

**Enrolled**  
**House Bill 4402**

Sponsored by Representative KOTEK (at the request of Joint Committee on the Third Special Session of 2020)

CHAPTER .....

AN ACT

Relating to claims arising during the COVID-19 emergency period; creating new provisions; amending 659A.200 and 659A.203; and declaring an emergency.

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

**SECTION 1. As used in sections 1 to 3 of this 2020 third special session Act:**

**(1) “COVID-19 emergency rule” means an executive order, order of the Superintendent of Public Instruction, declaration, directive or other state or federal authorization, policy, statement, guidance, rule or regulation that creates a standard or waives, suspends or modifies otherwise applicable state or federal law, regulations or standards regarding the rendering of education services.**

**(2) “Education program” means programs or activities operated on school property and any school program or activity operated on or off school property.**

**(3) “School” means a common school district, a union high school district, an education service district, a public charter school, a private school providing instruction to any grade from kindergarten through grade 12 or a community college district.**

**SECTION 2. (1) A person may not bring a claim for damages related to COVID-19 infection suffered as a result of acts or omissions performed by a school:**

**(a) In the course of operating an education program; and**

**(b) When the school is operating in compliance with COVID-19 emergency rules in effect at the time of the act or omission.**

**(2) A person engaged in activities on school property that are not operated by a school may not bring a claim against the school for damages related to COVID-19 infection.**

**(3) The immunity provided by this section does not apply to reckless, wanton or intentional misconduct.**

**(4) This section does not limit any other cause of action or remedy available to an injured party, including but not limited to the following claims:**

**(a) Claims subject to ORS chapter 654;**

**(b) Claims subject to ORS chapter 656;**

**(c) Claims under state and federal leave and wage and hour laws and state and federal laws prohibiting discrimination and retaliation; and**

**(d) Claims under state and federal specialized instruction laws.**

**SECTION 3. (1) A school may move at any time to strike a claim in a civil action that is barred by section 2 of this 2020 third special session Act. A motion to strike under this section shall be treated as a motion to dismiss under ORCP 21 A but is not subject to ORCP**

**21 F. Upon granting a motion under this section, the court shall enter a judgment of dismissal without prejudice. If the court denies a motion under this section, the court shall enter a limited judgment denying the motion.**

**(2)(a) A school that moves to strike a claim under this section has the initial burden of making a prima facie showing that the claim is barred under section 2 of this 2020 third special session Act.**

**(b) If the school meets the burden under paragraph (a) of this subsection, the burden shifts to the plaintiff in the action to establish that a genuine issue of material fact exists that the claim is not barred under section 2 of this 2020 third special session Act. If the plaintiff meets the burden under this paragraph, the court shall deny the motion.**

**(c) The court shall consider only the pleadings and supporting and opposing affidavits in determining whether a genuine issue of material fact exists. If the court determines that a genuine issue of material fact exists:**

**(A) The fact that the determination has been made and the substance of the determination may not be admitted in evidence at any later stage of the case; and**

**(B) The determination does not affect the burden of proof or standard of proof that is applied in the proceeding.**

**SECTION 4.** ORS 659A.200 is amended to read:

659A.200. As used in ORS 659A.200 to 659A.224:

(1) "Disciplinary action" includes but is not limited to any discrimination, dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.

(2) "Employee" means a person:

(a) Employed by or under contract with the state or any agency of or political subdivision in the state;

(b) Employed by or under contract with any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;

(c) Employed by the public corporation created under ORS 656.751;

(d) Employed by a contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement;

(e) Employed by or under contract with any person authorized by contract to act on behalf of the state, agency or subdivision;

(f) Employed by a nonprofit organization; or

(g) Serving as a member of a board of directors of a nonprofit organization who is not otherwise considered an employee.

(3) "Information" includes public and private records, documents and electronically stored data.

(4) "Knowledge" means actual knowledge.

(5) "Nonprofit organization" or "nonprofit" means an organization or group of organizations that:

(a) Receives public funds by way of grant or contract; and

(b) Is exempt from income tax under section 501(c)(3) of the Internal Revenue Code.

(6) "Public employer" means:

(a) The state or any agency of or political subdivision in the state;

(b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee; or

(c) An employer who employs an employee described in subsection (2)(a) to (e) of this section.

**(7) "School" means a common school district, a union high school district, an education service district, a public charter school, a private school providing instruction to any grade from kindergarten through grade 12 or a community college district.**

**(8) "School services" means any of the following services:**

**(a) Custodial or janitorial services;**

- (b) Nutrition services;
- (c) Transportation services; or
- (d) Any other education services that are customarily performed by school employees.

(9) "School services employee" means a person employed by a school services employer to provide school services to a school.

(10) "School services employer" means a private employer that enters into a contract with a school to provide school services to the school.

**SECTION 5.** ORS 659A.203 is amended to read:

659A.203. (1) Subject to ORS 659A.206, except as provided in ORS 659A.200 to 659A.224, it is an unlawful employment practice for any public or nonprofit employer to:

(a) Prohibit any employee from discussing, either specifically or generally with any member of the Legislative Assembly, legislative committee staff acting under the direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision in the state or any elected auditor of a city, county or metropolitan service district, the activities of:

(A) The state or any agency of or political subdivision in the state; or

(B) Any person authorized to act on behalf of the state or any agency of or political subdivision in the state.

(b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure of any information that the employee reasonably believes is evidence of:

(A) A violation of any federal, state or local law, rule or regulation by the public or nonprofit employer;

(B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the public or nonprofit employer; or

(C) Subject to ORS 659A.212 (2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States.

(c) Require any employee to give notice prior to making any disclosure or engaging in discussion described in this section, except as allowed in ORS 659A.206 (1).

(d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions described in this section.

(2) A public or nonprofit employer may not invoke or impose any disciplinary action against an employee for employee activity described in subsection (1) of this section or ORS 659A.212.

**(3) It is an unlawful employment practice for any school services employer to invoke or impose any disciplinary action against a school services employee for reporting or filing a complaint alleging a violation of any law, regulation or standard pertaining to the COVID-19 pandemic.**

[3] (4) The remedies provided by this section are in addition to any remedy provided to an employee under ORS 659A.199 or other remedy that may be available to an employee for the conduct alleged as a violation of this section.

[4] (5) A violation of this section is a Class A misdemeanor.

**SECTION 6.** (1) Sections 1 to 3 of this 2020 third special session Act apply to claims arising during the period in which any declaration of a state of emergency related to COVID-19 and issued by the Governor on March 8, 2020, and any extension of the declaration, is in effect.

(2) The amendments to ORS 659A.203 by section 5 of this 2020 third special session Act apply to retaliatory conduct that occurs at any time regarding protected employee activity described in ORS 659A.203 (3) that occurs during the period in which any declaration of a state of emergency related to COVID-19 and issued by the Governor on March 8, 2020, and any extension of the declaration, is in effect.

**SECTION 7. This 2020 third special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 third special session Act takes effect on its passage.**

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**Passed by House December 21, 2020**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate December 21, 2020**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2020

**Approved:**

.....M,....., 2020

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Kate Brown, Governor

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

.....M,....., 2020

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Bev Clarno, Secretary of State