

# House Bill 2888

Sponsored by Representatives DEXTER, GRAYBER, REYNOLDS; Representatives EVANS, HUDSON, NELSON, NOSSE, Senators CAMPOS, FREDERICK, GELSER BLOUIN, JAMA, SOLLMAN, STEINER (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**.

Expands regular employment protections afforded for performance of legislative duties by members or prospective members of Legislative Assembly by requiring employers, at option of member or prospective member, to grant time off less than full-day absence to member or prospective member to perform legislative duties. Continues alternative requirement, at option of member or prospective member, for regular employer to grant leave of absence to member or prospective member to attend legislative session, interim committee meetings or other specified official functions.

Grants rulemaking authority to Commissioner of Bureau of Labor and Industries to implement statutory provisions and directs commissioner to provide technical advice and guidance to employers to facilitate compliance with statutory requirements.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to required employment leave for the performance of legislative duties; creating new pro-  
3 visions; amending ORS 171.120, 171.122 and 171.125; and prescribing an effective date.

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

5 **SECTION 1. As used in ORS 171.120 to 171.125:**

6 (1) **"Legislative duties":**

7 (a) **Means:**

8 (A) **Attending legislative sessions when the Legislative Assembly is in regular or special**  
9 **session;**

10 (B) **Attending legislative committee meetings during interim periods, including attending**  
11 **by virtual or remote means if virtual or remote attendance is permitted by legislative rule**  
12 **or statute;**

13 (C) **Attending a task force, work group or other organized meeting at which a member**  
14 **or prospective member is present for the purpose of developing or discussing legislation;**

15 (D) **Attending in an ex officio capacity a meeting of an interstate body, commission, ad-**  
16 **visory committee or other entity for which a member may receive a per diem under ORS**  
17 **171.072 or may receive reimbursement for out-of-state travel; and**

18 (E) **Using telephone, videoconferencing or other remote communication technology to**  
19 **participate in meetings described in subparagraph (C) or (D) of this paragraph.**

20 (b) **Does not include:**

21 (A) **Attending campaign or partisan events;**

22 (B) **Attending private events;**

23 (C) **Attending events that do not constitute public-facing official activities for which law**  
24 **or rule requires the public notice of the event and its agenda; or**

25 (D) **Participating in events described in this paragraph using telephone,**  
26 **videoconferencing or other remote communication technology.**

**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 (c) May be further defined by rule by the Commissioner of the Bureau of Labor and In-  
 2 dustries consistently with paragraphs (a) and (b) of this subsection.

3 (2) “Member” means a member of the Legislative Assembly.

4 (3) “Prospective member” means a person who is certified or appointed to serve in the  
 5 Legislative Assembly but who has not taken the oath of office.

6 **SECTION 2.** ORS 171.120 is amended to read:

7 171.120. (1) **The people of Oregon, from the founding of the state to contemporary times,**  
 8 **have always entrusted the legislative power to a citizen legislature in which members of the**  
 9 **Legislative Assembly are expected to perform legislative duties not as full-time occupations**  
 10 **but in tandem with other pursuits. Accordingly, it is the policy of the State of Oregon that**  
 11 **members and prospective members of the Legislative Assembly be accorded employment**  
 12 **protections that are sufficient to allow members and prospective members to attend to leg-**  
 13 **islative duties without negative impact to the outside employment relationships that mem-**  
 14 **bers and prospective members may maintain.** It is the purpose and intent of the Legislative  
 15 Assembly in enacting [*this section and ORS 171.122 and 171.125*] **ORS 171.120 to 171.125** that, sub-  
 16 ject to the conditions set forth in these sections, any member [*of the Legislative Assembly*] whose  
 17 employment is interrupted because of attendance at regular or special sessions of the Legislative  
 18 Assembly or the performance of official duties as a member [*of the Legislative Assembly*] shall be  
 19 restored to the employment status the member would have enjoyed if the member had continued in  
 20 employment during any such attendance or performance of duties.

21 (2) As a part of the public policy to encourage public service, an employer may not discharge  
 22 or threaten to discharge, intimidate or coerce any employee by reason of the employee’s service or  
 23 scheduled service as a member or prospective member [*of the Legislative Assembly*].

24 (3) The member or prospective member may not be subject to discipline or harassment or placed  
 25 at any employment disadvantage as a consequence of the leave of absence **or grant of time off to**  
 26 **perform legislative duties.** It is an unlawful employment practice under ORS chapter 659A for a  
 27 member or prospective member to be subject to discipline or harassment or placed at any employ-  
 28 ment disadvantage as a consequence of any leave of absence **described in ORS 171.122** related to  
 29 regular or special session attendance or **any leave of absence or time off granted for the per-**  
 30 **formance of legislative duties as described in section 3 of this 2023 Act.** A member or prospec-  
 31 tive member may file a complaint with the Commissioner of the Bureau of Labor and Industries  
 32 under ORS 659A.820, or a civil action under ORS 659A.885, alleging violation of [*this subsection*]  
 33 **ORS 171.120 to 171.125.**

34 **SECTION 3.** (1) **Any member or prospective member of the Legislative Assembly shall**  
 35 **be granted time off during an employer’s work day during which the member or prospective**  
 36 **member is on duty and performing work for the employer to:**

37 (a) **Attend virtual committee meetings using online, telephonic or videoconferencing**  
 38 **technology;**

39 (b) **Attend virtual meetings of task forces, work groups or similar gatherings at which**  
 40 **legislative duties are performed; or**

41 (c) **Place or receive telephone calls or use other communicative technology to perform**  
 42 **legislative duties.**

43 (2) **An employer of a member or prospective member that also has furnished the member**  
 44 **or prospective member with an office or other workspace that permits private conversation**  
 45 **shall allow the member or prospective member to perform legislative duties at that office**

1 or workspace. An employer of a member or prospective member shall allow a member or  
 2 prospective member to temporarily leave the employer's premises to perform legislative du-  
 3 ties and then return to the employer's premises to continue work on behalf of the employer.

4 (3) An employer is not required to compensate the member or prospective member for  
 5 time spent performing legislative duties described in this section, but may not withhold from  
 6 compensation amounts that exceed the hourly rate of compensation, as computed in  
 7 15-minute increments, for time that the member or prospective member spends performing  
 8 legislative duties.

9 (4) This section is not applicable if:

10 (a) The member or prospective member was employed by the employer for a period of  
 11 less than 90 days immediately prior to the first day in which time is granted to the member  
 12 or prospective member to perform legislative duties;

13 (b) The regular employment position of the member or prospective member or the char-  
 14 acter, terms, conditions or activities of the position are incompatible under the Constitution  
 15 and laws of this state with the office of member of the Legislative Assembly;

16 (c) Employment is on a temporary basis; or

17 (d) The employer employs fewer than 10 persons immediately prior to the first day for  
 18 which time off is sought by the member or prospective member under subsection (1) of this  
 19 section to perform legislative duties.

20 **SECTION 4.** ORS 171.122 is amended to read:

21 171.122. (1) Any member or prospective member of the Legislative Assembly who leaves regular  
 22 employment in order to attend upon any regular or special session of the Legislative Assembly or  
 23 to perform [*official*] **legislative** duties [*as a member or prospective member of the Legislative Assembly*  
 24 *for which the member or prospective member may receive a per diem under ORS 171.072 or may receive*  
 25 *reimbursements for out-of-state travel*], shall be granted a leave of absence from such regular em-  
 26 ployment position for [*such*] **the** period of time as is reasonably necessary to permit [*such*] **that** at-  
 27 tendance or performance of duties.

28 (2) A member or prospective member [*of the Legislative Assembly*] shall give notice to the em-  
 29 ployer when the leave of absence described in subsection (1) of this section is anticipated or is to  
 30 be taken:

31 (a) At least 30 days before a regular session; and

32 (b) As soon as it is reasonably apparent that:

33 (A) A special or emergency session is to be called; or

34 (B) **The member or prospective member is expected to perform legislative duties.**

35 (3) The regular employment position of a member or prospective member on leave of absence  
 36 under this section shall only be deemed vacant for the period of such leave of absence, and the  
 37 member or prospective member shall not be subject to removal or discharge from such position as  
 38 a consequence of such leave of absence.

39 (4) Upon the termination of the leave of absence of the member or prospective member under  
 40 this section, a member or prospective member shall be restored to the regular employment position  
 41 the member or prospective member held immediately prior to the first day of the leave of absence  
 42 if such position still exists, or, if such position does not still exist, to as similar a position as pos-  
 43 sible, without loss of seniority, the right to participate in insurance or any other employment bene-  
 44 fits, other than wages for services not rendered during the leave of absence, as a consequence of the  
 45 leave of absence of the member or prospective member. Such seniority, right to participate in in-

1 surance or other employment benefits shall continue to accumulate during the leave of absence as  
 2 though the member or prospective member had continued in employment continuously in the regular  
 3 employment position the member or prospective member held immediately prior to the first day of  
 4 the leave of absence of the member or prospective member.

5 (5) This section is not applicable if:

6 (a) The member or prospective member was employed by the employer for a period of less than  
 7 90 days immediately prior to the first day of the leave of absence.

8 (b) The circumstances of the employer have so changed during the leave of absence of the  
 9 member or prospective member as to make restoration of the member or prospective member to  
 10 employment impossible or unreasonable.

11 (c) The member or prospective member fails to apply for restoration to employment within:

12 (A) Fifteen days after adjournment sine die of the Legislative Assembly following a regular  
 13 session; or

14 (B) If the leave was for a lesser period for another legislative assignment, five days after the  
 15 assignment is completed.

16 (d) The regular employment position of the member or prospective member immediately prior to  
 17 the first day of the leave of absence or the character, terms, conditions or activities of such position  
 18 are incompatible under the Constitution and laws of this state with the office of member of the  
 19 Legislative Assembly.

20 (e) Employment is on a temporary basis.

21 (f) The employer employs fewer than 10 persons immediately prior to the first day of the leave  
 22 of absence.

23 [(6) As used in this section, "prospective member" means a person who is certified or appointed to  
 24 serve in the Legislative Assembly but who has not taken the oath of office.]

25 **SECTION 5. The Commissioner of the Bureau of Labor and Industries:**

26 (1) **May adopt rules to implement the provisions of ORS 171.120 to 171.125.**

27 (2) **Shall provide technical advice and guidance to employers to facilitate employer com-**  
 28 **pliance with ORS 171.120 to 171.125.**

29 **SECTION 6.** ORS 171.125 is amended to read:

30 171.125. (1) If any employer fails to comply with the provisions of ORS 171.120 [*and 171.122*] **to**  
 31 **171.125**, the circuit court for any county in which [*such*] **the** employer maintains a place of business  
 32 has jurisdiction, upon the filing of a petition by the Attorney General on behalf of [*the person*] **a**  
 33 **member or prospective member** [*entitled to such benefits by reason of noncompliance of the em-*  
 34 *ployer, specifically*] to require the employer to comply with the provisions of ORS 171.120 [*and*  
 35 *171.122*] **to 171.125.**

36 (2) If any employer fails to comply with ORS 171.120 [*and 171.122*] **to 171.125**, the member or  
 37 prospective member may bring an action under ORS chapter 659A employing counsel of the  
 38 member's or prospective member's own choosing.

39 **SECTION 7. Sections 1, 3 and 5 of this 2023 Act are added to and made a part of ORS**  
 40 **171.120 to 171.125.**

41 **SECTION 8. This 2023 Act takes effect on the 91st day after the date on which the 2023**  
 42 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**