

**A-Engrossed**  
**Senate Bill 1586**

Ordered by the Senate February 14  
Including Senate Amendments dated February 14

Sponsored by Senator TAYLOR; Senators DEMBROW, JAMA, Representatives BYNUM, GRAYBER, POWER, PRUSAK (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.

Clarifies prohibitions regarding provisions that may not be included in agreements between employers and former, current or prospective employees.

**Specifies circumstances under which certain prohibited provisions may be included in agreements that release claim brought against employer for certain unlawful conduct.**

**Establishes conduct that constitutes violation of prohibitions. Creates exemptions to prohibitions.**

**Allows recovery of civil penalties for certain violations.**

**Requires mediator in mediation concerning allegations of certain unlawful conduct to provide person who is party to mediation and who is not represented by attorney with copy of certain policies concerning prevention of certain unlawful conduct.**

*[Provides that mediation communications relating to certain allegations of misconduct are not confidential and may be admitted as evidence.]*

Requires employers to provide copy of employer's written policies against unlawful discrimination and harassment to person with whom employer seeks to enter into certain agreements.

**A BILL FOR AN ACT**

1  
2 Relating to unlawful employment practices; creating new provisions; and amending ORS 243.319,  
3 243.323, 659A.370 and 659A.375.

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

5 **SECTION 1.** ORS 659A.370 is amended to read:

6 659A.370. (1) Except as provided in subsections (2) or (4) of this section, it is an unlawful em-  
7 ployment practice for an employer to enter into an agreement with **a former, current** [*an*  
8 *employee*] or prospective employee, as a condition of employment, continued employment, promotion,  
9 compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement  
10 provision or any other provision that has the purpose or effect of preventing the employee from  
11 disclosing or discussing conduct:

12 (a)(A) That constitutes discrimination prohibited by ORS 659A.030, including conduct that con-  
13 stitutes sexual assault; or

14 (B) That constitutes discrimination prohibited by ORS 659A.082 or 659A.112; and

15 (b)(A) That occurred between employees or between an employer and an employee in the  
16 workplace or at a work-related event that is off the employment premises and coordinated by or  
17 through the employer; or

18 (B) That occurred between an employer and an employee off the employment premises.

19 *[(2) An employer may enter into a settlement, separation or severance agreement that includes one*  
20 *or more of the following provisions only when an employee claiming to be aggrieved by conduct de-*

**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 *scribed under subsection (1) of this section requests to enter into the agreement:]*

2 **(2)(a) Whenever an employer and a former, current or prospective employee enter into**  
3 **an agreement, the terms of which release a claim brought against the employer by an em-**  
4 **ployee alleging the occurrence of unlawful conduct described in subsection (1)(a) and (b) of**  
5 **this section, the agreement may include one or more of the following provisions only when**  
6 **the employee who is a party to the agreement requests the inclusion of such provisions in**  
7 **the agreement:**

8 [(a)] **(A)** A provision described in subsection (1) of this section;

9 [(b)] *A provision that prevents the disclosure of factual information relating to a claim of discrimi-*  
10 *nation or conduct that constitutes sexual assault; or]*

11 **(B) A provision that prevents the disclosure of the amount of or fact of any settlement;**  
12 **or**

13 [(c)] **(C)** A no-rehire provision that prohibits the employee from seeking reemployment with the  
14 employer as a term or condition of the agreement.

15 **(b) It is a violation of this subsection for an employer or former employer to:**

16 **(A) Make an offer of settlement conditional upon a request to include in the agreement**  
17 **the provisions described in paragraph (a) of this subsection.**

18 **(B) Fail to provide a person with whom the employer seeks to enter into the agreement**  
19 **a copy of the policy described in ORS 659A.375.**

20 (3)(a) An agreement entered into under subsection (2) of this section must provide that the em-  
21 ployee has at least seven days after executing the agreement to revoke the agreement.

22 (b) The agreement may not become effective until after the revocation period has expired.

23 **(4) The prohibitions under subsection (1) of this section do not apply to agreements en-**  
24 **tered into between an employer and a former, current or prospective employee** if an employer  
25 makes a good faith determination that [an] **the** employee has engaged in conduct prohibited by ORS  
26 659A.030, including sexual assault, conduct prohibited by ORS 659A.082 or 659A.112 or conduct  
27 prohibited by this section[, *the employer may enter into a settlement, separation or severance agreement*  
28 *that includes one or more of the following provisions:]*

29 [(a)] *A provision described in subsection (1) of this section;]*

30 [(b)] *A provision that prevents the disclosure of factual information that relates to a claim of dis-*  
31 *crimination or conduct that conduct that constitutes sexual assault; or]*

32 [(c)] *A no-rehire provision that prohibits the employee from seeking reemployment with the employer*  
33 *as a term or condition of the agreement].*

34 (5) An employee may file a complaint under ORS 659A.820 for violations of this section and may  
35 bring a civil action under ORS 659A.885 and recover **a civil penalty of up to \$5,000 and relief** as  
36 provided by ORS 659A.885 (1) to (3).

37 (6) This section does not apply to an employee who is tasked by law to receive confidential or  
38 privileged reports of discrimination, sexual assault or harassment.

39 **(7) Except to the extent provided under subsections (2) and (4) of this section, provisions**  
40 **included in an agreement in violation of this section are void and unenforceable.**

41 **(8) Nothing in this section prohibits an employer from enforcing a nondisclosure or**  
42 **nondisparagement agreement that is unrelated to the conduct described in subsection (1) of**  
43 **this section.**

44 [(7)] **(9)** As used in this section, “sexual assault” means unwanted conduct of a sexual nature  
45 that is inflicted upon a person or compelled through the use of physical force, manipulation, threat

1 or intimidation.

2 **SECTION 2.** For purposes of mediation related to claims or allegations of the unlawful  
3 conduct described under ORS 659A.370 (1)(a) and (b), a mediator in the mediation shall pro-  
4 vide a person who is a party to the mediation and who is not represented by an attorney with  
5 a copy of the model procedures and policies made available by the Bureau of Labor and In-  
6 dustries under ORS 659A.375.

7 **SECTION 3.** ORS 659A.375 is amended to read:

8 659A.375. (1) Every employer in this state shall adopt a written policy containing procedures  
9 and practices for the reduction and prevention of discrimination prohibited by ORS 659A.030, in-  
10 cluding sexual assault, as defined in ORS 659A.370, and discrimination prohibited by ORS 659A.082  
11 and 659A.112.

12 (2) At a minimum, the policy must:

13 (a) Provide a process for an employee to report prohibited conduct;

14 (b) Identify the individual designated by the employer who is responsible for receiving reports  
15 of prohibited conduct, including an individual designated as an alternate to receive such reports;

16 (c) Include the statute of limitations period applicable to an employee's right of action for al-  
17 leging unlawful conduct described in subsection (1) of this section;

18 (d) Include a statement that an employer may not require or coerce an employee to enter into  
19 a nondisclosure or nondisparagement agreement, including a description of the meaning of those  
20 terms;

21 (e) Include an explanation that an employee claiming to be aggrieved by conduct described in  
22 subsection (1) of this section may voluntarily request to enter into an agreement described in ORS  
23 659A.370 (2), including a statement that explains that the employee has at least seven days to revoke  
24 the agreement; and

25 (f) Include a statement that advises employers and employees to document any incidents in-  
26 volving conduct prohibited by ORS 659A.030, including sexual assault as defined in ORS 659A.370,  
27 or conduct prohibited by ORS 659A.082 and 659A.112.

28 (3) An employer shall:

29 (a) Make the policy available to employees within the workplace;

30 (b) Provide a copy of the policy to each employee at the time of hire; *[and]*

31 **(c) Provide to each person with whom the employer seeks to enter into an agreement,**  
32 **as described in ORS 659A.370 (2), a copy of the policy in the language the employer typically**  
33 **uses to communicate with the person; and**

34 *[(c)]* **(d)** Require any individual who is designated by the employer to receive complaints to  
35 provide a copy of the policy to an employee at the time that the employee discloses information  
36 regarding prohibited discrimination or harassment.

37 (4) The Bureau of Labor and Industries shall make available on the bureau's website model  
38 procedures or policies that employers may use as guidance to establish the policy described in this  
39 section.

40 (5) Nothing in this section is intended to relieve an employer of liability for engaging in conduct  
41 that is prohibited under ORS chapter 659A.

42 **SECTION 4.** ORS 243.323 is amended to read:

43 243.323. (1) Except as provided in subsection (2) or (4) of this section, it is an unlawful employ-  
44 ment practice under ORS chapter 659A for a public employer to enter into an agreement with a  
45 **former, current** *[an employee]* or prospective employee, as a condition of employment, continued

1 employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure pro-  
2 vision, a nondisparagement provision or any other provision that has the purpose or effect of pre-  
3 venting the employee from disclosing or discussing workplace harassment:

4 (a) That occurred between employees or between an employer and an employee in the workplace  
5 or at a work-related event that is off the employment premises and coordinated by or through the  
6 employer; or

7 (b) That occurred between an employer and an employee off the employment premises.

8 [(2) A public employer may enter into a settlement, separation or severance agreement that includes  
9 one or more of the following provisions only when an employee claiming to be aggrieved by workplace  
10 harassment described under subsection (1) of this section requests to enter into the agreement:]

11 **(2) Whenever a public employer and a former, current or prospective employee enter into**  
12 **an agreement, the terms of which release a claim brought against the employer by an em-**  
13 **ployee alleging workplace harassment described under subsection (1) of this section, the**  
14 **agreement may include one or more of the following provisions only when the employee who**  
15 **is a party to the agreement requests the inclusion of such provisions in the agreement:**

16 (a) A provision described in subsection (1) of this section;

17 [(b) A provision that prevents the disclosure of factual information relating to the claim of dis-  
18 crimination or conduct that constitutes sexual assault; or]

19 **(b) A provision that prevents the disclosure of the amount of or fact of any settlement;**  
20 **or**

21 (c) A no-rehire provision that prohibits the employee from seeking reemployment with the em-  
22 ployer as a term or condition of the agreement.

23 (3)(a) An agreement entered into under subsection (2) of this section must provide that the em-  
24 ployee has at least seven days after executing the agreement to revoke the agreement.

25 (b) The agreement may not become effective until after the revocation period has expired.

26 **(4) The prohibitions in subsection (1) of this section do not apply to agreements entered**  
27 **into between a public employer and a former, current or prospective employee if [an] the**  
28 **public employer makes a good faith determination that [an] the employee has engaged in workplace**  
29 **harassment described under subsection (1) of this section[, the employer may enter into a settlement,**  
30 **separation or severance agreement that includes one or more of the following provisions:]**

31 [(a) A provision described in subsection (1) of this section;]

32 [(b) A provision that prevents the disclosure of factual information that relates to the workplace  
33 harassment; or]

34 [(c) A no-rehire provision that prohibits the employee from seeking reemployment with the employer  
35 as a term or condition of the agreement].

36 (5) An employee may file a complaint under ORS 659A.820 for violations of this section and may  
37 bring a civil action under ORS 659A.885 and recover **a civil penalty of up to \$5,000 and relief** as  
38 provided by ORS 659A.885 (1) to (3).

39 (6) This section does not apply to an employee who is tasked by law to receive confidential or  
40 privileged reports of discrimination, sexual assault or harassment.

41 **(7) Except to the extent provided under subsections (2) and (4) of this section, provisions**  
42 **included in an agreement in violation of this section are void and unenforceable.**

43 **(8) Nothing in this section prohibits a public employer from enforcing a nondisclosure or**  
44 **nondisparagement agreement that is unrelated to workplace harassment described in sub-**  
45 **section (1) of this section.**

1       **SECTION 5.** Section 6 of this 2022 Act is added to and made a part of ORS 243.317 to  
2       **243.323.**

3       **SECTION 6.** For purposes of a mediation related to claims or allegations of workplace  
4       harassment, a mediator in the mediation shall provide a person who is a party to the medi-  
5       ation and who is not represented by an attorney with a copy of the policy described in ORS  
6       **243.319.**

7       **SECTION 7.** ORS 243.319 is amended to read:

8       243.319. (1) A public employer shall establish and adopt a written policy that seeks to prevent  
9       workplace harassment that occurs between employees or between an employer and an employee in  
10      the workplace or at a work-related event that is off the employment premises and coordinated by  
11      or through the employer, or between an employer and an employee off the employment premises.

12      (2) The policy must include:

13      (a) A statement prohibiting workplace harassment;

14      (b) Information explaining that a victim of workplace harassment has a right to seek redress  
15      through the employer's internal process provided under ORS 243.321, through the Bureau of Labor  
16      and Industries' complaint resolution process under ORS 659A.820 to 659A.865 or under any other  
17      available law, whether civil or criminal, including:

18      (A) The timeline under which relief may be sought;

19      (B) Any available administrative or judicial remedies; and

20      (C) The advance notice of claim against a public body that a claimant must provide as required  
21      under ORS 30.275;

22      (c) A statement that a person who reports workplace harassment has the right to be protected  
23      from retaliation;

24      (d) A statement of the scope of the policy, including that the policy applies to elected public  
25      officials, volunteers and interns;

26      (e) An explanation that a victim of workplace harassment may voluntarily disclose information  
27      regarding an incident of workplace harassment that involves the victim;

28      (f) Information to connect a victim of workplace harassment with legal resources and counseling  
29      and support services, including any available employee assistance services;

30      (g) A statement that an employer may not require or coerce an employee to enter into a  
31      nondisclosure or nondisparagement agreement, including a description of the meaning of those  
32      terms;

33      (h) An explanation that an employee claiming to be aggrieved by workplace harassment may  
34      voluntarily request to enter into an agreement described in ORS 243.323 (2), including a statement  
35      that explains that the employee has at least seven days to revoke the agreement; and

36      (i) A statement that advises employers and employees to document any incidents of workplace  
37      harassment.

38      (3) A public employer shall provide a copy of the policies described in this section to each em-  
39      ployee and shall include a copy of the policies in any orientation materials that are provided to new  
40      employees at the time of hire.

41      (4) If an employee discloses any concerns about workplace harassment to a supervisor of the  
42      employer, or to a designated individual as described in ORS 243.321 (3), the supervisor or designated  
43      individual shall, at the time of the disclosure, provide to the employee a copy of the policy described  
44      in this section.

45      **(5) A public employer shall provide to each person with whom the employer seeks to en-**

1 **ter into an agreement, as described under ORS 243.323 (2), a copy of the policies described**  
2 **in this section in the language that the employer typically uses to communicate with the**  
3 **person.**

4 [(5)] (6) A policy established under this section must comply with the requirements for a written  
5 policy provided under ORS 659A.375.

6

\_\_\_\_\_