

Enrolled Senate Bill 1586

Sponsored by Senator TAYLOR; Senators DEMBROW, JAMA, Representatives BYNUM, DEXTER, GRAYBER, MEEK, NELSON, POWER, PRUSAK, SALINAS (Presession filed.)

CHAPTER

AN ACT

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

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

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

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

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

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

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

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

(2) *An employer may enter into a settlement, separation or severance agreement that includes one or more of the following provisions only when an employee claiming to be aggrieved by conduct described under subsection (1) of this section requests to enter into the agreement:]*

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

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

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

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

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

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

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

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

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

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

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

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

[(b) A provision that prevents the disclosure of factual information that relates to a claim of discrimination or conduct that constitutes sexual assault; or]

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

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

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

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

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

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

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

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

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

(2) At a minimum, the policy must:

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

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

(c) Include the statute of limitations period applicable to an employee’s right of action for alleging unlawful conduct described in subsection (1) of this section;

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

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

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

(3) An employer shall:

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

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

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

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

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

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

SECTION 4. ORS 243.323 is amended to read:

243.323. (1) Except as provided in subsection (2) or (4) of this section, it is an unlawful employment practice under ORS chapter 659A for a public employer to enter into an agreement with a **former, current** *[an employee]* or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing workplace harassment:

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

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

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

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

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

[(b) A provision that prevents the disclosure of factual information relating to the claim of discrimination or conduct that constitutes sexual assault; or]

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

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

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

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

(4) The prohibitions in subsection (1) of this section do not apply to agreements entered into between a public employer and a former, current or prospective employee if *[an]* the

public employer makes a good faith determination that [an] **the** employee has engaged in workplace harassment described under subsection (1) of this section[, *the employer may enter into a settlement, separation or severance agreement that includes one or more of the following provisions:*]

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

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

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

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

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

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

(8) Nothing in this section prohibits a public employer from enforcing a nondisclosure or nondisparagement agreement that is unrelated to workplace harassment described in subsection (1) of this section.

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

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

SECTION 7. ORS 243.319 is amended to read:

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

(2) The policy must include:

(a) A statement prohibiting workplace harassment;

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

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

(B) Any available administrative or judicial remedies; and

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

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

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

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

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

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

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

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

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

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

(5) A public employer shall provide to each person with whom the employer seeks to enter into an agreement, as described under ORS 243.323 (2), a copy of the policies described in this section in the language that the employer typically uses to communicate with the person.

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

Passed by Senate February 16, 2022

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House February 28, 2022

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2022

Approved:

.....M.,....., 2022

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2022

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