

# Senate Bill 249

Sponsored by Senator ROBINSON (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 employment preference for veterans; creating new provisions; and amending ORS 30.275,  
3 408.230, 408.237, 652.230 and 659A.875.

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 percentage points to a veteran's score and 10 percentage 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 the preference to the total combined examination score without al-  
26 locating the preference to any single feature or part of the examination. The employer shall add five  
27 percentage points to a veteran's score and 10 percentage 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 or disabled veteran from consideration for**  
41 **a vacant civil service position, the public employer shall within three business days of the**  
42 **elimination, provide written notice to the veteran or disabled 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 2023**  
 12 **Act apply to civil service positions that are first advertised or solicited on or after the ef-**  
 13 **fective date of this 2023 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) 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)] (c) 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.** ORS 652.230 is amended to read:

30 652.230. (1) Any employee whose compensation is at a rate that is in violation of ORS 652.220  
31 shall have a right of action against the employer for the recovery of:

32 (a) The amount of the unpaid wages to which the employee is entitled for the one year period  
33 preceding the commencement of the action; and

34 (b) An additional amount as liquidated damages equal to the amount referred to in paragraph  
35 (a) of this subsection.

36 (2) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under  
37 this section. The court may award reasonable attorney fees and expert witness fees incurred by a  
38 defendant who prevails in the action if the court determines that the plaintiff had no objectively  
39 reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse  
40 decision of a trial court.

41 (3) The action for the unpaid wages and liquidated damages may be maintained by one or more  
42 employees on behalf of themselves or other employees similarly situated.

43 (4) No agreement for compensation at a rate less than the rate to which such employee is enti-  
44 tled under ORS 652.210 to 652.235 is a defense to any action under ORS 652.210 to 652.235.

45 (5) For the purpose of time limitations, a compensation practice that is unlawful under ORS

1 652.220 occurs each time compensation is paid pursuant to a discriminatory compensation decision  
2 or other practice.

3 (6) An action under this section alleging a violation of ORS 652.220 must be commenced within  
4 one year after the occurrence of the unlawful practice.

5 (7) Notwithstanding ORS 30.275 [(2)(b)] (2)(c), notice of claim against a public body under ORS  
6 652.220 must be given within 300 days of discovery of the alleged loss or injury.

7 **SECTION 6.** ORS 659A.875 is amended to read:

8 659A.875. (1) Except as provided in subsection (2) of this section:

9 (a) A civil action under ORS 659A.885 alleging an unlawful employment practice other than a  
10 violation of ORS 243.323, 659A.030, 659A.082, 659A.112 or 659A.370 must be commenced within one  
11 year after the occurrence of the unlawful employment practice unless a complaint has been timely  
12 filed under ORS 659A.820.

13 (b) A civil action under ORS 659A.885 alleging a violation of ORS 243.323, 659A.030, 659A.082,  
14 659A.112 or 659A.370 must be commenced not later than five years after the occurrence of the al-  
15 leged violation.

16 (2) A person who has filed a complaint under ORS 659A.820 must commence a civil action under  
17 ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880.  
18 This subsection does not apply to a complainant alleging an unlawful practice under ORS 659A.145  
19 or 659A.421 or discrimination under federal housing law.

20 (3) A civil action alleging a violation of ORS 659A.145 or 659A.421 must be commenced not later  
21 than two years after the occurrence or the termination of the unlawful practice, or within two years  
22 after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs  
23 last. The two-year period shall not include any time during which an administrative proceeding was  
24 pending with respect to the unlawful practice.

25 (4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS  
26 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful prac-  
27 tice.

28 (5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS  
29 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a  
30 public body as defined in ORS 30.260.

31 (6) Notwithstanding ORS 30.275 (9):

32 (a) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any  
33 officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employ-  
34 ment practice other than a violation of ORS 243.323, 659A.030, 659A.082, 659A.112 or 659A.370 must  
35 be commenced within one year after the occurrence of the unlawful employment practice unless a  
36 complaint has been timely filed under ORS 659A.820.

37 (b) A civil action under ORS 659A.885 alleging a violation of ORS 659A.030, 659A.082, 659A.112  
38 or 659A.370 must be commenced not later than five years after the occurrence of the alleged vio-  
39 lation unless a complaint has been timely filed under ORS 659A.820.

40 (c) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any  
41 officer, employee or agent of a public body as defined in ORS 30.260, alleging a violation of ORS  
42 243.323, 659A.030, 659A.082 or 659A.112 must be commenced not later than five years after the oc-  
43 currence of the alleged violation unless a complaint has been timely filed under ORS 659A.820.

44 (7) For the purpose of time limitations, a compensation practice that is unlawful under ORS  
45 652.220 occurs each time compensation is paid under a discriminatory compensation decision or

1 other practice.

2 (8) Notwithstanding ORS 30.275 [(2)(b)] (2)(c), notice of claim against a public body under ORS  
3 652.220 or 659A.355 must be given within 300 days of discovery of the alleged loss or injury.

4 **SECTION 7. Sections 8, 9 and 11 of this 2023 Act are added to and made a part of ORS**  
5 **408.225 to 408.237.**

6 **SECTION 8. For a civil claim alleging a violation of ORS 408.230 or 408.237:**

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

8 (2) A prevailing plaintiff is entitled to recover noneconomic damages, as defined in ORS  
9 31.705; and

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

11 **SECTION 9. (1) The Department of Veterans' Affairs shall establish a program, as de-**  
12 **scribed in this section, for investigation and nonbinding arbitration of claims for violations**  
13 **of ORS 408.230 or 408.237.**

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

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

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

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

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

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

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

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

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

36 **SECTION 10. (1) Section 9 of this 2023 Act becomes operative on July 1, 2024.**

37 (2) The Department of Veterans' Affairs may take any action before the operative date  
38 specified in subsection (1) of this section that is necessary for the department to exercise,  
39 on and after the operative date specified in subsection (1) of this section, all of the duties,  
40 functions and powers conferred on the department by section 9 of this 2023 Act.

41 **SECTION 11. (1) A public employer shall conduct, or cause to be conducted, annual**  
42 **training on the requirements of ORS 408.230 and 408.237.**

43 (2) A public employer may submit training materials to the Department of Veterans'  
44 Affairs for approval. The department shall approve the materials if the department finds that  
45 the materials accurately convey the requirements of ORS 408.230 and 408.237 and are likely

1 **to improve compliance with those requirements.**

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

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