

Enrolled
Senate Bill 823

Sponsored by COMMITTEE ON HEALTH CARE

CHAPTER

AN ACT

Relating to violence against health care employees; creating new provisions; and amending ORS 654.062, 654.414 and 654.416.

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

SECTION 1. (1)(a) Not later than June 30, 2021, a health care employer shall conduct a comprehensive security and safety evaluation to identify factors that may cause violence committed against employees on the premises of a health care employer.

(b) The health care employer shall conduct the evaluation using a state or nationally recognized workplace violence prevention toolkit designed to reduce violence against health care employees.

(2)(a) Not later than December 31, 2021, each health care employer in this state shall report to the Director of the Department of Consumer and Business Services as to whether the employer has conducted the evaluation required under subsection (1) of this section.

(b) Not later than March 22, 2022, the director shall compile the reports submitted by each health care employer and submit a report summarizing health care employer compliance with this section to the committees of the Legislative Assembly related to health care.

(3) As used in this section, "health care employer" has the meaning given that term in ORS 654.412.

SECTION 2. Section 1 of this 2019 Act is repealed on June 30, 2022.

SECTION 3. ORS 654.062 is amended to read:

654.062. (1) Every employee should notify the employer of any violation of law, regulation or standard pertaining to safety and health in the place of employment when the violation comes to the knowledge of the employee.

(2) However, any employee or representative of the employee may complain to the Director of the Department of Consumer and Business Services or any authorized representatives of the director of any violation of law, regulation or standard pertaining to safety and health in the place of employment, whether or not the employee also notifies the employer.

(3) Upon receiving any employee complaint, the director shall make inquiries, inspections and investigations that the director considers reasonable and appropriate. When an employee or representative of the employee has complained in writing of an alleged violation and no resulting citation is issued to the employer, the director shall furnish to the employee or representative of the employee, upon written request, a statement of reasons for the decision.

(4) The director shall establish procedures for keeping confidential the identity of any employee who requests protection in writing. When a request has been made, neither a written complaint from

an employee, or representative of the employee, nor a memorandum containing the identity of a complainant may be disclosed under ORS 192.311 to 192.478.

(5) It is an unlawful employment practice for any person to bar or discharge from employment or otherwise discriminate against any employee or prospective employee because the employee or prospective employee has:

(a) Opposed any practice forbidden by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780;

(b) Made any complaint or instituted or caused to be instituted any proceeding under or related to ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, or has testified or is about to testify in any such proceeding; [or]

(c) Exercised on behalf of the employee, prospective employee or others any right afforded by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780[.]; or

(d) In good faith reported an assault that occurred on the premises of a health care employer as defined in ORS 654.412 or in the home of a patient receiving home health care services.

(6)(a) Any employee or prospective employee alleging to have been barred or discharged from employment or otherwise discriminated against in compensation, or in terms, conditions or privileges of employment, in violation of subsection (5) of this section may, within 90 days after the employee or prospective employee has reasonable cause to believe that the violation has occurred, file a complaint with the Commissioner of the Bureau of Labor and Industries alleging discrimination under the provisions of ORS 659A.820. Upon receipt of the complaint the commissioner shall process the complaint under the procedures, policies and remedies established by ORS chapter 659A and the policies established by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 in the same way and to the same extent that the complaint would be processed if the complaint involved allegations of unlawful employment practices under ORS 659A.030 (1)(f).

(b) Within 90 days after receipt of a complaint filed under this subsection, the commissioner shall notify the complainant of the commissioner's determination.

(c) The affected employee or prospective employee may bring a civil action in any circuit court of the State of Oregon against any person alleged to have violated subsection (5) of this section. The civil action must be commenced within one year after the employee or prospective employee has reasonable cause to believe a violation has occurred, unless a complaint has been timely filed under ORS 659A.820.

(d) The commissioner or the circuit court may order all appropriate relief including rehiring or reinstatement to the employee's former position with back pay.

SECTION 4. ORS 654.414 is amended to read:

654.414. (1) A health care employer shall:

(a) Conduct periodic security and safety assessments to identify existing or potential hazards for assaults committed against employees;

(b) Develop and implement an assault prevention and protection program for employees based on assessments conducted under paragraph (a) of this subsection; and

(c) Provide assault prevention and protection training on a regular and ongoing basis for employees.

(2) An assessment conducted under subsection (1)(a) of this section shall include, but need not be limited to:

(a) A measure of the frequency of assaults committed against employees that occur on the premises of a health care employer or in the home of a patient receiving home health care services during the preceding five years or for the years that records are available if fewer than five years of records are available; and

(b) An identification of the causes and consequences of assaults against employees.

(3) An assault prevention and protection program developed and implemented by a health care employer under subsection (1)(b) of this section shall be based on an assessment conducted under subsection (1)(a) of this section and shall address security considerations related to the following:

- (a) Physical attributes of the health care setting;
- (b) Staffing plans, including security staffing;
- (c) Personnel policies;
- (d) First aid and emergency procedures;
- (e) Procedures for reporting assaults; and
- (f) Education and training for employees.

(4)(a) Assault prevention and protection training required under subsection (1)(c) of this section shall address the following topics:

- (A) General safety and personal safety procedures;
- (B) Escalation cycles for assaultive behaviors;
- (C) Factors that predict assaultive behaviors;
- (D) Techniques for obtaining medical history from a patient with assaultive behavior;
- (E) Verbal and physical techniques to de-escalate and minimize assaultive behaviors;
- (F) Strategies for avoiding physical harm and minimizing use of restraints;
- (G) Restraint techniques consistent with regulatory requirements;
- (H) Self-defense, including:

(i) The amount of physical force that is reasonably necessary to protect the employee or a third person from assault; and

(ii) The use of least restrictive procedures necessary under the circumstances, in accordance with an approved behavior management plan, and any other methods of response approved by the health care employer;

- (I) Procedures for documenting and reporting incidents involving assaultive behaviors;
- (J) Programs for post-incident counseling and follow-up;
- (K) Resources available to employees for coping with assaults; and
- (L) The health care employer's workplace assault prevention and protection program.

(b) A health care employer shall provide assault prevention and protection training to a new employee within 90 days of the employee's initial hiring date.

(c) A health care employer may use classes, video recordings, brochures, verbal or written training or other training that the employer determines to be appropriate, based on an employee's job duties, under the assault prevention and protection program developed by the employer.

(5) At least once every two years, a health care employer shall establish, in coordination with the health care employer's workplace safety committee as described in ORS 654.176, a process by which the committee shall review the health care employer's assault prevention and protection program developed and implemented under subsection (1)(b) of this section in order to evaluate the efficacy of the program and consider any changes to the program.

SECTION 5. ORS 654.416 is amended to read:

654.416. (1) A health care employer shall maintain a record of assaults committed against employees that occur on the premises of the health care employer or in the home of a patient receiving home health care services. The record shall include, but need not be limited to, the following:

- (a) The name and address of the premises on which each assault occurred;
- (b) The date, time and specific location where the assault occurred;
- (c) The name, job title and department or ward assignment of the employee who was assaulted;
- (d) A description of the person who committed the assault as a patient, visitor, employee or other category;
- (e) A description of the assaultive behavior as:
 - (A) An assault with mild soreness, surface abrasions, scratches or small bruises;
 - (B) An assault with major soreness, cuts or large bruises;
 - (C) An assault with severe lacerations, a bone fracture or a head injury; or
 - (D) An assault with loss of limb or death;
- (f) An identification of the physical injury;
- (g) A description of any weapon used;

(h) The number of employees, **including nursing staff as defined in ORS 441.179**, in the immediate area of the assault when it occurred; and

(i) A description of actions taken by the employees and the health care employer in response to the assault.

(2) A health care employer shall maintain the record of assaults described in subsection (1) of this section for no fewer than five years following a reported assault.

(3)(a) Upon the request of an employee or of a workplace safety committee conducting a review pursuant to ORS 654.414, the health care employer shall generate and make available to the requesting party a report summarizing:

(A) The information in the record required under subsection (1) of this section; and

(B) Information regarding work-related injuries and illnesses recorded by the health care employer to comply with applicable federal health and safety recordkeeping requirements.

(b) A report made available under this subsection:

(A) May not include any personally identifiable information; and

(B) May be used only for the purposes of conducting a review of the assault prevention and protection program under ORS 654.414 or for other purposes that are related to improving the program.

[3] (4) The Director of the Department of Consumer and Business Services shall adopt by rule a common recording form for the purposes of this section.

Passed by Senate April 22, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 3, 2019

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Tina Kotek, Speaker of House

Received by Governor:

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

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