

# Enrolled Senate Bill 123

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CHAPTER .....

AN ACT

Relating to unlawful employment practices; amending ORS 652.210, 652.220 and 652.235.

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

**SECTION 1.** ORS 652.210, as amended by section 1, chapter 197, Oregon Laws 2017, is amended to read:

652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

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

(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.

(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.

(6) "Rate" with reference to wages means:

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

(b) 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.

**(8) "System" means a consistent and verifiable method in use at the time that a violation is alleged under ORS 652.220.**

[(8)] **(9)** "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)] **(10)** "Veteran status" means an individual is a veteran as defined in ORS 408.225.

[(10)] (11) “Wages” means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, or paid in cash or any medium other than cash.

[(11)] (12) “Working conditions” includes work environment, hours, time of day, physical surroundings and potential hazards encountered by an employee.

[(12)] (13) “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, as amended by section 2, chapter 197, Oregon Laws 2017, is amended to read:

652.220. (1) It is an unlawful employment practice under ORS chapter 659A for an employer to:

(a) In any manner discriminate between employees on the basis of a protected class in the payment of wages or other compensation for work of comparable character.

(b) Pay wages or other compensation to any employee at a rate greater than that at which the employer pays wages or other compensation to employees of a protected class for work of comparable character.

(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) Notwithstanding subsection (1) of this section[,]:

(a) 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.]

**(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 paragraph, if the combination of factors accounts for the entire compensation differential.**

**(b) An employer may pay employees for work of comparable character at different compensation levels on the basis of one or more of the factors listed in paragraph (a) of this subsection that are contained in a collective bargaining agreement.**

(3) 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 652.235 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 652.235, 659A.830 or 659A.885 or in a criminal action pursuant to ORS 652.210 to 652.235.

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

**(5) It is not a violation of this section for an employer to pay a different level of compensation to an employee who:**

**(a) Pursuant to a claim for a compensable injury under ORS chapter 656, receives wages for modified work; or**

**(b) As a result of a medical condition, is temporarily performing modified work that is:**

**(A) Authorized by a medical professional licensed under ORS chapter 677; or**

**(B) Requested by the employee and authorized by the employer in a manner that does not discriminate against employees on the basis of a protected class.**

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

[6] (7) 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] (8) 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 652.235 is amended to read:

652.235. (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) **Was** 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) Included a review of practices designed to eliminate unlawful wage differentials; and**

(b) *[Eliminated the wage differentials for the plaintiff and]* Has made reasonable and substantial progress toward eliminating **unlawful** wage differentials for **the employer's employees** *[the protected class asserted by the plaintiff]*.

(2) If the court grants the motion filed under this section **and the plaintiff prevails on the claim in the action**, the court *[may]*:

**(a) Shall order the employer to eliminate the unlawful wage differential for the plaintiff;**

**(b) Shall award back pay or unpaid wages as provided under ORS 652.230 or 659A.885 (1) [only for the two-year period immediately preceding the filing of the action]; and**

**(c) May allow the prevailing plaintiff costs and reasonable attorney fees, but may not award compensatory or punitive damages.**

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

**(b) Evidence that an employer has increased an employee's pay as a result of conducting an equal-pay analysis may not be considered as an admission of liability in a civil action alleging a violation of ORS 652.220.**

(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.

**Passed by Senate May 14, 2019**

**Repassed by Senate June 29, 2019**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 18, 2019**

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Tina Kotek, Speaker of House

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**Approved:**

.....M,....., 2019

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2019

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Bev Clarno, Secretary of State