870, 659A.875 and 659A.885; and prescribing an effective date.

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

SECTION 1. ORS 652.210 is amended to read:

652.210. As used in ORS 652.210 to 652.230, unless the context requires otherwise:

(1) "Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation.

~~[(1)]~~ **(2) "Employee"** means any individual who, otherwise than as a copartner of the employer, as an independent contractor or as a participant in a work training program administered under the state or federal assistance laws, renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only partly in this state, an individual is not an employee unless the contract of employment of the employee has been entered into, or payments thereunder are ordinarily made or to be made, within this state.

~~[(2)]~~ **(3)(a) "Employer"** means any person employing one or more employees, including the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(b) "Employer" does not include the federal government.

(4) "Equal-pay analysis" means an evaluation process to assess and correct wage disparities among employees who perform work of comparable character.

(5) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.

~~[(3)]~~ **(6) "Rate"** with reference to wages means:

(a) The basis of compensation for services by an employee for an employer; and

(b) ~~[includes]~~ Compensation based on the time spent in the performance of the services, on the number of operations accomplished or on the quantity produced or handled.

(7) "Sexual orientation" has the meaning given that term in ORS 174.100.

[(4)] (8) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required under ORS 652.220 to be paid to the employee.

(9) "**Veteran status**" means an individual is a veteran as defined in ORS 408.225.

[(5)] (10) "Wages" means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, [including] **or paid in cash or any medium other than cash** [cash value of all compensation paid in any medium other than cash].

(11) "**Working conditions**" includes work environment, hours, time of day, physical surroundings and potential hazards encountered by an employee.

(12) "**Work of comparable character**" means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title.

SECTION 2. ORS 652.220 is amended to read:

652.220. (1) [No employer shall:] **It is an unlawful employment practice under ORS chapter 659A for an employer to:**

(a) In any manner discriminate between [the sexes] **employees on the basis of a protected class** in the payment of wages **or other compensation** for work of comparable character[, the performance of which requires comparable skills].

(b) Pay wages **or other compensation** to any employee at a rate [less] **greater** than that at which the employer pays wages **or other compensation** to employees of [the opposite sex] **a protected class** for work of comparable character[, the performance of which requires comparable skills].

(c) **Screen job applicants based on current or past compensation.**

(d) **Determine compensation for a position based on current or past compensation of a prospective employee. This paragraph is not intended to prevent an employer from considering the compensation of a current employee of the employer during a transfer, move or hire of the employee to a new position with the same employer.**

[(2) Subsection (1) of this section does not apply where:]

[(a) Payment is made pursuant to a seniority or merit system which does not discriminate on the basis of sex.]

[(b) A differential in wages between employees is based in good faith on factors other than sex.]

(2) **Notwithstanding subsection (1) of this section, an employer may pay employees for work of comparable character at different compensation levels if all of the difference in compensation levels is based on a bona fide factor that is related to the position in question and is based on:**

(a) **A seniority system;**

(b) **A merit system;**

(c) **A system that measures earnings by quantity or quality of production, including piece-rate work;**

(d) **Workplace locations;**

(e) **Travel, if travel is necessary and regular for the employee;**

(f) **Education;**

(g) **Training;**

(h) **Experience; or**

(i) **Any combination of the factors described in this subsection, if the combination of factors accounts for the entire compensation differential.**

(3) [No employer shall] **An employer may not** in any manner discriminate in the payment of wages **or other compensation** against any employee because the employee has filed a complaint **under ORS 659A.820 or** in a proceeding under ORS 652.210 to 652.230[, or **659A.885** or has testified, or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceedings pursuant to ORS 652.210 to 652.230, **659A.830 or 659A.885** or in a criminal action pursuant to ORS 652.210 to 652.230.

(4) **An employer may not reduce the compensation level of an employee to comply with the provisions of this section.**

(5) **Amounts owed to an employee because of the failure of the employer to comply with the requirements of this section are unpaid wages.**

(6) **An employee who asserts a violation under this section may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820, a civil action under ORS 652.230 or a civil action under 659A.885.**

(7) **An employer shall post a notice of the requirements of this section in every establishment where employees work. The Bureau of Labor and Industries shall make available to employers a template that meets the required notice provisions of this section.**

SECTION 3. ORS 652.230 is amended to read:

652.230. (1) Any employee whose compensation is at a rate that is in violation of ORS 652.220 shall have a right of action against the employer for the recovery of:

(a) The amount of the unpaid wages to which the employee is entitled for the one year period preceding the commencement of the action; and

(b) An additional amount as liquidated damages equal to the amount referred to in paragraph (a) of this subsection.

(2) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

(3) The action for the unpaid wages and liquidated damages may be maintained by one or more employees on behalf of themselves or other employees similarly situated.

(4) No agreement for compensation at a rate less than the rate to which such employee is entitled under ORS 652.210 to 652.230 is a defense to any action under ORS 652.210 to 652.230.

(5) **For the purpose of time limitations, a compensation practice that is unlawful under ORS 652.220 occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice.**

(6) **An action under this section alleging a violation of ORS 652.220 must be commenced within one year after the occurrence of the unlawful practice.**

(7) **Notwithstanding ORS 30.275 (2)(b), notice of claim against a public body under ORS 652.220 must be given within 300 days of discovery of the alleged loss or injury.**

SECTION 4. It is an unlawful practice under ORS chapter 659A for an employer or prospective employer to seek the salary history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee. This section is not intended to prevent an employer from requesting from a prospective employee written authorization to confirm prior compensation after the employer makes an offer of employment to the prospective employee that includes an amount of compensation.

SECTION 5. ORS 659A.820 is amended to read:

659A.820. (1) As used in this section, for purposes of a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, [*aggrieved person*] **“person claiming to be aggrieved by an unlawful practice”** includes, **but is not limited to**, a person who believes that the person:

(a) Has been injured by an unlawful practice **under ORS 659A.145 or 659A.421** or a discriminatory housing practice; or

(b) Will be injured by an unlawful practice **under ORS 659A.145 or 659A.421** or a discriminatory housing practice that is about to occur.

(2) Any person claiming to be aggrieved by an [*alleged*] unlawful practice may file with the Commissioner of the Bureau of Labor and Industries a verified written complaint that states the name and address of the person alleged to have committed the unlawful practice. The complaint must be signed by the complainant. The complaint must set forth the acts or omissions alleged to

be an unlawful practice. The complainant may be required to set forth in the complaint such other information as the commissioner may require. Except as provided in ORS 654.062, a complaint under this section must be filed no later than one year after the alleged unlawful practice.

(3)(a) Except as provided in paragraph (b) of this subsection, a complaint may not be filed under this section if a civil action has been commenced in state or federal court alleging the same matters.

(b) The prohibition described in paragraph (a) of this subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law.

(4) If an employer has one or more employees who refuse or threaten to refuse to abide by the provisions of this chapter or to cooperate in carrying out the purposes of this chapter, the employer may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

(5) Except as provided in subsection (6) of this section, the commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the complaint. The commissioner shall include in the notice the date, place and circumstances of the alleged unlawful practice.

(6) The commissioner shall notify the person against whom a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law is made within 10 days of the filing of the complaint. The commissioner shall include in the notice:

(a) The date, place and circumstances of the alleged unlawful practice; and

(b) A statement that the person against whom the complaint is made may file an answer to the complaint.

SECTION 6. ORS 659A.870 is amended to read:

659A.870. (1) Except as provided in this section, the filing of a civil action by a person in circuit court pursuant to ORS 659A.885, or in federal district court under applicable federal law, waives the right of the person to file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 with respect to the matters alleged in the civil action.

(2) The filing of a complaint under ORS 659A.820 is not a condition precedent to the filing of any civil action.

(3) If a person files a civil action alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the filing does not constitute an election of remedies or a waiver of the right of the person to file a complaint with the commissioner under ORS 659A.820, but the commissioner shall dismiss the complaint upon the commencement of a trial in the civil action.

(4) If a person files a complaint under ORS 659A.820 alleging a violation of ORS 652.220 and the commissioner issues a final order in favor of the complainant, the commissioner shall require the employer to pay an award of back pay for the lesser of:

(a) The two-year period immediately preceding the filing of the complaint plus the period of time commencing with the date on which the complaint is filed and ending on the date on which the commissioner issued the order; or

(b) The period of time the complainant was subject to an unlawful wage differential by the employer plus the period of time commencing with the date on which the complaint is filed and ending on the date on which the commissioner issued the order.

~~[(4)(a)]~~ **(5)(a)** The filing of a complaint under ORS 659A.820 by a person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not constitute an election of remedies or a waiver of the right of the person to file a civil action with respect to the same matters, but a civil action may not be filed after a hearing officer has commenced a hearing on the record under this chapter with respect to the allegations of the complaint.

(b) A respondent or complainant named in a complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may elect to have the matter heard in circuit court under ORS 659A.885. The election must be made in writing and received by the commissioner within 20 days after service of formal

charges under ORS 659A.845. If the respondent or the complainant makes the election, the commissioner may pursue the matter in court on behalf of the complainant at no cost to the complainant.

(c) If the Attorney General or the commissioner files a complaint under ORS 659A.825, the Attorney General or the commissioner may elect to have the matter heard in circuit court under ORS 659A.885.

(d) If the respondent, the complainant, the Attorney General or the commissioner do not elect to have the matter heard in circuit court, the commissioner may conduct a hearing on the formal charges under ORS 659A.850.

[5] (6) A person who has filed a complaint under ORS 659A.820 need not receive a 90-day notice under ORS 659A.880 before commencing a civil action that is based on the same matters alleged in the complaint filed with the commissioner.

[(6)] (7) Except as provided in subsections (3) and [(4)] (5) of this section, this section does not limit or alter in any way the authority or power of the commissioner, or limit or alter in any way any of the rights of an individual complainant, until and unless the complainant commences a civil action.

SECTION 7. ORS 659A.870, as amended by section 5, chapter 609, Oregon Laws 2015, is amended to read:

659A.870. (1) Except as provided in this section, the filing of a civil action by a person in circuit court pursuant to ORS 659A.885, or in federal district court under applicable federal law, waives the right of the person to file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 with respect to the matters alleged in the civil action.

(2) The filing of a complaint under ORS 659A.820 is not a condition precedent to the filing of any civil action.

(3) If a person files a civil action alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the filing does not constitute an election of remedies or a waiver of the right of the person to file a complaint with the commissioner under ORS 659A.820, but the commissioner shall dismiss the complaint upon the commencement of a trial in the civil action.

(4) If a person files a complaint under ORS 659A.820 alleging a violation of ORS 652.220 and the commissioner issues a final order in favor of the complainant, the commissioner shall require the employer to pay an award of back pay for the lesser of:

(a) The two-year period immediately preceding the filing of the complaint plus the period of time commencing with the date on which the complaint is filed and ending on the date on which the commissioner issued the order; or

(b) The period of time the complainant was subject to an unlawful wage differential by the employer plus the period of time commencing with the date on which the complaint is filed and ending on the date on which the commissioner issued the order.

[(4)(a)] (5)(a) The filing of a complaint under ORS 659A.820 by a person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not constitute an election of remedies or a waiver of the right of the person to file a civil action with respect to the same matters, but a civil action may not be filed after a hearing officer has commenced a hearing on the record under this chapter with respect to the allegations of the complaint.

(b) A respondent or complainant named in a complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may elect to have the matter heard in circuit court under ORS 659A.885. The election must be made in writing and received by the commissioner within 20 days after service of formal charges under ORS 659A.845. If the respondent or the complainant makes the election, the commissioner shall pursue the matter in court on behalf of the complainant at no cost to the complainant.

(c) If the Attorney General or the commissioner files a complaint under ORS 659A.825, the Attorney General or the commissioner may elect to have the matter heard in circuit court under ORS 659A.885.

(d) If the respondent, the complainant, the Attorney General or the commissioner do not elect to have the matter heard in circuit court, the commissioner may conduct a hearing on the formal charges under ORS 659A.850.

[(5)] (6) A person who has filed a complaint under ORS 659A.820 need not receive a 90-day notice under ORS 659A.880 before commencing a civil action that is based on the same matters alleged in the complaint filed with the commissioner.

[(6)] (7) Except as provided in subsections (3) and [(4)] (5) of this section, this section does not limit or alter in any way the authority or power of the commissioner, or limit or alter in any way any of the rights of an individual complainant, until and unless the complainant commences a civil action.

SECTION 8. ORS 659A.875 is amended to read:

659A.875. (1) Except as provided in subsection (2) of this section, a civil action under ORS 659A.885 alleging an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880. This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

(3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must be commenced not later than two years after the occurrence or the termination of the unlawful practice, or within two years after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs last. The two-year period shall not include any time during which an administrative proceeding was pending with respect to the unlawful practice.

(4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful practice.

(5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260.

(6) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(7) For the purpose of time limitations, a compensation practice that is unlawful under ORS 652.220 occurs each time compensation is paid under a discriminatory compensation decision or other practice.

(8) Notwithstanding ORS 30.275 (2)(b), notice of claim against a public body under ORS 652.220 or 659A.355 must be given within 300 days of discovery of the alleged loss or injury.

SECTION 9. 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, **652.220**, 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.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, **652.220**, **652.355**, 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.355**, 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) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:

(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or

(b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

[4] (5) 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] (6) 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] (7) 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] (8) 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 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

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

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

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

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

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable

basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

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

~~[(8)]~~ **(9)** When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

~~[(9)]~~ **(10)** In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

~~[(10)]~~ **(11)** In an action under subsection (1) or ~~[(8)]~~ **(9)** of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

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

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

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

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

SECTION 10. ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, and section 9 of this 2017 Act, 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, 652.220, 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 4 of this 2017 Act.**

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 652.220, 652.355, 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.355, 659A.421, 653.547 or 653.549 **or section 4 of this 2017 Act:**

(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) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:

(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or

(b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

(5) In any action under subsection (1) of this section alleging a violation of ORS 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.

(6) 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.

(7) 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.

(8) 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 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

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

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

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

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

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

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

(9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner

or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

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

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

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

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

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

SECTION 11. Section 12 of this 2017 Act is added to and made a part of ORS 652.210 to 652.230.

SECTION 12. (1) In a civil action under ORS 652.230 or 659A.885 (1) alleging a violation of ORS 652.220, the employer may file a motion to disallow an award of compensatory and punitive damages. The court shall grant the motion if the employer demonstrates, by a preponderance of the evidence, that the employer:

(a) Completed, within three years before the date that the employee filed the action, an equal-pay analysis of the employer's pay practices in good faith that was:

(A) Reasonable in detail and in scope in light of the size of the employer; and

(B) Related to the protected class asserted by the plaintiff in the action; and

(b) Eliminated the wage differentials for the plaintiff and has made reasonable and substantial progress toward eliminating wage differentials for the protected class asserted by the plaintiff.

(2) If the court grants the motion filed under this section, the court may award back pay only for the two-year period immediately preceding the filing of the action and may allow the prevailing plaintiff costs and reasonable attorney fees, but may not award compensatory or punitive damages.

(3) Evidence of an equal-pay analysis undertaken in accordance with subsection (1) of this section is inadmissible in any other proceeding.

(4) Information that an employer has not completed an equal-pay analysis may not be used as evidence of a violation of ORS 652.220 in an action under ORS 652.230 or 659A.885 alleging a violation of ORS 652.220.

SECTION 13. The amendments to ORS 659A.885 by section 10 of this 2017 Act become operative on January 1, 2024.

SECTION 14. Section 12 of this 2017 Act and the amendments to ORS 652.210, 652.220, 652.230, 659A.820, 659A.870, 659A.875 and 659A.885 by sections 1 to 3 and 5 to 9 of this 2017 Act become operative on January 1, 2019.

SECTION 15. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by House March 28, 2017

Repassed by House May 22, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 17, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

.....
Dennis Richardson, Secretary of State