

B-Engrossed
Senate Bill 828

Ordered by the Senate June 20
Including Senate Amendments dated April 20 and June 20

Sponsored by Senators DEMBROW, TAYLOR, Representatives KENY-GUYER, HOLVEY, LININGER, NOSSE, PARRISH; Senators BURDICK, FREDERICK, GELSER, MANNING JR, PROZANSKI, RILEY, Representatives ALONSO LEON, HELM, HERNANDEZ, PILUSO, POWER, RAYFIELD, SANCHEZ, SMITH WARNER, WITT

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.

Requires large employers in specified industries to provide new employee with estimated work schedule and to provide current employee with *[two weeks']* **seven days'** notice of employee work schedule. **Extends work schedule notice period to two weeks effective July 1, 2020. Permits large employers in specified industries to maintain list of employees for work shift coverage in certain circumstances.** Prohibits large employers in specified industries from scheduling work shifts that do not allow sufficient break time in between shifts unless employee earns 1.5 times scheduled rate of pay. Requires large employers in specified industries to pay penalty wage if employer changes scheduled shift with less than *[two weeks']* **seven days'** notice. Provides exception to penalty wage in certain circumstances *[outside employer's control]*.

Requires large employers in specified industries to maintain records relating to compliance for three years. Makes unlawful employment practice for large employers in specified industries to interfere with employee rights or retaliate against employee for exercising rights granted to employee under Act. Allows for administrative or civil cause of action and *[escalating]* statutory penalties for each violation.

[Extends] **Repeals sunset of** preemption of local government regulation of work schedules *[and sunsets preemption on July 1, 2022]*.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to employee work schedules; creating new provisions; amending ORS 659A.885 and section
3 1, chapter 591, Oregon Laws 2015; repealing section 2, chapter 591, Oregon Laws 2015; and de-
4 claring an emergency.

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

6 **SECTION 1. Sections 2 to 12 of this 2017 Act are added to and made a part of ORS**
7 **chapter 653.**

8 **SECTION 2. Definitions. As used in sections 2 to 12 of this 2017 Act, unless the context**
9 **requires otherwise:**

10 (1) "Chain" means an establishment that is part of an affiliation of two or more estab-
11 lishments within the United States, each of which is owned by the same person or entity and
12 operate under identical or substantially similar trade names or service marks, both as de-
13 fined in ORS 647.005.

14 (2)(a) "Employee" means an employee, as defined in ORS 652.310, who is employed in a
15 retail establishment, a hospitality establishment or a food services establishment and is en-
16 gaged in providing services relating to:

17 (A) Retail trade, as that term is used in the 2012 North American Industry Classification
18 System under code 44-45;

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 (B) Hotels and motels, as those terms are used in the 2012 North American Industry
2 Classification System under code 721110, or casino hotels, as that term is used in the 2012
3 North American Industry Classification System under code 721120; or

4 (C) Food services, as that term is used in the 2012 North American Industry Classifica-
5 tion System under code 722.

6 (b) "Employee" does not include:

7 (A) A salaried employee described in ORS 653.020 (3);

8 (B) A worker supplied to an employer by a worker leasing company, as defined in ORS
9 656.850; or

10 (C) An employee of a business that provides services to or on behalf of an employer.

11 (3) "Employer" means an employer, or a successor to an employer, described in section
12 3 (1) of this 2017 Act.

13 (4) "Food services establishment" means the fixed point of sale location for establish-
14 ments defined in the 2012 North American Industry Classification System under code 722 as
15 food services and drinking places.

16 (5) "Hospitality establishment" has the meaning provided in the 2012 North American
17 Industry Classification System under code 721110 for hotels and motels and code 721120 for
18 casino hotels.

19 (6) "On-call shift" means any time that an employer requires an employee to be available
20 to work or to contact the employer or wait to be contacted by the employer for the purpose
21 of determining whether the employee must report to work. During the shift, on-call status
22 applies regardless of whether the employee is located on or off the employer's premises.

23 (7) "Regular rate of pay" means the regular hourly rate or hourly equivalent that an
24 employer must pay an employee for each hour the employee works during a given work shift,
25 including any shift differential pay. "Regular rate of pay" does not include:

26 (a) Tips;

27 (b) Bonuses or other incentive payments;

28 (c) Overtime, holiday pay or other premium rate; or

29 (d) Any additional compensation an employer is required to pay an employee under sec-
30 tion 6 or 7 of this 2017 Act.

31 (8) "Retail establishment" means the fixed point of sale location for an establishment
32 defined in the 2012 North American Industry Classification System under codes 441110 to
33 453998 as a retail trade establishment.

34 (9) "Shift differential pay" means a pay differential meant to compensate an employee for
35 work performed under differing conditions, such as for working at night. "Shift differential
36 pay" does not include any additional compensation an employer is required to pay an em-
37 ployee under section 6 or 7 of this 2017 Act.

38 (10) "Successor" means a business or enterprise that is substantially the same entity as
39 the predecessor employer according to criteria adopted by the Bureau of Labor and Indus-
40 tries by rule and consistent with federal law.

41 (11) "Time of hire" means the period after an offer of employment and acceptance of the
42 offer of employment and on or before the commencement of employment.

43 (12) "Work schedule" means the hours, days and times, including regular work shifts and
44 on-call shifts, when an employee is required by an employer to perform duties of employment
45 for which the employee will receive compensation.

1 (13) "Work shift" means the specific and consecutive hours the employer requires the
2 employee to work.

3 (14) "Workweek" means a fixed period of time established by an employer that reflects
4 a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek
5 may begin on any day of the week and any hour of the day and need not coincide with a
6 calendar week. The beginning of a workweek may be changed if the change is intended to
7 be permanent.

8 (15) "Writing" or "written" means a printed or printable communication in physical or
9 electronic format including a communication that is transmitted through electronic mail,
10 text message or a computer system or is otherwise sent and stored electronically.

11 (16) "Year" means any fixed, consecutive 12-month period of time.

12 **SECTION 3. Covered employees.** (1) Sections 2 to 12 of this 2017 Act apply to an employee
13 who is employed by an employer, as defined in ORS 652.310, that is also one or more of the
14 following:

15 (a) A retail establishment that employs 500 or more employees worldwide, including but
16 not limited to a chain or an integrated enterprise.

17 (b) A hospitality establishment that employs 500 or more employees worldwide, including
18 but not limited to a chain or an integrated enterprise.

19 (c) A food services establishment that employs 500 or more employees worldwide, in-
20 cluding but not limited to a chain or an integrated enterprise.

21 (2) To determine the number of employees employed by an employer, the calculation shall
22 be based upon the average number of employees employed on each working day during each
23 of 20 or more workweeks in the current calendar year or immediately preceding calendar
24 year.

25 (3) Separate entities that form an integrated enterprise are considered a single employer
26 under sections 2 to 12 of this 2017 Act. Separate entities will be considered an integrated
27 enterprise and a single employer under sections 2 to 12 of this 2017 Act where a separate
28 entity controls the operation of another entity. The factors to consider in determining
29 whether separate entities form an integrated enterprise include, but are not limited to:

30 (a) The degree of interrelation between the operations of multiple entities;

31 (b) The degree to which the entities share common management;

32 (c) The degree to which the entities have centralized control of labor relations; and

33 (d) The degree of common ownership or financial control over the entities.

34 (4) The Commissioner of the Bureau of Labor and Industries shall adopt rules in ac-
35 cordance with the provisions of subsection (3) of this section regarding how to determine
36 when separate entities form an integrated enterprise for the purposes of sections 2 to 12 of
37 this 2017 Act.

38 **SECTION 4. Good faith estimate of work schedule.** (1) An employer shall provide a new
39 employee with a written good faith estimate of the employee's work schedule at the time of
40 hire. The good faith estimate:

41 (a) Shall state the median number of hours the employee can expect to work in an av-
42 erage one-month period;

43 (b) Shall explain the voluntary standby list described in section 4a of this 2017 Act and
44 provide the written notice required in section 4a of this 2017 Act;

45 (c) Shall indicate whether an employee who is not on the voluntary standby list can ex-

1 pect to work on-call shifts and, if so, set forth an objective standard for when an employee
2 not listed on the voluntary standby list may be expected to be available to work on-call
3 shifts; and

4 (d) May be based on a prior year schedule if it is a good faith estimate of seasonal or
5 episodic work.

6 (2) The employer shall include the good faith estimate in the language the employer
7 typically uses to communicate with the employee.

8 **SECTION 4a. Voluntary standby list.** (1) An employer may maintain a standby list of
9 employees whom the employer will request to work additional hours to address unanticipated
10 customer needs or unexpected employee absences if the listed employees have requested or
11 agreed in writing to be included on the standby list and the employer notifies each employee
12 in writing:

13 (a) That the list is voluntary and how an employee may request to be removed from the
14 list;

15 (b) How the employer will notify a standby list employee of additional hours available and
16 how an employee may accept the additional hours;

17 (c) That the employee is not required to accept the additional hours offered; and

18 (d) That an employee on the standby list is not eligible for additional compensation under
19 section 7 of this 2017 Act for the changes to the employee's written work schedule resulting
20 from the employee's acceptance of additional hours offered to the employee as a result of
21 being on the standby list.

22 (2) An employer shall provide an employee on the standby list with notice of additional
23 hours available by in-person conversation, telephone call, electronic mail, text message or
24 other accessible electronic or written format.

25 (3) An employee who receives notice of additional hours available under this section may
26 decline to accept the additional hours offered.

27 (4) An employee who consents to work additional hours in response to an employer's
28 request under this section is not eligible for any additional compensation under section 7 of
29 this 2017 Act for the resulting change to the employee's written work schedule.

30 (5) An employee may request to be removed from the standby list at any time.

31 (6) An employer may not retaliate against an employee who:

32 (a) Does not request or agree to be added to the standby list;

33 (b) Requests to be removed from the standby list; or

34 (c) Declines an employer's request that the employee work additional hours as a result
35 of the employee being on the standby list.

36 (7) In addition to any other penalty provided by law, the Commissioner of the Bureau of
37 Labor and Industries may assess a civil penalty not to exceed \$2,000 against an employer that
38 the commissioner finds has coerced an employee into requesting or agreeing to be added to
39 the standby list in violation of this section. Each violation is a separate and distinct offense.
40 In the case of a continuing violation, each day's continuance is a separate and distinct vio-
41 lation.

42 (8) The standby list is not a list of employees scheduled for on-call shifts and the em-
43 ployer is not required to include a list of employees on the standby list in the written work
44 schedule described in section 5 of this 2017 Act.

45 **SECTION 5. Advance notice of work schedule.** (1) An employer shall provide an employee

1 with a work schedule in writing at least seven calendar days before the first day of the work
2 schedule.

3 (2) The employer shall post the written work schedule in a conspicuous and accessible
4 location, in English and in the language the employer typically uses to communicate with the
5 employees.

6 (3) The employer shall provide a written work schedule that runs through the last date
7 of the posted work schedule in effect at the time of delivery to:

8 (a) A new employee on or before the employee's first day of work; or

9 (b) An existing employee on the employee's first day of work after a leave of absence.

10 (4) The written work schedule shall include all work shifts and on-call shifts for the work
11 period.

12 (5) If the employer requests changes to the written work schedule after the advance no-
13 tice required in this section:

14 (a) The employer shall provide the employee with timely notice of the change by in-
15 person conversation, telephone call, electronic mail, text message or other accessible elec-
16 tronic or written format; and

17 (b) The employee may decline any work shifts not included in the employee's written
18 work schedule.

19 (6) At any time after the advance notice of written work schedule required in this sec-
20 tion, an employee may request in writing that the employer add the employee to one or more
21 work shifts or on-call work shifts. Any changes to the employee's written work schedule
22 resulting from such employee-requested work schedule changes are not subject to the ad-
23 vance notice requirements of this section.

24 **SECTION 5a.** Section 5 of this 2017 Act is amended to read:

25 **Sec. 5.** (1) An employer shall provide an employee with a work schedule in writing at least
26 [seven] 14 calendar days before the first day of the work schedule.

27 (2) The employer shall post the written work schedule in a conspicuous and accessible location,
28 in English and in the language the employer typically uses to communicate with the employees.

29 (3) The employer shall provide a written work schedule that runs through the last date of the
30 posted work schedule in effect at the time of delivery to:

31 (a) A new employee on or before the employee's first day of work; or

32 (b) An existing employee on the employee's first day of work after a leave of absence.

33 (4) The written work schedule shall include all work shifts and on-call shifts for the work period.

34 (5) If the employer requests changes to the written work schedule after the advance notice re-
35 quired in this section:

36 (a) The employer shall provide the employee with timely notice of the change by in-person con-
37 versation, telephone call, electronic mail, text message or other accessible electronic or written
38 format; and

39 (b) The employee may decline any work shifts not included in the employee's written work
40 schedule.

41 (6) At any time after the advance notice of written work schedule required in this section, an
42 employee may request in writing that the employer add the employee to one or more work shifts
43 or on-call work shifts. Any changes to the employee's written work schedule resulting from such
44 employee-requested work schedule changes are not subject to the advance notice requirements of
45 this section.

1 **SECTION 6. Right to rest between work shifts.** (1) Unless the employee requests or
2 consents to work such hours, an employer may not schedule or require an employee to work
3 during the following rest periods:

4 (a) The first 10 hours following the end of the previous calendar day's work shift or on-
5 call shift; or

6 (b) The first 10 hours following the end of a work shift or on-call shift that spanned two
7 calendar days.

8 (2) Except as provided in subsection (3) of this section, an employer shall compensate an
9 employee for each hour or portion of an hour that the employee works during a rest period
10 described in subsection (1) of this section at one and one-half times the employee's regular
11 rate of pay.

12 (3) Subsection (2) of this section does not apply to any hour or portion of an hour an
13 employee works during the rest period described in subsection (1) of this section during
14 which the employee is engaged in providing roadside assistance services. As used in this
15 subsection, "roadside assistance" means offsite repair assistance rendered to a motorist with
16 a disabled vehicle.

17 **SECTION 6a. Employee right to input into work schedule.** (1) At time of hire and during
18 employment, an employee may identify any limitations or changes in the employee's work
19 schedule availability. The employee may also request not to be scheduled for work shifts
20 during certain times or at certain locations.

21 (2)(a) An employer may require the employee to provide reasonable verification of the
22 need for a request made under subsection (1) of this section.

23 (b) The employer shall pay any reasonable costs for providing verification that is medical
24 verification required under this subsection, including lost wages, that are not paid under a
25 health benefit plan in which the employee is enrolled.

26 (c) Nothing in this subsection is intended to limit the application of ORS 659A.306.

27 (3) An employer may not retaliate against an employee for making a request under sub-
28 section (1) of this section.

29 (4) An employer is under no obligation to grant an employee's request under subsection
30 (1) of this section.

31 **SECTION 7. Compensation for work schedule changes.** (1) As used in this section:

32 (a) "Group communication" means communication to all eligible employees, either writ-
33 ten or oral.

34 (b) "Ticketed event" means a sporting, entertainment, civic, charitable or other event
35 that requires a ticket for admission. The ticket may be electronic, physical or a name on a
36 list held by the event organizer.

37 (2) An employer shall provide the following compensation to an employee for each
38 employer-requested change that occurs to the employee's written work schedule without the
39 advance notice required in section 5 of this 2017 Act:

40 (a) One hour of pay at the employee's regular rate of pay, in addition to wages earned,
41 when the employer:

42 (A) Adds more than 30 minutes of work to the employee's work shift;

43 (B) Changes the date or start or end time of the employee's work shift with no loss of
44 hours; or

45 (C) Schedules the employee for an additional work shift or on-call shift.

1 **(b) One-half times the employee’s regular rate of pay per hour for each scheduled hour**
2 **that the employee does not work when the employer:**

3 **(A) Subtracts hours from the employee’s work shift before or after the employee reports**
4 **for duty;**

5 **(B) Changes the date or start or end time of the employee’s work shift, resulting in a loss**
6 **of work shift hours;**

7 **(C) Cancels the employee’s work shift; or**

8 **(D) Does not ask the employee to perform work when the employee is scheduled for an**
9 **on-call shift.**

10 **(3) The requirements for additional compensation in this section do not apply when:**

11 **(a) An employer changes the start or end time of an employee’s work shift by 30 minutes**
12 **or less;**

13 **(b) An employee mutually agrees with another employee to employee-initiated work shift**
14 **swaps or coverage. The employer may require that work shift swaps or coverage under this**
15 **paragraph be preapproved by the employer. The employer may assist employees in finding**
16 **such arrangements, provided that any employer assistance must be limited to helping an**
17 **employee identify other employees who may be available to provide work shift swaps or**
18 **coverage and may not include the employer arranging the work shift swap or coverage;**

19 **(c) An employee requests changes to the employee’s written work schedule, including**
20 **adding or subtracting hours, and the employee documents the request in writing;**

21 **(d) An employer makes changes to an employee’s written work schedule at the**
22 **employee’s request under section 5 (6) of this 2017 Act;**

23 **(e) An employer subtracts hours from an employee’s work schedule for disciplinary rea-**
24 **sons for just cause, provided the employer documents the incident leading to the employee’s**
25 **discipline in writing;**

26 **(f) An employee’s work shift or on-call shift cannot begin or continue due to threats to**
27 **employees or property or due to the recommendation of a public official;**

28 **(g) Operations cannot begin or continue because public utilities fail to supply electricity,**
29 **water or gas or there is a failure in the public utilities or sewer system;**

30 **(h) Operations cannot begin or continue due to a natural disaster or a similar cause not**
31 **within the employer’s control, including when the natural disaster or similar cause physically**
32 **affects the work site;**

33 **(i) Operations hours change or are substantially altered because a ticketed event is can-**
34 **celled, rescheduled or changes in duration due to circumstances that are outside the**
35 **employer’s control and that occur after the employer provides the written work schedule**
36 **under section 5 of this 2017 Act;**

37 **(j) An employer requests that an employee on a voluntary standby list work additional**
38 **hours as described in section 4a of this 2017 Act and the employee consents to work the ad-**
39 **ditional hours; or**

40 **(k)(A) An employer requests that an employee work additional hours to address unan-**
41 **ticipated customer needs or unexpected employee absence;**

42 **(B) The employee consents in writing to work the additional hours;**

43 **(C) If the employer maintains a voluntary standby list described in section 4a of this 2017**
44 **Act, the employer has contacted all of the employees listed on the voluntary standby list and**
45 **requires additional employee coverage; and**

1 (D)(i) If the employee is working a work shift at the time the employer makes the re-
2 quest, the employer makes the request either individually or as part of a group communi-
3 cation; or

4 (ii) If the employee is not working a work shift at the time the employer makes the re-
5 quest, the employer makes the request through a group communication.

6
7 **NOTICE AND RECORDKEEPING REQUIREMENTS**

8
9 **SECTION 8. Notice and posting requirements.** (1) The Commissioner of the Bureau of
10 Labor and Industries shall make available to employers a template of a poster giving notice
11 of the rights described in sections 2 to 12 of this 2017 Act. The poster must be in English.

12 (2) Employers shall display the poster at the workplace. If displaying the poster is not
13 feasible, including situations in which the employees work remotely or do not have a regular
14 workplace or job site, the employer may provide the poster on an individual basis in a phys-
15 ical or electronic format that is reasonably conspicuous and accessible.

16 **SECTION 9.** An employer shall retain records that document the employer's compliance
17 with sections 2 to 12 of this 2017 Act for three years.

18
19 **RETALIATION**

20
21 **SECTION 10. Retaliation prohibited.** It is an unlawful practice for an employer to:

22 (1) Interfere with, restrain, deny or attempt to deny the exercise of any right protected
23 under sections 2 to 12 of this 2017 Act; or

24 (2) Retaliate or in any way discriminate against an individual with respect to hire or
25 tenure or any other term or condition of employment because the individual has inquired
26 about the provisions of sections 2 to 12 of this 2017 Act.

27
28 **ENFORCEMENT**

29
30 **SECTION 11. Enforcement, right of action and administrative remedies.** (1) An employee
31 asserting a violation of section 10 of this 2017 Act may file a complaint with the Commis-
32 sioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action as provided
33 in ORS 659A.885.

34 (2) The commissioner has the same enforcement powers with respect to the rights es-
35 tablished under this section and sections 3, 4a, 5, 6, 6a, 7, 9, 10 and 12 of this 2017 Act as are
36 established in ORS chapters 652 and 653.

37 (3) In addition to any other damages provided by law, the commissioner may assess a
38 statutory penalty as follows:

39 (a) \$500 for any violation of section 8 of this 2017 Act.

40 (b) \$1,000 for any violation of section 3, 4a, 5, 6, 6a, 7, 9 or 10 of this 2017 Act.

41 (4) If the commissioner determines that the employer paid the full remedy due, not in-
42 cluding any statutory penalty, within 14 days of service of an order, the commissioner shall
43 waive 50 percent of the amount of any statutory penalty imposed by order under this section.

44
45 **LIMITS TO LEGISLATIVE INTENT**

SECTION 12. Nothing in sections 2 to 12 of this 2017 Act is intended to:

(1) Limit employee rights or protections otherwise provided by law;

(2) Create an additional remedy for an employee if a remedy equal to or better than a remedy in section 6 or 7 of this 2017 Act is required by a collective bargaining agreement or other contract; or

(3) Provide a cause of action to an employee for work schedule changes necessary to accommodate that employee under state or federal family or medical leave laws, state or federal disability laws or ORS 659A.043 or 659A.046 or ORS chapter 656.

ACTION FOR RETALIATION

SECTION 13. 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:

(a) ORS 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 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

(b) **Section 10 of this 2017 Act, except an action may not be brought for a claim relating to section 6a of this 2017 Act.**

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 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.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) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or

1 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
2 compensatory damages or \$200, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 appealing an adverse decision of the trial court.

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

4 (a) “Aggrieved person” includes a person who believes that the person:

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

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

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

12
13 **PREEMPTION**

14
15 **SECTION 14.** Section 1, chapter 591, Oregon Laws 2015, is amended to read:

16 **Sec. 1.** (1) As used in this section:

17 (a) “Enact” includes but is not limited to adopt, amend, refer or pass with a delayed operative
18 or effective date.

19 (b) “Local government” includes a county, city, district or other public corporation, authority
20 or entity organized and existing under statute or city or county charter.

21 (c) “Work schedule” means the days and times during which an employee is required by an
22 employer to perform the duties for which the employee will receive compensation. “Work
23 schedule” does not include employee time off for medical reasons or sick time.

24 (2) The State of Oregon preempts all charter and statutory authority of local governments to
25 enact a requirement relating to work schedules [*before the date of adjournment sine die of the 2017*
26 *regular session of the Legislative Assembly*].

27 (3) Notwithstanding subsection (2) of this section, a local government may set work schedule
28 requirements:

29 (a) For public employers; and

30 (b) In specifications for public contracts or subcontracts entered into by the local government.

31 **SECTION 15.** Section 2, chapter 591, Oregon Laws 2015, is repealed.

32
33 **OPERATIVE DATE**

34
35 **SECTION 16.** (1) Sections 2 to 5, 6 to 10 and 12 of this 2017 Act become operative on July
36 1, 2018.

37 (2) Section 11 of this 2017 Act and the amendments to ORS 659A.885 by section 13 of this
38 2017 Act become operative on January 1, 2019.

39 (3) The amendments to section 5 of this 2017 Act by section 5a of this 2017 Act become
40 operative on July 1, 2020.

41 (4) The Commissioner of the Bureau of Labor and Industries may take any action before
42 the operative dates specified in subsection (1), (2) or (3) of this section that is necessary to
43 enable the commissioner to exercise, on and after the operative dates specified in subsection
44 (1), (2) or (3) of this section, all of the duties, functions and powers conferred on the com-
45 missioner by sections 2 to 12 of this 2017 Act and the amendments to ORS 659A.885 by sec-

1 **tion 13 of this 2017 Act.**

2

3

CAPTIONS

4

5 **SECTION 17. The unit and section captions used in this 2017 Act are provided only for**
6 **the convenience of the reader and do not become part of the statutory law of this state or**
7 **express any legislative intent in the enactment of this 2017 Act.**

8

9

EMERGENCY CLAUSE

10

11 **SECTION 18. This 2017 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
13 **on its passage.**

14
