

Senate Bill 378

Sponsored by Senator BOQUIST (at the request of former Senator Herman Baertschiger, Jr.) (Pre-session 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**.

Provides that, when interview is element of process of selecting candidate for civil service position from eligibility list, public employer must interview each veteran applicant who meets qualifications for position and shows transferable skills if duties of position are performed by only one person within public employer's organization.

Requires public employer to provide written notice to veteran who is eliminated from consideration for vacant civil service position.

Provides right to jury trial and permits awards of noneconomic damages in civil suits for violation of veterans' employment preference statutes. Modifies period for notice of tort claim against public body for violation of veterans' employment preference statutes.

Directs Department of Veterans' Affairs to establish program for investigation and nonbinding arbitration of alleged violation of veterans' employment preference statutes.

Requires public employers to conduct annual training related to veterans' employment preferences. Provides that conducting approved annual training is affirmative defense to claim for violation of veterans' employment preference statutes.

A BILL FOR AN ACT

1
2 Relating to veterans' employment preferences; creating new provisions; and amending ORS 30.275,
3 408.230 and 408.237.

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

5 **SECTION 1.** ORS 408.237 is amended to read:

6 408.237. (1) As used in this section:

7 (a) "Eligibility list" means a list of ranked eligible candidates for a civil service position who
8 have become eligible for the position through a test or series of tests and who will be considered
9 for the civil service position in ranked order.

10 (b) "Transferable skill" means a skill that a veteran has obtained through military education or
11 experience that substantially relates, directly or indirectly, to the civil service position for which
12 the veteran is applying.

13 (2) When an interview is a component of the selection process for a civil service position or for
14 an eligibility list for a civil service position, a public employer shall interview each veteran:

15 (a) Whom the public employer determines meets the minimum qualifications and special quali-
16 fications for the civil service position or eligibility list; and

17 (b) Who submits application materials that the public employer determines show sufficient evi-
18 dence that the veteran has the transferable skills required and requested by the public employer for
19 the civil service position or eligibility list.

20 (3)(a) **Except as provided in paragraph (b) of this subsection**, a public employer is not re-
21 quired to comply with subsection (2) of this section if the employer conducts interviews only as part
22 of the process of selecting a candidate for a civil service position from an eligibility list.

23 (b) **The exemption in paragraph (a) of this subsection does not apply to a civil service**
24 **position if the duties of that position are performed by only one person within the public**

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 **employer's organization.**

2 (4) A public employer may consult with the Oregon Military Department and the Department
3 of Veterans' Affairs to determine whether certain military education or experience produces a
4 transferable skill.

5 (5) The Department of Veterans' Affairs shall provide training to veterans on how to show evi-
6 dence of transferable skills in an application for a civil service position or eligibility list.

7 (6) Violation of subsection (2) of this section is an unlawful employment practice under ORS
8 chapter 659A.

9 (7) A veteran claiming to be aggrieved by a violation of subsection (2) of this section may file
10 a complaint under ORS 659A.820.

11 **SECTION 2.** ORS 408.230 is amended to read:

12 408.230. (1) A public employer shall grant a preference to a veteran or disabled veteran who
13 applies for a vacant civil service position or seeks promotion to a civil service position with a
14 higher maximum salary rate and who:

15 (a)(A) Successfully completes an initial application screening or an application examination for
16 the position; or

17 (B) Successfully completes a civil service test the employer administers to establish eligibility
18 for the position; and

19 (b) Meets the minimum qualifications and any special qualifications for the position.

20 (2) The employer shall grant the preference in the following manner:

21 (a) For an initial application screening used to develop a list of persons for interviews, the em-
22 ployer shall add five preference points to a veteran's score and 10 preference points to a disabled
23 veteran's score.

24 (b) For an application examination, given after the initial application screening, that results in
25 a score, the employer shall add preference points to the total combined examination score without
26 allocating the points to any single feature or part of the examination. The employer shall add five
27 preference points to a veteran's score and 10 preference points to a disabled veteran's score.

28 (c) For an application examination that consists of an interview, an evaluation of the veteran's
29 performance, experience or training, a supervisor's rating or any other method of ranking an appli-
30 cant that does not result in a score, the employer shall give a preference to the veteran or disabled
31 veteran. An employer that uses an application examination of the type described in this paragraph
32 shall devise and apply methods by which the employer gives special consideration in the employer's
33 hiring decision to veterans and disabled veterans.

34 (3) Preferences of the type described in subsection (1) of this section are not a requirement that
35 the public employer appoint a veteran or disabled veteran to a civil service position.

36 (4) A public employer shall appoint an otherwise qualified veteran or disabled veteran to a va-
37 cant civil service position if the results of a veteran's or disabled veteran's application examination,
38 when combined with the veteran's or disabled veteran's preference, are equal to or higher than the
39 results of an application examination for an applicant who is not a veteran or disabled veteran.

40 **(5) If a public employer eliminates a veteran from consideration for a vacant civil service**
41 **position, the public employer shall, within three business days of the elimination, provide**
42 **written notice to the veteran.**

43 [(5)] (6) If a public employer does not appoint a veteran or disabled veteran to a vacant civil
44 service position, upon written request of the veteran or disabled veteran, the employer, in writing,
45 shall provide the employer's reasons for the decision not to appoint the veteran or disabled veteran

1 to the position. The employer may base a decision not to appoint the veteran or disabled veteran
 2 solely on the veteran's or disabled veteran's merits or qualifications with respect to the vacant civil
 3 service position.

4 [(6)] (7) Violation of this section is an unlawful employment practice.

5 [(7)] (8) A veteran or disabled veteran claiming to be aggrieved by a violation of this section
 6 may file a verified written complaint with the Commissioner of the Bureau of Labor and Industries
 7 in accordance with ORS 659A.820.

8 [(8)] (9) For purposes of this section, "disabled veteran" includes a person who is receiving
 9 service-connected compensation from the United States Department of Veterans Affairs under 38
 10 U.S.C. 1110 or 1131.

11 **SECTION 3. The amendments to ORS 408.230 and 408.237 by sections 1 and 2 of this 2021**
 12 **Act apply to civil service positions that are first advertised or solicited on or after the ef-**
 13 **fective date of this 2021 Act.**

14 **SECTION 4.** ORS 30.275 is amended to read:

15 30.275. (1) No action arising from any act or omission of a public body or an officer, employee
 16 or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice
 17 of claim is given as required by this section.

18 (2) Notice of claim shall be given within the following applicable period of time, not including
 19 the period, not exceeding 90 days, during which the person injured is unable to give the notice be-
 20 cause of the injury or because of minority, incompetency or other incapacity:

21 (a)(A) For wrongful death, within one year after the alleged loss or injury.

22 **(B) For violation of ORS 408.230 or 408.237, within two years after the alleged violation.**

23 (b) For all other claims, within 180 days after the alleged loss or injury.

24 (3) Notice of claim required by this section is satisfied by:

25 (a) Formal notice of claim as provided in subsections (4) and (5) of this section;

26 (b) Actual notice of claim as provided in subsection (6) of this section;

27 (c) Commencement of an action on the claim by or on behalf of the claimant within the appli-
 28 cable period of time provided in subsection (2) of this section; or

29 (d) Payment of all or any part of the claim by or on behalf of the public body at any time.

30 (4) Formal notice of claim is a written communication from a claimant or representative of a
 31 claimant containing:

32 (a) A statement that a claim for damages is or will be asserted against the public body or an
 33 officer, employee or agent of the public body;

34 (b) A description of the time, place and circumstances giving rise to the claim, so far as known
 35 to the claimant; and

36 (c) The name of the claimant and the mailing address to which correspondence concerning the
 37 claim may be sent.

38 (5) Formal notice of claim shall be given by mail or personal delivery:

39 (a) If the claim is against the state or an officer, employee or agent thereof, to the office of the
 40 Director of the Oregon Department of Administrative Services.

41 (b) If the claim is against a local public body or an officer, employee or agent thereof, to the
 42 public body at its principal administrative office, to any member of the governing body of the public
 43 body, or to an attorney designated by the governing body as its general counsel.

44 (6) Actual notice of claim is any communication by which any individual to whom notice may
 45 be given as provided in subsection (5) of this section or any person responsible for administering tort

1 claims on behalf of the public body acquires actual knowledge of the time, place and circumstances
 2 giving rise to the claim, where the communication is such that a reasonable person would conclude
 3 that a particular person intends to assert a claim against the public body or an officer, employee
 4 or agent of the public body. A person responsible for administering tort claims on behalf of a public
 5 body is a person who, acting within the scope of the person's responsibility, as an officer, employee
 6 or agent of a public body or as an employee or agent of an insurance carrier insuring the public
 7 body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, ad-
 8 justment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting
 9 forms for claimants to provide claim information, or in supervising any of those activities.

10 (7) In an action arising from any act or omission of a public body or an officer, employee or
 11 agent of a public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of
 12 proving that notice of claim was given as required by this section.

13 (8) The requirement that a notice of claim be given under subsections (1) to (7) of this section
 14 does not apply if:

15 (a)(A) The claimant was under the age of 18 years when the acts or omissions giving rise to a
 16 claim occurred;

17 (B) The claim is against the Department of Human Services or the Oregon Youth Authority; and

18 (C) The claimant was in the custody of the Department of Human Services pursuant to an order
 19 of a juvenile court under ORS 419B.150, 419B.185, 419B.337 or 419B.527, or was in the custody of
 20 the Oregon Youth Authority under the provisions of ORS 419C.478, 420.011 or 420A.040, when the
 21 acts or omissions giving rise to a claim occurred.

22 (b) The claim is against a private, nonprofit organization that provides public transportation
 23 services described under ORS 30.260 (4)(d).

24 (9) Except as provided in ORS 12.120, 12.135 and 659A.875, but notwithstanding any other pro-
 25 vision of ORS chapter 12 or other statute providing a limitation on the commencement of an action,
 26 an action arising from any act or omission of a public body or an officer, employee or agent of a
 27 public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the
 28 alleged loss or injury.

29 **SECTION 5. Sections 6, 7 and 9 of this 2021 Act are added to and made a part of ORS**
 30 **408.225 to 408.237.**

31 **SECTION 6. For a civil claim alleging a violation of ORS 408.230 or 408.237:**

32 **(1) At the request of any party, the claim shall be tried to a jury;**

33 **(2) A prevailing plaintiff is entitled to recover noneconomic damages, as defined in ORS**
 34 **31.710; and**

35 **(3) A court may not award attorney fees or costs to a public employer.**

36 **SECTION 7. (1) The Department of Veterans' Affairs shall establish a program, as de-**
 37 **scribed in this section, for investigation and nonbinding arbitration of claims for violations**
 38 **of ORS 408.230 or 408.237.**

39 **(2) A veteran claiming to be aggrieved by a violation of ORS 408.230 or 408.237 may file**
 40 **a written complaint with the department describing the alleged violation. The complaint**
 41 **must be signed by the complainant. The complaint must be filed within one year of the al-**
 42 **leged violation.**

43 **(3) A complaint may not be filed under this section if:**

44 **(a) A civil action has been commenced in state or federal court alleging the same mat-**
 45 **ters; or**

1 (b) A complaint has been filed with the Commissioner of the Bureau of Labor and In-
2 dustries alleging the same matters.

3 (4) The public employer against whom the complaint was filed may file an answer to the
4 complaint.

5 (5) Upon receipt of a complaint, the department shall investigate the complaint. The de-
6 partment may request pertinent documents, testimony and other evidence from relevant
7 parties. The department shall establish a process for requesting, receiving and analyzing
8 such evidence. The department may establish a process to enable direct dialogue between the
9 complainant and the public employer against whom the complaint was filed.

10 (6) The department shall issue a written determination, based on the preponderance of
11 the evidence, of whether a violation of ORS 408.230 or 408.237 occurred. The determination
12 of the department does not affect the rights or liabilities of any party.

13 (7) All public bodies, as defined in ORS 174.109, are directed to cooperate with and assist
14 the department in investigations under this section.

15 (8) The department shall adopt rules necessary for the administration of this section.

16 **SECTION 8.** (1) Section 7 of this 2021 Act becomes operative on July 1, 2022.

17 (2) The Department of Veterans' Affairs may take any action before the operative date
18 specified in subsection (1) of this section that is necessary for the department to exercise,
19 on and after the operative date specified in subsection (1) of this section, all of the duties,
20 functions and powers conferred on the department by section 7 of this 2021 Act.

21 **SECTION 9.** (1) A public employer shall conduct, or cause to be conducted, annual
22 training on the requirements of ORS 408.230 and 408.237.

23 (2) A public employer may submit training materials to the Department of Veterans'
24 Affairs for approval. The department shall approve the materials if the department finds that
25 the materials accurately convey the requirements of ORS 408.230 and 408.237 and are likely
26 to improve compliance with those requirements.

27 (3) Compliance with this section is an affirmative defense to a claim for violation of ORS
28 408.230 or 408.237, if the materials used in the most recent training are approved by the De-
29 partment of Veterans' Affairs.

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