

# House Bill 2006

Sponsored by Representative VEGA PEDERSON, Senator ROSENBAUM; Representative SMITH WARNER (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian) (Presession filed.)

## 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 **as introduced**.

Makes practice of paying employees of opposite sex who hold equivalent jobs at different wage rates unlawful employment practice. Creates exceptions. Requires Commissioner of Bureau of Labor and Industries to establish certain guidelines and to report to Legislative Assembly by September 15, 2016, on implementation of Act. Imposes civil penalties for violations.

## A BILL FOR AN ACT

1  
2 Relating to wage rate for employees holding equivalent jobs; creating new provisions; and amending  
3 ORS 652.900 and 659A.885.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 652.**

6 **SECTION 2. (1) As used in this section, "equivalent jobs" means jobs that are not nec-**  
7 **essarily the same position but for which the requirements are equivalent when considered**  
8 **as a composite of skills, effort, responsibility and working conditions.**

9 **(2) An employer may not discriminate between employees on the basis of sex by paying**  
10 **wages to an employee that are less than the wages paid to an employee of the opposite sex**  
11 **holding an equivalent job.**

12 **(3) Notwithstanding subsection (2) of this section, an employer may pay employees in**  
13 **equivalent jobs at different wage rates if the different wage rates are based on:**

14 **(a) A seniority system;**

15 **(b) A merit system;**

16 **(c) A system that measures earnings by quantity or quality of production; or**

17 **(d) A differential based on a bona fide factor other than sex, such as education, training**  
18 **or experience, if the employer can demonstrate that the factor:**

19 **(A) Is job-related to the position in question;**

20 **(B) Furthers a legitimate business purpose of the employer, unless the employee can**  
21 **demonstrate that an alternative employment practice exists that would serve the same**  
22 **business purpose without resulting in such a factor and the employer has refused to adopt**  
23 **the alternative practice; and**

24 **(C) Was applied reasonably in light of the asserted basis for paying employees at different**  
25 **wage rates.**

26 **(4) An employer may not reduce the wage rate of an employee in order to comply with**  
27 **the provisions of this section.**

28 **(5) Amounts owing to an employee because of the failure of the employer to comply with**  
29 **the requirements of this section are unpaid wages.**

30 **(6) A violation of this section is an unlawful employment practice. A person unlawfully**

**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 **discriminated against under this section may file a complaint under ORS 659A.820 with the**  
 2 **Commissioner of the Bureau of Labor and Industries.**

3 **(7) The Commissioner of the Bureau of Labor and Industries shall issue guidelines for**  
 4 **determining if wage rate discrimination is occurring against employees of a particular sex**  
 5 **in a job that is dominated by employees of the opposite sex.**

6 **SECTION 3.** ORS 652.900 is amended to read:

7 652.900. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau  
 8 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who vi-  
 9 olates ORS 652.020, 652.110, 652.140, 652.145, 652.260, 652.610 (4) or 652.750 **or section 2 of this 2015**  
 10 **Act** or any rule adopted under those statutes.

11 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

12 (3) All sums collected as penalties under this section shall be first applied toward reimbursement  
 13 of costs incurred in determining the violations, conducting hearings under this section and ad-  
 14 dressing and collecting the penalties. The remainder, if any, of the sums collected as penalties under  
 15 this section shall be paid into the State Treasury and credited to the General Fund and is available  
 16 for general governmental expenses.

17 **SECTION 4.** **Section 5 of this 2015 Act is added to and made a part of ORS chapter 659A.**

18 **SECTION 5.** **It is an unlawful practice for an employer to:**

19 **(1) Pay employees of the opposite sex holding equivalent jobs at different wage rates in**  
 20 **violation of section 2 of this 2015 Act.**

21 **(2) Discharge, or retaliate or in any way discriminate against, an individual with respect**  
 22 **to hire or tenure or any other term or condition of employment because the individual has:**

23 **(a) Inquired about the provisions of section 2 of this 2015 Act;**

24 **(b) Made a complaint that an employee has not been paid wages in accordance with sec-**  
 25 **tion 2 of this 2015 Act;**

26 **(c) Caused to be instituted or is about to cause to be instituted any proceedings under**  
 27 **or related to section 2 of this 2015 Act; or**

28 **(d) Testified or is about to testify in any such proceedings.**

29 **SECTION 6.** ORS 659A.885 is amended to read:

30 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
 31 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
 32 the court may order injunctive relief and any other equitable relief that may be appropriate, in-  
 33 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A  
 34 court may order back pay in an action under this subsection only for the two-year period imme-  
 35 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau  
 36 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-  
 37 year period immediately preceding the filing of the action. In any action under this subsection, the  
 38 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
 39 cept as provided in subsection (3) of this section:

40 (a) The judge shall determine the facts in an action under this subsection; and

41 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall  
 42 review the judgment pursuant to the standard established by ORS 19.415 (3).

43 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS  
 44 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,  
 45 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,

1 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
 2 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
 3 659A.318, 659A.320 or 659A.421 **or section 2 of this 2015 Act.**

4 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 5 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,  
 6 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421:

7 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,  
 8 compensatory damages or \$200, whichever is greater, and punitive damages;

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

10 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-  
 11 ment pursuant to the standard established by ORS 19.415 (1); and

12 (d) Any attorney fee agreement shall be subject to approval by the court.

13 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or  
 14 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,  
 15 compensatory damages or \$200, whichever is greater.

16 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,  
 17 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)  
 18 of this section, compensatory damages or \$250, whichever is greater.

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

22 (7) Any individual against whom any distinction, discrimination or restriction on account of  
 23 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
 24 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
 25 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
 26 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
 27 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
 28 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
 29 section:

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

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

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

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

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

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

43 (8) When the commissioner or the Attorney General has reasonable cause to believe that a  
 44 person or group of persons is engaged in a pattern or practice of resistance to the rights protected  
 45 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied

1 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner  
2 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same  
3 manner as a person or group of persons may file a civil action under this section. In a civil action  
4 filed under this subsection, the court may assess against the respondent, in addition to the relief  
5 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

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

17 (a) "Aggrieved person" includes a person who believes that the person:

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

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

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

25 **SECTION 7. The Commissioner of the Bureau of Labor and Industries shall report to the**  
26 **Legislative Assembly by September 15, 2016, on the implementation of this 2015 Act. The re-**  
27 **port shall be made in the manner provided in ORS 192.245.**

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