

Minority Report
A-Engrossed
House Bill 2005

Ordered by the House March 27
Including House Minority Report Amendments dated March 27

Sponsored by nonconcurring members of the House Committee on Business and Labor: Representatives BARRETO,
HACK

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.

Provides definitions relating to comparable work for purposes of pay equity provisions. Makes unlawful employment practice to discriminate in payment of wages against employee on basis of protected class. Makes unlawful employment practice to screen job applicants based on salary history, to base salary decision on salary history and to seek salary history information from applicant for employment other than after making offer of employment. Requires employer to demonstrate business necessity for pay differentials that are not based on merit, seniority, **workplace location, travel or** piece-rate or production-based work.

Extends time limitation to bring certain pay equity claims by making each subsequent payroll action that is based on underlying pay equity violation actionable. Extends tort claim notice requirement from 180 days to one year for public employee to give notice of certain pay equity violations. **Adds compensatory damages to available remedies.** [*Adds additional remedies for pay equity and wage-related violations that include right to jury trial and right to compensatory and punitive damages.*]

[*Protects seniority rights for employee who uses sick leave or medical leave.*]

A BILL FOR AN ACT

1
2 Relating to pay equity; creating new provisions; and amending ORS 652.210, 652.220 and 652.230.

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

4 **SECTION 1.** ORS 652.210 is amended to read:

5 652.210. As used in ORS 652.210 to 652.230, unless the context requires otherwise:

6 (1) **"Business necessity" means an important and legitimate business purpose.**

7 (2) **"Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity-**
8 **based compensation.**

9 [(1)] (3) "Employee" means any individual who, otherwise than as a copartner of the employer,
10 as an independent contractor or as a participant in a work training program administered under the
11 state or federal assistance laws, renders personal services wholly or partly in this state to an em-
12 ployer who pays or agrees to pay such individual at a fixed rate. However, when services are ren-
13 dered only partly in this state, an individual is not an employee unless the contract of employment
14 of the employee has been entered into, or payments thereunder are ordinarily made or to be made,
15 within this state.

16 [(2)] (4)(a) "Employer" means any person employing one or more employees, including the State
17 of Oregon or any political subdivision thereof or any county, city, district, authority, public corpo-
18 ration or entity and any of their instrumentalities organized and existing under law or charter.

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

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 [(3)] **(5)(a)** “Rate” with reference to wages means the basis of compensation for services by an
2 employee for an employer *[and]*.

3 **(b) “Rate”** includes compensation based on the time spent in the performance of the services,
4 on the number of operations accomplished or on the quantity produced or handled.

5 **(6) “Sexual orientation”** has the meaning given that term in ORS 174.100.

6 [(4) “Unpaid wages” means the difference between the wages actually paid to an employee and the
7 wages required under ORS 652.220 to be paid to the employee.]

8 **(7) “Veteran”** has the meaning given that term in ORS 408.225.

9 [(5)] **(8) “Wages”** means *[all compensation]* **remuneration** for performance of service by an em-
10 ployee for an employer, whether paid by the employer or another person, *[including cash value of*
11 *all compensation paid in any medium other than cash]*.

12 **(9) “Working conditions”** includes work environment, hours, time of day, physical sur-
13 roundings and potential hazards encountered by an employee.

14 **(10) “Work of comparable character”** means work that requires substantially similar
15 knowledge, skill, effort, responsibility and working conditions in the performance of work,
16 regardless of job description or job title.

17 **SECTION 2.** ORS 652.220 is amended to read:

18 652.220. (1) *[No employer shall]* **It is an unlawful employment practice under ORS chapter**
19 **659A for an employer to:**

20 (a) In any manner discriminate between *[the sexes]* **employees or applicants on the basis of**
21 **race, color, religion, sex, sexual orientation, national origin, marital status, veteran status,**
22 **disability or age** in the payment of wages **or other compensation** for work of comparable char-
23 acter, the performance of which requires comparable skills.

24 (b) Pay wages **or other compensation** to any employee at a rate less than that at which the
25 employer pays wages **or other compensation** to employees of *[the opposite sex]* **another race,**
26 **color, religion, sex, sexual orientation, national origin, marital status, veteran status, disa-**
27 **bility or age** for work of comparable character, the performance of which requires comparable
28 skills.

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

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

34 (e) **Seek the salary history of an applicant or employee from a current or former em-**
35 **ployer. This paragraph is not intended to prevent an employer from requesting from a pro-**
36 **spective employee written authorization to confirm prior compensation after the employer**
37 **makes an offer of employment to the employee that includes compensation.**

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

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

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

42 **(2) Notwithstanding subsection (1) of this section, an employer may pay employees in**
43 **equivalent jobs at different compensation levels if the different compensation levels are based**
44 **on:**

45 **(a) A seniority system;**

1 (b) A merit system;

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

4 (d) Workplace locations;

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

6 (f) A bona fide factor other than race, color, religion, sex, sexual orientation, national
7 origin, marital status, veteran status, disability or age, including education, training or ex-
8 perience, if the employer can reasonably demonstrate that the factor:

9 (A) Is not based on or derived from race, color, religion, sex, sexual orientation, national
10 origin, marital status, veteran status, disability or age;

11 (B) Is not based on perceptions of traditional or appropriate roles associated with race,
12 color, religion, sex, sexual orientation, national origin, marital status, vetera-
13 nary status, disability or age;

14 (C) Is job-related for the position in question;

15 (D) Is based on a business necessity; and

16 (E) Accounts for the entire compensation differential.

17 (3) *[No employer shall]* An employer may not in any manner discriminate in the payment of
18 wages or compensation against any employee because the employee has filed a complaint in a
19 proceeding under ORS 652.210 to 652.230, or has testified, or is about to testify, or because the em-
20 ployer believes that the employee may testify, in any investigation or proceedings pursuant to ORS
21 652.210 to 652.230 or in a criminal action pursuant to ORS 652.210 to 652.230.

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

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

26 **SECTION 3.** ORS 652.230 is amended to read:

27 652.230. (1) Any employee whose compensation is at a rate that is in violation of ORS 652.220
28 shall have a right of action against the employer for the recovery of:

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

31 (b) An additional amount as liquidated damages equal to the amount referred to in paragraph
32 (a) of this subsection~~].~~; **and**

33 (c) **Compensatory damages or \$250, whichever is greater.**

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

39 (3) *[The]* An action *[for the unpaid wages and liquidated damages]* **under this section** may be
40 maintained by one or more employees on behalf of themselves or other employees similarly situated.

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

43 (5) **Notwithstanding ORS 30.275, notice of claim against a public body under ORS 652.220**
44 **must be given within one year of discovery of the alleged loss or injury.**

45 (6)(a) **Except as provided in paragraph (b) of this subsection, a complaint under this**

1 section must be filed no later than one year after the alleged unlawful practice.

2 (b) For the purpose of time limitations, a compensation practice that is unlawful under
3 ORS 652.220 occurs each time compensation is paid pursuant to a discriminatory compen-
4 sation decision or other practice.

5 **SECTION 4.** Section 5 of this 2017 Act is added to and made a part of ORS 652.210 to
6 652.230.

7 **SECTION 5.** (1) As used in this section, “self-evaluation” means a system to evaluate and
8 correct wage disparities among employees who perform comparable work.

9 (2) It is an affirmative defense to all liability under ORS 652.230 that the employer has,
10 within three years before the date that an employee files a complaint:

11 (a) Completed a self-evaluation of its pay practices in good faith that is:

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

13 (B) Consistent with standards of the Oregon Department of Administrative Services; and

14 (b) Demonstrated that reasonable progress has been made toward eliminating wage dif-
15 ferentials based on race, color, religion, sex, sexual orientation, national origin, marital sta-
16 tus, veteran status, disability or age for comparable work, if necessary.

17 (3) It is an affirmative defense to compensatory damages under ORS 652.230 (1)(c) that
18 the employer has, within three years before the date that an employee files a complaint:

19 (a) Completed a self-evaluation of its pay practices in good faith that did not meet the
20 requirements of subsection (2)(a)(A) or (B) of this section; and

21 (b) Demonstrated that reasonable progress has been made toward eliminating wage dif-
22 ferentials based on race, color, religion, sex, sexual orientation, national origin, marital sta-
23 tus, veteran status, disability or age for comparable work, if necessary.

24 (4) Evidence of a self-evaluation or remedial steps undertaken in accordance with this
25 section is inadmissible in any other proceeding.

26 (5) An employer who has not completed a self-evaluation is not subject to an adverse
27 inference in any proceeding.

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