

Senate Bill 428

Sponsored by Senator BONHAM (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**.

Modifies pay equity requirements for employers. Removes certain provisions relating to obligations, rights and remedies under pay equity laws.

Makes conforming amendments.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the repeal of certain provisions related to pay equity; amending ORS 652.210, 652.220,
3 652.230, 659A.870, 659A.875 and 659A.885 and section 1, chapter 39, Oregon Laws 2022; repealing
4 ORS 652.235 and 659A.357 and section 13, chapter 197, Oregon Laws 2017; and declaring an
5 emergency.

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

7 **SECTION 1.** ORS 652.210, as amended by sections 1 and 2, chapter 23, Oregon Laws 2022, is
8 amended to read:

9 652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

10 [(1)(a) "*Compensation*" includes wages, salary, bonuses, benefits, fringe benefits and equity-based
11 compensation.]

12 [(b) "*Compensation*" does not include vaccine incentives.]

13 [(2)] (1) "Employee" means any individual who, otherwise than as a copartner of the employer,
14 as an independent contractor or as a participant in a work training program administered under the
15 state or federal assistance laws, renders personal services wholly or partly in this state to an em-
16 ployer who pays or agrees to pay such individual at a fixed rate. However, when services are ren-
17 dered only partly in this state, an individual is not an employee unless the contract of employment
18 of the employee has been entered into, or payments thereunder are ordinarily made or to be made,
19 within this state.

20 [(3)(a)] (2)(a) "Employer" means any person employing one or more employees, including the
21 State of Oregon or any political subdivision thereof or any county, city, district, authority, public
22 corporation or entity and any of their instrumentalities organized and existing under law or charter.

23 (b) "Employer" does not [include] **mean** the federal government.

24 [(4) "*Equal-pay analysis*" means an evaluation process to assess and correct wage disparities
25 among employees who perform work of comparable character.]

26 [(5) "*Gender identity*" has the meaning given that term in ORS 174.100.]

27 [(6) "*Protected class*" means a group of persons distinguished by race, color, religion, sex, sexual
28 orientation, gender identity, national origin, marital status, veteran status, disability or age.]

29 [(7) "*Public health emergency*" means:]

30 [(a) A public health emergency declared under ORS 433.441.]

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 ***[(b) An emergency declared under ORS 401.165 if related to a public health emergency as defined***
 2 ***in ORS 433.442.]***

3 ***[(8)] (3) “Rate” with reference to wages means:***

4 ***(a) The basis of compensation for services by an employee for an employer; and***

5 ***(b) Compensation based on the time spent in the performance of the services, on the number of***
 6 ***operations accomplished or on the quantity produced or handled.***

7 ***[(9) “Sexual orientation” has the meaning given that term in ORS 174.100.]***

8 ***[(10) “System” means a consistent and verifiable method in use at the time that a violation is al-***
 9 ***leged under ORS 652.220.]***

10 ***[(11)] (4) “Unpaid wages” means the difference between the wages actually paid to an employee***
 11 ***and the wages required under ORS 652.220 to be paid to the employee.***

12 ***[(12) “Vaccine incentives” means monetary or nonmonetary incentives, including but not limited to***
 13 ***additional paid time off or protected time off from work provided by employers to employees who have***
 14 ***been immunized against infectious diseases for which a public health emergency has been declared.]***

15 ***[(13) “Veteran status” means an individual is a veteran as defined in ORS 408.225.]***

16 ***[(14)] (5) “Wages” means all compensation for performance of service by an employee for an***
 17 ***employer, whether paid by the employer or another person, or paid in cash or any medium other***
 18 ***than cash.***

19 ***[(15) “Working conditions” includes work environment, hours, time of day, physical surroundings***
 20 ***and potential hazards encountered by an employee.]***

21 ***[(16) “Work of comparable character” means work that requires substantially similar knowledge,***
 22 ***skill, effort, responsibility and working conditions in the performance of work, regardless of job de-***
 23 ***scription or job title.]***

24 **SECTION 2. ORS 652.220 is amended to read:**

25 ***652.220. (1) [It is an unlawful employment practice under ORS chapter 659A for an employer to]***

26 ***An employer may not:***

27 ***(a) In any manner discriminate between [employees on the basis of a protected class] the sexes***
 28 ***in the payment of wages [or other compensation] for work of comparable character, the perform-***
 29 ***ance of which requires comparable skills.***

30 ***(b) Pay wages [or other compensation] to any employee at a rate [greater] less than that at which***
 31 ***the employer pays wages [or other compensation] to employees of [a protected class] the opposite***
 32 ***sex for work of comparable character, the performance of which requires comparable skills.***

33 ***[(c) Screen job applicants based on current or past compensation.]***

34 ***[(d) Determine compensation for a position based on current or past compensation of a prospective***
 35 ***employee. This paragraph is not intended to prevent an employer from considering the compensation***
 36 ***of a current employee of the employer during a transfer, move or hire of the employee to a new position***
 37 ***with the same employer.]***

38 ***[(2) Notwithstanding subsection (1) of this section:]***

39 ***[(a) An employer may pay employees for work of comparable character at different compensation***
 40 ***levels if all of the difference in compensation levels is based on a bona fide factor that is related to the***
 41 ***position in question and is based on:]***

42 ***[(A) A seniority system;]***

43 ***[(B) A merit system;]***

44 ***[(C) A system that measures earnings by quantity or quality of production, including piece-rate***
 45 ***work;]***

1 *[(D) Workplace locations;]*

2 *[(E) Travel, if travel is necessary and regular for the employee;]*

3 *[(F) Education;]*

4 *[(G) Training;]*

5 *[(H) Experience; or]*

6 *[(I) Any combination of the factors described in this paragraph, if the combination of factors ac-*
 7 *counts for the entire compensation differential.]*

8 *[(b) An employer may pay employees for work of comparable character at different compensation*
 9 *levels on the basis of one or more of the factors listed in paragraph (a) of this subsection that are*
 10 *contained in a collective bargaining agreement.]*

11 **(2) Subsection (1) of this section does not apply where:**

12 **(a) Payment is made pursuant to a seniority or merit system which does not discriminate**
 13 **on the basis of sex.**

14 **(b) A differential in wages between employees is based in good faith on factors other than**
 15 **sex.**

16 (3) An employer may not in any manner discriminate in the payment of wages [*or other com-*
 17 *pen-sation]* against any employee because the employee has filed a complaint under ORS 659A.820
 18 or in a proceeding under ORS 652.210 to 652.235, [*or 659A.885*] or has testified, or is about to testify,
 19 or because the employer believes that the employee may testify, in any investigation or proceedings
 20 pursuant to ORS 652.210 to 652.235[,] **or** 659A.830, [*or 659A.885*] or in a criminal action pursuant to
 21 ORS 652.210 to 652.235.

22 *[(4) An employer may not reduce the compensation level of an employee to comply with the pro-*
 23 *visions of this section.]*

24 *[(5) It is not a violation of this section for an employer to pay a different level of compensation to*
 25 *an employee who:]*

26 *[(a) Pursuant to a claim for a compensable injury under ORS chapter 656, receives wages for*
 27 *modified work; or]*

28 *[(b) As a result of a medical condition, is temporarily performing modified work that is:]*

29 *[(A) Authorized by a medical professional licensed under ORS chapter 677; or]*

30 *[(B) Requested by the employee and authorized by the employer in a manner that does not dis-*
 31 *criminate against employees on the basis of a protected class.]*

32 *[(6) Amounts owed to an employee because of the failure of the employer to comply with the re-*
 33 *quirements of this section are unpaid wages.]*

34 *[(7) An employee who asserts a violation under this section may file a complaint with the Com-*
 35 *missioner of the Bureau of Labor and Industries under ORS 659A.820, a civil action under ORS*
 36 *652.230 or a civil action under 659A.885.]*

37 *[(8) An employer shall post a notice of the requirements of this section in every establishment where*
 38 *employees work. The Bureau of Labor and Industries shall make available to employers a template that*
 39 *meets the required notice provisions of this section.]*

40 **SECTION 3.** ORS 652.230 is amended to read:

41 652.230. (1) Any employee whose compensation is at a rate that is in violation of ORS 652.220
 42 shall have a right of action against the employer for the recovery of:

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

45 (b) An additional amount as liquidated damages equal to the amount referred to in paragraph

1 (a) of this subsection.

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

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

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

11 *[(5) For the purpose of time limitations, a compensation practice that is unlawful under ORS
12 652.220 occurs each time compensation is paid pursuant to a discriminatory compensation decision or
13 other practice.]*

14 *[(6) An action under this section alleging a violation of ORS 652.220 must be commenced within
15 one year after the occurrence of the unlawful practice.]*

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

18 **SECTION 4.** ORS 659A.870 is amended to read:

19 659A.870. (1) Except as provided in this section, the filing of a civil action by a person in circuit
20 court pursuant to ORS 659A.885, or in federal district court under applicable federal law, waives the
21 right of the person to file a complaint with the Commissioner of the Bureau of Labor and Industries
22 under ORS 659A.820 with respect to the matters alleged in the civil action.

23 (2) The filing of a complaint under ORS 659A.820 is not a condition precedent to the filing of
24 any civil action.

25 (3) If a person files a civil action alleging an unlawful practice under ORS 659A.145 or 659A.421
26 or discrimination under federal housing law, the filing does not constitute an election of remedies
27 or a waiver of the right of the person to file a complaint with the commissioner under ORS 659A.820,
28 but the commissioner shall dismiss the complaint upon the commencement of a trial in the civil
29 action.

30 *[(4) If a person files a complaint under ORS 659A.820 alleging a violation of ORS 652.220 and the
31 commissioner issues a final order in favor of the complainant, the commissioner shall require the em-
32 ployer to pay an award of back pay for the lesser of:]*

33 *[(a) The two-year period immediately preceding the filing of the complaint plus the period of time
34 commencing with the date on which the complaint is filed and ending on the date on which the com-
35 missioner issued the order; or]*

36 *[(b) The period of time the complainant was subject to an unlawful wage differential by the em-
37 ployer plus the period of time commencing with the date on which the complaint is filed and ending
38 on the date on which the commissioner issued the order.]*

39 *[(5)(a)]* (4)(a) The filing of a complaint under ORS 659A.820 by a person alleging an unlawful
40 practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not
41 constitute an election of remedies or a waiver of the right of the person to file a civil action with
42 respect to the same matters, but a civil action may not be filed after a hearing officer has com-
43 menced a hearing on the record under this chapter with respect to the allegations of the complaint.

44 (b) A respondent or complainant named in a complaint filed under ORS 659A.820 or 659A.825
45 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal

1 housing law may elect to have the matter heard in circuit court under ORS 659A.885. The election
 2 must be made in writing and received by the commissioner within 20 days after service of formal
 3 charges under ORS 659A.845. If the respondent or the complainant makes the election, the commis-
 4 sioner shall pursue the matter in court on behalf of the complainant at no cost to the complainant.

5 (c) If the Attorney General or the commissioner files a complaint under ORS 659A.825, the At-
 6 torney General or the commissioner may elect to have the matter heard in circuit court under ORS
 7 659A.885.

8 (d) If the respondent, the complainant, the Attorney General or the commissioner do not elect
 9 to have the matter heard in circuit court, the commissioner may conduct a hearing on the formal
 10 charges under ORS 659A.850.

11 [(6)] (5) A person who has filed a complaint under ORS 659A.820 need not receive a 90-day no-
 12 tice under ORS 659A.880 before commencing a civil action that is based on the same matters alleged
 13 in the complaint filed with the commissioner.

14 [(7)] (6) Except as provided in subsections (3) and [(5)] (4) of this section, this section does not
 15 limit or alter in any way the authority or power of the commissioner, or limit or alter in any way
 16 any of the rights of an individual complainant, until and unless the complainant commences a civil
 17 action.

18 **SECTION 5.** ORS 659A.875 is amended to read:

19 659A.875. (1) Except as provided in subsection (2) of this section:

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

24 (b) A civil action under ORS 659A.885 alleging a violation of ORS 243.323, 659A.030, 659A.082,
 25 659A.112 or 659A.370 must be commenced not later than five years after the occurrence of the al-
 26 leged violation.

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

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

36 (4) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS
 37 659A.403 or 659A.406 must be commenced within one year of the occurrence of the unlawful prac-
 38 tice.

39 (5) The notice of claim required under ORS 30.275 must be given in any civil action under ORS
 40 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a
 41 public body as defined in ORS 30.260.

42 (6) Notwithstanding ORS 30.275 (9):

43 (a) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any
 44 officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employ-
 45 ment practice other than a violation of ORS 243.323, 659A.030, 659A.082, 659A.112 or 659A.370 must

1 be commenced within one year after the occurrence of the unlawful employment practice unless a
2 complaint has been timely filed under ORS 659A.820.

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

6 (c) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any
7 officer, employee or agent of a public body as defined in ORS 30.260, alleging a violation of ORS
8 243.323, 659A.030, 659A.082 or 659A.112 must be commenced not later than five years after the oc-
9 currence of the alleged violation unless a complaint has been timely filed under ORS 659A.820.

10 *[(7) For the purpose of time limitations, a compensation practice that is unlawful under ORS*
11 *652.220 occurs each time compensation is paid under a discriminatory compensation decision or other*
12 *practice.]*

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

15 **SECTION 6.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
16 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
17 Oregon Laws 2019, section 13, chapter 701, Oregon Laws 2019, section 45, chapter 367, Oregon Laws
18 2021, and section 8, chapter 99, Oregon Laws 2022, is amended to read:

19 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
20 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
21 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
22 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
23 court may order back pay in an action under this subsection only for the two-year period imme-
24 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
25 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
26 year period immediately preceding the filing of the action. In any action under this subsection, the
27 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
28 cept as provided in subsection (3) of this section:

29 (a) The judge shall determine the facts in an action under this subsection; and

30 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
31 review the judgment pursuant to the standard established by ORS 19.415 (3).

32 (2) An action may be brought under subsection (1) of this section alleging a violation of:

33 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574,
34 652.020, [652.220,] 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852,
35 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to
36 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,
37 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
38 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, [659A.357,] 659A.370 or 659A.421 or
39 section 5, chapter 99, Oregon Laws 2022; or

40 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

41 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
42 243.323, [652.220, 652.355,] 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
43 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to
44 659A.262, 659A.290, 659A.318, 659A.343, [659A.355, 659A.357,] 659A.370 or 659A.421:

45 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,

1 compensatory damages or \$200, whichever is greater, and punitive damages;

2 (b) At the request of any party, the action shall be tried to a jury;

3 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
4 ment pursuant to the standard established by ORS 19.415 (1); and

5 (d) Any attorney fee agreement shall be subject to approval by the court.

6 *[(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vio-*
7 *lation of ORS 652.220, the court may award punitive damages if:]*

8 *[(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted*
9 *with malice or acted with willful and wanton misconduct; or]*

10 *[(b) An employer was previously adjudicated in a proceeding under this section or under ORS*
11 *659A.850 for a violation of ORS 652.220.]*

12 *[(5)] (4)* In any action under subsection (1) of this section alleging a violation of ORS 653.060
13 or 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this
14 section, compensatory damages or \$200, whichever is greater.

15 *[(6)] (5)* In any action under subsection (1) of this section alleging a violation of ORS 171.120,
16 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
17 of this section, compensatory damages or \$250, whichever is greater.

18 *[(7)] (6)* In any action under subsection (1) of this section alleging a violation of ORS 10.090 or
19 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
20 a civil penalty in the amount of \$720.

21 *[(8)] (7)* Any individual against whom any distinction, discrimination or restriction on account
22 of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status or
23 age, if the individual is 18 years of age or older, has been made by any place of public accommo-
24 dation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by
25 any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action
26 against the operator or manager of the place, the employee or person acting on behalf of the place
27 or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an
28 action under this subsection:

29 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
30 compensatory and punitive damages;

31 (b) The operator or manager of the place of public accommodation, the employee or person
32 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
33 damages awarded in the action;

34 (c) At the request of any party, the action shall be tried to a jury;

35 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

36 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
37 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
38 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
39 and

40 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
41 judgment pursuant to the standard established by ORS 19.415 (1).

42 *[(9)] (8)* When the commissioner or the Attorney General has reasonable cause to believe that
43 a person or group of persons is engaged in a pattern or practice of resistance to the rights protected
44 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
45 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner

1 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
 2 manner as a person or group of persons may file a civil action under this section. In a civil action
 3 filed under this subsection, the court may assess against the respondent, in addition to the relief
 4 authorized under subsections (1) and (3) of this section, a civil penalty:

5 (a) In an amount not exceeding \$50,000 for a first violation; and

6 (b) In an amount not exceeding \$100,000 for any subsequent violation.

7 ~~[(10)]~~ (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145
 8 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 9 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 10 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 11 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 12 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 13 appealing an adverse decision of the trial court.

14 ~~[(11)]~~ (10) In an action under subsection (1) or ~~[(9)]~~ (8) of this section alleging a violation of ORS
 15 659A.145 or 659A.421 or discrimination under federal housing law:

16 (a) "Aggrieved person" includes a person who believes that the person:

17 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

18 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
 19 occur.

20 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
 21 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
 22 tifies that the case is of general public importance. The court may allow an intervenor prevailing
 23 party costs and reasonable attorney fees at trial and on appeal.

24 **SECTION 7.** ORS 659A.885, as amended by section 10, chapter 197, Oregon Laws 2017, section
 25 6, chapter 139, Oregon Laws 2019, section 8, chapter 343, Oregon Laws 2019, section 8, chapter 463,
 26 Oregon Laws 2019, section 58, chapter 700, Oregon Laws 2019, section 13, chapter 701, Oregon Laws
 27 2019, section 46, chapter 367, Oregon Laws 2021, and section 9, chapter 99, Oregon Laws 2022, is
 28 amended to read:

29 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 30 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 31 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 32 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 33 court may order back pay in an action under this subsection only for the two-year period imme-
 34 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 35 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 36 year period immediately preceding the filing of the action. In any action under this subsection, the
 37 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 38 cept as provided in subsection (3) of this section:

39 (a) The judge shall determine the facts in an action under this subsection; and

40 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
 41 review the judgment pursuant to the standard established by ORS 19.415 (3).

42 (2) An action may be brought under subsection (1) of this section alleging a violation of:

43 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 243.323, 408.230, 408.237 (2), 475C.285, 476.574,
 44 652.020, ~~[652.220,]~~ 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 657B.060 and
 45 657B.070, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,

1 659A.103 to 659A.145, 659A.147, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,
 2 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300,
 3 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.343, 659A.355, [659A.357,] 659A.370 or
 4 659A.421 or section 5, chapter 99, Oregon Laws 2022; or

5 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

6 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 7 243.323, [652.220, 652.355,] 653.547, 653.549, 657B.060 and 657B.070, 659.852, 659A.030, 659A.040,
 8 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
 9 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.343, [659A.355, 659A.357,] 659A.370 or
 10 659A.421:

11 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 12 compensatory damages or \$200, whichever is greater, and punitive damages;

13 (b) At the request of any party, the action shall be tried to a jury;

14 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
 15 ment pursuant to the standard established by ORS 19.415 (1); and

16 (d) Any attorney fee agreement shall be subject to approval by the court.

17 [(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vio-
 18 lation of ORS 652.220, the court may award punitive damages if:]

19 [(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted
 20 with malice or acted with willful and wanton misconduct; or]

21 [(b) An employer was previously adjudicated in a proceeding under this section or under ORS
 22 659A.850 for a violation of ORS 652.220.]

23 [(5)] (4) In any action under subsection (1) of this section alleging a violation of ORS 653.060
 24 or 659A.147, the court may award, in addition to the relief authorized under subsection (1) of this
 25 section, compensatory damages or \$200, whichever is greater.

26 [(6)] (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120,
 27 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 28 of this section, compensatory damages or \$250, whichever is greater.

29 [(7)] (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or
 30 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section,
 31 a civil penalty in the amount of \$720.

32 [(8)] (7) Any individual against whom any distinction, discrimination or restriction on account
 33 of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status or
 34 age, if the individual is 18 years of age or older, has been made by any place of public accommo-
 35 dation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by
 36 any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action
 37 against the operator or manager of the place, the employee or person acting on behalf of the place
 38 or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an
 39 action under this subsection:

40 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 41 compensatory and punitive damages;

42 (b) The operator or manager of the place of public accommodation, the employee or person
 43 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
 44 damages awarded in the action;

45 (c) At the request of any party, the action shall be tried to a jury;

1 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

2 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
3 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
4 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
5 and

6 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
7 judgment pursuant to the standard established by ORS 19.415 (1).

8 [(9)] (8) When the commissioner or the Attorney General has reasonable cause to believe that
9 a person or group of persons is engaged in a pattern or practice of resistance to the rights protected
10 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
11 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
12 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
13 manner as a person or group of persons may file a civil action under this section. In a civil action
14 filed under this subsection, the court may assess against the respondent, in addition to the relief
15 authorized under subsections (1) and (3) of this section, a civil penalty:

16 (a) In an amount not exceeding \$50,000 for a first violation; and

17 (b) In an amount not exceeding \$100,000 for any subsequent violation.

18 [(10)] (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145
19 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
20 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
21 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
22 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
23 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
24 appealing an adverse decision of the trial court.

25 [(11)] (10) In an action under subsection (1) or [(9)] (8) of this section alleging a violation of ORS
26 659A.145 or 659A.421 or discrimination under federal housing law:

27 (a) "Aggrieved person" includes a person who believes that the person:

28 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

29 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to
30 occur.

31 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
32 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
33 tifies that the case is of general public importance. The court may allow an intervenor prevailing
34 party costs and reasonable attorney fees at trial and on appeal.

35 **SECTION 8.** Section 1, chapter 39, Oregon Laws 2022, is amended to read:

36 **Sec. 1.** (1) As used in this section:

37 (a) "Behavioral health care" means services and supports for individuals with mental health or
38 substance use disorders.

39 (b) "Provider" means:

40 (A) A mental health or substance use disorder crisis line provider;

41 (B) An Urban Indian Health Program in this state;

42 (C) A Tribal Behavioral Health Program grant recipient in this state; or

43 (D) An entity:

44 (i) That provides behavioral health care to adults or youth, of which at least 50 percent are
45 uninsured, enrolled in the state medical assistance program or enrolled in Medicare;

- 1 (ii) That is not a hospital; and
- 2 (iii) That:
- 3 (I) Has been certified by the Oregon Health Authority to provide behavioral health care;
- 4 (II) Provides behavioral health care through a program contracting with or administered by the
- 5 Oregon Youth Authority;
- 6 (III) Provides behavioral health rehabilitation services through a program contracting with or
- 7 administered by the Department of Human Services;
- 8 (IV) Is a licensed opioid treatment program;
- 9 (V) Provides withdrawal management services; or
- 10 (VI) Is a sobering center.

- 11 (2) The Oregon Health Authority shall administer a program to distribute grants to providers.
- 12 (3) A provider may use a grant under subsection (2) of this section to:
- 13 (a) Increase compensation for the provider’s staff;
- 14 (b) Pay a retention bonus to an individual on the provider’s staff if necessary to prevent the
- 15 individual from leaving the provider’s employ; or
- 16 (c) Hire new staff and provide a hiring bonus, if necessary to recruit new staff.
- 17 (4) A provider must use at least 75 percent of the grant on direct compensation to the provider’s
- 18 staff in the form of wages, benefits and bonuses. The remainder may be spent on programs or other
- 19 noncompensatory means to increase workforce retention or recruitment.

20 *[(5) Notwithstanding the definition of “compensation” in ORS 652.210, a hiring or retention bonus*
 21 *paid under subsection (3) of this section is not a violation of ORS 652.220.]*

22 [(6)] (5) Providers must report to the Oregon Health Authority, in the form and manner pre-
 23 scribed by the authority, on how the grants were spent and whether the expenditures resulted in
 24 improved compensation for staff.

25 [(7)] (6) Each grant shall be a percentage of the funds available under section 5 *[of this 2022*
 26 *Act]*, **chapter 39, Oregon Laws 2022**, that represents a provider’s staffing costs, for both filled and
 27 vacant positions, relative to the staffing costs of all providers in this state. Applicants for grants
 28 must state in the application how the grant will be spent in accordance with subsection (3) of this
 29 section.

30 [(8)] (7) Any portion of a grant that is not spent as provided in this section constitutes an
 31 overpayment that the Oregon Health Authority shall recover from a provider.

32 [(9)] (8) The Oregon Health Authority shall adopt rules necessary to carry out the provisions
 33 of this section.

34 **SECTION 9. (1) ORS 652.235 and 659A.357 are repealed.**
 35 **(2) Section 13, chapter 197, Oregon Laws 2017, is repealed.**
 36 **SECTION 10. This 2023 Act being necessary for the immediate preservation of the public**
 37 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
 38 **on its passage.**

39 _____