

House Bill 3285

Sponsored by Representative NELSON, Senator JAMA, Representative BOWMAN

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 unlawful practice for employer or employment agency to advertise job, promotion or transfer opportunity without disclosing pay range and employment benefits in job posting. Requires employers to maintain certain employment records for each employee. Makes violation unlawful practice.

Permits Commissioner of Bureau of Labor and Industries to assess civil penalty against employer or employment agency for violation.

Makes employment agencies subject to prohibition against inquiries regarding salary history and past criminal convictions.

Becomes operative on January 2, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to disclosures of certain information concerning employment-related matters; creating new
3 provisions; amending ORS 659A.357 and 659A.360; and prescribing an effective date.

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

SECTION 1. (1) As used in this section:

5
6 (a)(A) **“Employee” means an individual performing services for an employer for
7 remuneration or under any contract for hire, written or oral, express or implied.**

8 (B) **“Employee” does not mean an independent contractor as defined in ORS 670.600.**

9 (b) **“Employer” has the meaning given that term in ORS 652.210.**

10 (c) **“Employment agency” has the meaning given that term in ORS 659A.001.**

11 (d) **“Employment benefits” includes health benefits, paid time off and retirement benefits.**

12 (e) **“Job posting” means any written or printed communication, whether electronic or
13 hard copy, that shows an employer or employment agency is recruiting and accepting appli-
14 cations for a specific employment position.**

15 (f) **“Pay range” means a range from the lowest to the highest salary or hourly wage that
16 an employer or employment agency, in good faith, would pay as compensation for a partic-
17 ular employment position in accordance with a predetermined compensation schedule or an
18 allocated budget.**

19 (2) **An employer may not:**

20 (a) **Directly or indirectly, through an employment agency or other third party, advertise
21 an employment, promotion or transfer opportunity without disclosing in the job posting the
22 pay range and a general description of the employment benefits associated with the employ-
23 ment, promotion or transfer opportunity.**

24 (b) **Fail or refuse to disclose to an applicant the pay range and a general description of
25 the employment benefits associated with an employment, promotion or transfer opportunity
26 that was not advertised in a job posting.**

27 (c) **Fail or refuse to provide each employee with the pay range and general description**

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 of the employment benefits associated with the employment position held by the employee
 2 as follows:

3 (A) At least once per year throughout the duration of the employee's employment with
 4 the employer;

5 (B) At the time of hire;

6 (C) On the date on which the employee is promoted or transferred to a new position; and

7 (D) Upon the request of the employee.

8 (d) Retaliate or in any way discriminate against an individual with respect to hire or
 9 tenure or any other term or condition of employment because the individual has exercised
 10 a right protected under this section.

11 (3)(a) Every employer shall maintain records for each employee of the employer that in-
 12 clude the job title, salary history and employment benefits for each position held by the
 13 employee.

14 (b) An employer shall retain a record described under paragraph (a) of this subsection
 15 throughout the duration of the employee's employment with the employer and for at least
 16 two years following the date on which the employee ceases to be employed by the employer.

17 (4) This section applies to positions that will be performed in whole or in part in this
 18 state.

19 (5) A violation of this section is an unlawful practice under ORS chapter 659A. An indi-
 20 vidual alleging a violation of this section may file a complaint under ORS 659A.820 with the
 21 Commissioner of the Bureau of Labor and Industries. The commissioner shall enforce the
 22 provisions of this section in the manner provided in ORS chapter 659A regarding other un-
 23 lawful practices.

24 (6)(a) In addition to any other relief provided by law, the Commissioner of the Bureau
 25 of Labor and Industries may assess a civil penalty against an employer or employment
 26 agency that violates this section as follows:

27 (A) \$1,000 for a first violation.

28 (B) For each subsequent violation, the penalty amount shall increase by \$1,000, but at
 29 no time shall the total amount of a penalty assessed against an employer or employment
 30 agency under this paragraph exceed \$10,000.

31 (b) Any monetary civil penalty under this subsection shall be imposed in the manner
 32 provided by ORS 183.745.

33 (c) The commissioner shall deposit a civil penalty assessed under this subsection in the
 34 Bureau of Labor and Industries Account under ORS 651.160.

35 (7)(a) In addition to any other remedy provided by law, an individual may allege a vio-
 36 lation of this section by filing a civil action against an employer or employment agency.

37 (b) If the individual prevails in an action brought under this subsection, the court may
 38 enter a judgment against the employer or employment agency for the greater of the follow-
 39 ing amounts, per claim:

40 (A) Actual damages; or

41 (B) An amount between \$1,000 and \$10,000.

42 (c) In an action brought under this subsection, the prevailing plaintiff may recover rea-
 43 sonable attorney fees and injunctive relief.

44 (d) An action under this subsection must be commenced not later than one year after
 45 the conduct that gives rise to the claim for relief occurred.

SECTION 2. ORS 659A.357 is amended to read:

659A.357. (1) It is an unlawful practice under ORS chapter 659A for an employer, [or] prospective employer **or employment agency** to seek the salary history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee. This section is not intended to prevent an employer **or employment agency** from requesting from a prospective employee written authorization to confirm prior compensation after the employer **or employment agency** makes an offer of employment to the prospective employee that includes an amount of compensation.

(2) **As used in this section, “employment agency” has the meaning given that term in ORS 659A.001.**

SECTION 3. ORS 659A.360 is amended to read:

659A.360. (1) It is an unlawful practice for an employer **or employment agency** to exclude an applicant from an initial interview solely because of a past criminal conviction.

(2) An employer **or employment agency** excludes an applicant from an initial interview if the employer **or employment agency**:

- (a) Requires an applicant to disclose on an employment application a criminal conviction;
- (b) Requires an applicant to disclose, prior to an initial interview, a criminal conviction; or
- (c) If no interview is conducted, requires an applicant to disclose, prior to making a conditional offer of employment, a criminal conviction.

(3) Subject to subsections (1) and (2) of this section, nothing in this section prevents an employer **or employment agency** from considering an applicant’s conviction history when making a hiring decision.

(4) Subsections (1) and (2) of this section do not apply:

- (a) If federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant’s criminal history;
- (b) To an employer that is a law enforcement agency;
- (c) To an employer in the criminal justice system; [or]
- (d) To an employer seeking a nonemployee volunteer[.]; **or**
- (e) **To an employment agency that undertakes to procure employees for an employer described in paragraph (b), (c) or (d) of this subsection.**

(5) **As used in this section, “employment agency” has the meaning given that term in ORS 659A.001.**

SECTION 4. (1) **Section 1 of this 2023 Act and the amendments to ORS 659A.357 and 659A.360 by sections 2 and 3 of this 2023 Act become operative on January 2, 2024.**

(2) **The Commissioner of the Bureau of Labor and Industries may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the commissioner, on and after the operative date specified in subsection (1) of this section, to undertake and exercise all of the duties, functions and powers conferred on the commissioner under section 1 of this 2023 Act.**

SECTION 5. **This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.**