

Senate Bill 907

Sponsored by Senator PATTERSON, Representatives HUDSON, NELSON, ANDERSEN; Representatives CHAICHI, GAMBIA, NOSSE, WALTERS

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 employee with right to refuse to perform task assigned by employer under certain circumstances. Protects employee against disciplinary action for exercising right.

Prohibits employer from retaliating or discriminating against employee for invoking right.

Allows employee to use sick leave to cover period when employee is not working due to employee's exercising right to refuse to perform assigned task.

A BILL FOR AN ACT

Relating to employees' rights to refuse to perform certain work assignments; creating new provisions; and amending ORS 653.616 and 654.062.

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

SECTION 1. (1) Any employee, acting in good faith, may refuse to perform a task assigned by an employer in any of the following circumstances:

(a)(A) The employee has a reasonable apprehension that the performance of the assigned task would result in serious injury or impairment to the health and safety of the employee or other employees;

(B) Insofar as it is reasonably practicable, the employee or any other employee has communicated or otherwise attempted to notify the employer of the safety or health risk; and

(C) The employer has failed to provide a response that is reasonably calculated to allay the employee's concerns regarding the safety or health risk associated with the assigned task;

(b) The performance of the assigned task would cause the employee to engage in illegal or criminal activity; or

(c) The performance of the assigned task would cause the employee to report to or remain at a worksite during an evacuation due to a major disaster or emergency.

(2) For purposes of this section, an employee shall be considered to be acting in good faith if, under the same circumstances, a reasonable person would conclude that the performance of the assigned task would result in serious injury or impairment to the health and safety of the employee or cause the employee to engage in illegal or criminal activity.

(3) An employee may use sick time earned under ORS 653.606 or any other paid or unpaid leave available to the employee to cover a period for which the employee has refused to perform an assigned task provided that the employee:

(a) Has refused to perform the assigned task in accordance with this section; and

(b) Has not been assigned a different task, the performance of which would not pose a risk to the health and safety of the employee or expose the employee to a risk of civil or

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 **criminal liability.**

2 **(4) An employee's refusal to perform an assigned task in accordance with this section**
3 **shall not be grounds for any disciplinary action, for dismissal or suspension from employ-**
4 **ment or for any other adverse employment action.**

5 **SECTION 2.** ORS 654.062 is amended to read:

6 654.062. (1) Every employee should notify the employer of any violation of law, regulation or
7 standard pertaining to safety and health in the place of employment when the violation comes to the
8 knowledge of the employee.

9 (2) However, any employee or representative of the employee may complain to the Director of
10 the Department of Consumer and Business Services or any authorized representatives of the director
11 of any violation of law, regulation or standard pertaining to safety and health in the place of em-
12 ployment, whether or not the employee also notifies the employer.

13 (3) Upon receiving any employee complaint, the director shall make inquiries, inspections and
14 investigations that the director considers reasonable and appropriate. When an employee or repre-
15 sentative of the employee has complained in writing of an alleged violation and no resulting citation
16 is issued to the employer, the director shall furnish to the employee or representative of the em-
17 ployee, upon written request, a statement of reasons for the decision.

18 (4) The director shall establish procedures for keeping confidential the identity of any employee
19 who requests protection in writing. When a request has been made, neither a written complaint from
20 an employee, or representative of the employee, nor a memorandum containing the identity of a
21 complainant may be disclosed under ORS 192.311 to 192.478.

22 (5) It is an unlawful employment practice for any person to bar or discharge from employment
23 or otherwise discriminate against any employee or prospective employee because the employee or
24 prospective employee has:

25 (a) Opposed any practice forbidden by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to
26 654.780;

27 (b) Made any complaint or instituted or caused to be instituted any proceeding under or related
28 to ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, or has testified or is about to
29 testify in any such proceeding;

30 (c) Exercised on behalf of the employee, prospective employee or others any right afforded by
31 ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780; [or]

32 (d) In good faith reported an assault that occurred on the premises of a health care employer
33 as defined in ORS 654.412 or in the home of a patient receiving home health care services[.]; **or**

34 **(e) Exercised the right to refuse to perform a task assigned by an employer as afforded**
35 **by section 1 of this 2023 Act.**

36 (6)(a) Any employee or prospective employee alleging to have been barred or discharged from
37 employment or otherwise discriminated against in compensation, or in terms, conditions or privileges
38 of employment, in violation of subsection (5) of this section may, within one year after the employee
39 or prospective employee has reasonable cause to believe that the violation has occurred, file a
40 complaint with the Commissioner of the Bureau of Labor and Industries alleging discrimination un-
41 der the provisions of ORS 659A.820. Upon receipt of the complaint the commissioner shall process
42 the complaint under the procedures, policies and remedies established by ORS chapter 659A and the
43 policies established by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 in the same
44 way and to the same extent that the complaint would be processed if the complaint involved
45 allegations of unlawful employment practices under ORS 659A.030 (1)(f).

1 (b) Within 90 days after receipt of a complaint filed under this subsection, the commissioner
2 shall notify the complainant of the commissioner's determination.

3 (c) The affected employee or prospective employee may bring a civil action in any circuit court
4 of the State of Oregon against any person alleged to have violated subsection (5) of this section. The
5 civil action must be commenced within one year after the employee or prospective employee has
6 reasonable cause to believe a violation has occurred, unless a complaint has been timely filed under
7 ORS 659A.820.

8 (d) The commissioner or the circuit court may order all appropriate relief including rehiring or
9 reinstatement to the employee's former position with back pay.

10 (7)(a) In any action brought under subsection (6) of this section, there is a rebuttable
11 presumption that a violation of subsection (5) of this section has occurred if a person bars or dis-
12 charges an employee or prospective employee from employment or otherwise discriminates against
13 an employee or prospective employee within 60 days after the employee or prospective employee has
14 engaged in any of the protected activities described in subsection (5)(a) to [(d)] (e) of this section.
15 The person may rebut the presumption that a violation of subsection (5) of this section has occurred
16 by a demonstration of a preponderance of the evidence.

17 (b) If a person bars or discharges an employee or prospective employee from employment or
18 otherwise discriminates against the employee or prospective employee more than 60 days after the
19 employee or prospective employee has engaged in any of the protected activities described under
20 subsection (5)(a) to [(d)] (e) of this section, such action does not create a presumption in favor of
21 or against finding that a violation of subsection (5) of this section has occurred. Where such action
22 has occurred more than 60 days after the protected activity, this subsection does not modify any
23 existing rule of case law relating to the proximity of time between a protected activity and an ad-
24 verse employment action. The burden of proof shall be on the employee or prospective employee to
25 demonstrate by a preponderance of the evidence that a violation occurred.

26 **SECTION 3.** ORS 653.616 is amended to read:

27 653.616. An employee may use sick time earned under ORS 653.606:

28 (1) For an employee's mental or physical illness, injury or health condition, need for medical
29 diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for
30 preventive medical care.

31 (2) For care of a family member with a mental or physical illness, injury or health condition,
32 care of a family member who needs medical diagnosis, care, or treatment of a mental or physical
33 illness, injury or health condition or care of a family member who needs preventive medical care.

34 (3) Notwithstanding ORS 659A.153, for any other purpose specified in ORS 659A.159.

35 (4) For a purpose specified in ORS 659A.272, notwithstanding ORS 659A.270 (1).

36 (5) To donate accrued sick time to another employee if the other employee uses the donated sick
37 time for a purpose specified in this section and the employer has a policy that allows an employee
38 to donate sick time to a coworker for a purpose specified in this section.

39 (6) In the event of a public health emergency. For purposes of this subsection, a public health
40 emergency includes, but is not limited to:

41 (a) Closure of the employee's place of business, or the school or place of care of the employee's
42 child, by order of a public official due to a public health emergency;

43 (b) A determination by a lawful public health authority or by a health care provider that the
44 presence of the employee or the family member of the employee in the community would jeopardize
45 the health of others, such that the employee must provide self care or care for the family member;

1 or

2 (c) The exclusion of the employee from the workplace under any law or rule that requires the
3 employer to exclude the employee from the workplace for health reasons.

4 **(7) To cover a period in which an employee has refused to perform a task assigned by**
5 **an employer in accordance with section 1 of this 2023 Act.**

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