

Enrolled Senate Bill 946

Sponsored by Senators BROWN, MONNES ANDERSON, Representative TOMEI; Senators ATKINSON, AVAKIAN, DEVLIN, WALKER, Representatives BARKER, BERGER, BEYER, BONAMICI, BOONE, BUCKLEY, CANNON, CLEM, COWAN, DINGFELDER, D EDWARDS, GALIZIO, GELSER, HOLVEY, HUNT, KOMP, KRIEGER, MACPHERSON, MERKLEY, NATHANSON, NOLAN, OLSON, RILEY, ROSENBAUM, SCHAUFLEER, SCOTT, SHIELDS, P SMITH, WHISNANT

CHAPTER

AN ACT

Relating to leave from work for victims of certain crimes; creating new provisions; amending ORS 659A.885; and declaring an emergency.

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

SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of ORS chapter 659A.

SECTION 2. Definitions. As used in sections 2 to 7 of this 2007 Act:

(1) "Covered employer" means an employer who employs six or more individuals in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to address domestic violence, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic violence, sexual assault or stalking.

(2) "Eligible employee" means an employee who:

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 days immediately before the date the employee takes leave; and

(b) Is a victim of domestic violence, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, sexual assault or stalking.

(3) "Protective order" means an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(4) "Victim of domestic violence" means:

(a) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(b) Any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805.

(5) "Victim of sexual assault" means:

(a) An individual against whom a sexual offense has been committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805.

(6) "Victim of stalking" means:

(a) An individual against whom stalking has been committed as described in ORS 163.732;
or

(b) Any other individual designated as a victim of stalking by rule adopted under ORS 659A.805.

(7) "Victim services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, sexual assault or stalking.

SECTION 3. Leave from work. Except as provided in section 4 of this 2007 Act, a covered employer shall allow an eligible employee to take reasonable leave from employment for any of the following purposes:

(1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking.

(2) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or stalking of the eligible employee or the employee's minor child or dependent.

(3) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking.

(4) To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent.

(5) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent.

SECTION 4. Undue hardship. (1) As used in this section, "undue hardship" means a significant difficulty and expense to a covered employer's business and includes consideration of the size of the employer's business and the employer's critical need for the eligible employee.

(2) A covered employer may limit the amount of leave an eligible employee takes under section 3 of this 2007 Act if the employee's leave creates an undue hardship on the employer's business.

SECTION 5. Denying leave to employee prohibited; civil action. It is an unlawful employment practice for a covered employer to deny leave to an eligible employee or to discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee takes leave as provided in section 3 of this 2007 Act.

SECTION 6. Notice to employer; records confidential. (1) An eligible employee shall give the covered employer reasonable advance notice of the employee's intention to take leave for the purposes identified in section 3 of this 2007 Act, unless giving the advance notice is not feasible.

(2) The covered employer may require the eligible employee to provide certification that:

(a) The employee or the employee's minor child or dependent is a victim of domestic violence, sexual assault or stalking; and

(b) The leave taken is for one of the purposes identified in section 3 of this 2007 Act.

(3) The eligible employee shall provide the certification within a reasonable time after receiving the covered employer's request for the certification.

(4) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the employee's minor child or dependent was a victim of domestic violence, sexual assault or stalking.

(b) A copy of a protective order or other evidence from a court or attorney that the eligible employee appeared in or was preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking.

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the employee's minor child or dependent was undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking.

(5) All records and information kept by a covered employer regarding an eligible employee's leave under sections 2 to 7 of this 2007 Act, including the fact that the employee has requested or obtained leave under section 3 of this 2007 Act, are confidential and may not be released without the express permission of the employee, unless otherwise required by law.

SECTION 7. Use of paid leave. (1) Except as provided in subsections (2) and (3) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy, a covered employer is not required to grant leave with pay to an eligible employee under section 3 of this 2007 Act.

(2) An eligible employee who takes leave pursuant to section 3 of this 2007 Act may use any paid accrued vacation leave or may use any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or an employer policy, the covered employer may determine the order in which paid accrued leave is to be used when more than one type of paid accrued leave is available to the employee.

SECTION 8. ORS 659A.885 is amended to read:

659A.885. (1) Any individual 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 such other equitable relief as 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 **section 5 of this 2007 Act** or ORS 25.337, 25.424, 171.120, 399.235, 476.574, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 (1) or (3).

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262, 659A.318 or 659A.421 (1) or (3):

(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 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

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

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

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

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

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

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

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

SECTION 9. The section captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2007 Act.

SECTION 10. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by Senate April 18, 2007

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Secretary of Senate

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President of Senate

Passed by House May 14, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State