

# D R A F T

## SUMMARY

Modifies law regarding requirement that public employer grant preference to veteran or disabled veteran in selection process for civil service position or eligibility list for civil service position. Limits eligibility for preference to veteran who applies within 10 years of discharge or release from service in Armed Forces of United States. Requires public employer to interview veteran who shows evidence of requested skills, required skills and transferable skills and to provide written explanation if interview is not conducted.

## A BILL FOR AN ACT

Relating to preferences for veterans in public employment selection processes; creating new provisions; amending ORS 408.225, 408.230, 408.237 and 659A.885; and repealing ORS 408.235.

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

**SECTION 1.** ORS 408.225 is amended to read:

408.225. (1) As used in ORS 408.225 to 408.237:

(a)(A) “Civil service position” means any position for which a hiring or promotion decision is made or required to be made based on the results of a merit based, competitive process that includes, but is not limited to, consideration of an applicant’s or employee’s relative ability, knowledge, experience and other skills.

(B) A “civil service position” need not be labeled a “civil service position.”

(b) “Combat zone” means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in

1 combat.

2 (c) "Disabled veteran" means a veteran who has a disability rating from  
3 the United States Department of Veterans Affairs, a veteran whose discharge  
4 or release from active duty was for a disability incurred or aggravated in the  
5 line of duty or a veteran who was awarded the Purple Heart for wounds re-  
6 ceived in combat.

7 (d) "Eligibility list" means a list of ranked eligible candidates for a  
8 civil service position who have become eligible for the position through  
9 a test or series of tests and who will be considered for the civil service  
10 position in ranked order.

11 [(d)] (e) "Honorable conditions" has the meaning given that term in rules  
12 adopted by the Department of Veterans' Affairs.

13 [(e)] (f) "Public employer" means a public body, as that term is defined  
14 in ORS 174.109, and any person authorized to act on behalf of the public  
15 body, with respect to control, management or supervision of any employee.

16 (g) "Requested skills" means attributes desired by a public employer  
17 in a candidate for a civil service position or for an eligibility list that  
18 are gained through knowledge or experience and that make a candi-  
19 date more competitive for a position when compared to other candi-  
20 dates for the same position who do not possess the requested skills at  
21 all or to the same degree, and that are reviewed and considered in  
22 determining the candidate's ranking in accordance with ORS 408.230.

23 (h) "Required skills" means attributes required by a public employer  
24 in a candidate for a civil service position or for an eligibility list that  
25 are gained through knowledge or experience, including but not limited  
26 to a minimum number of years of experience or education and re-  
27 quirements specific to the position such as certificates or licensure.

28 (i) "Transferable skills" means skills that a veteran has obtained,  
29 including military education or experience, that substantially relate  
30 to the civil service position for which the veteran is applying.

31 [(f)] (j) "Veteran" means a person who:

(A) Served on active duty with the Armed Forces of the United States:

(i) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and was discharged or released under honorable conditions;

(ii) For a period of more than 178 consecutive days beginning after January 31, 1955, and was discharged or released from active duty under honorable conditions;

(iii) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability;

(iv) For 178 days or less and was discharged or released from active duty under honorable conditions and has a disability rating from the United States Department of Veterans Affairs; or

(v) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions;

(B) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed Forces of the United States and was discharged or released from active duty under honorable conditions; or

(C) Is receiving a nonservice-connected pension from the United States Department of Veterans Affairs.

(2) As used in subsection [(1)(f)] (1)(j) of this section, “active duty” does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

**SECTION 2.** ORS 408.230 is amended to read:

408.230. (1) A public employer shall grant a preference to a veteran or disabled veteran who applies for a vacant civil service position or seeks promotion to a civil service position with a higher maximum salary rate and who:

(a)(A) Successfully completes an initial application screening or an application examination for the position; or

(B) Successfully completes a civil service test the employer administers

1 to establish eligibility for the position; *[and]*

2 (b) Meets the minimum qualifications and any special qualifications for  
3 the position; **and**

4 **(c) Applies for the position within 10 years after discharge or release**  
5 **from service in the Armed Forces of the United States.**

6 (2) The employer shall grant the preference in the following manner:

7 (a) For an initial application screening used to develop a list of persons  
8 for interviews, the employer shall add five preference points to a veteran's  
9 score and 10 preference points to a disabled veteran's score.

10 (b) For an application examination, given after the initial application  
11 screening, that results in a score, the employer shall add preference points  
12 to the total combined examination score without allocating the points to any  
13 single feature or part of the examination. The employer shall add five pref-  
14 erence points to a veteran's score and 10 preference points to a disabled  
15 veteran's score.

16 (c) For an application examination that consists of an interview, an  
17 evaluation of the veteran's performance, experience or training, a  
18 supervisor's rating or any other method of ranking an applicant that does  
19 not result in a score, the employer shall give a preference to the veteran or  
20 disabled veteran. An employer that uses an application examination of the  
21 type described in this paragraph shall devise and apply methods by which the  
22 employer gives *[special consideration]* **preference** in the employer's hiring  
23 decision to veterans and disabled veterans.

24 (3) Preferences of the type described in subsection (1) of this section are  
25 not a requirement that the public employer appoint a veteran or disabled  
26 veteran to a civil service position.

27 (4) A public employer shall appoint an otherwise qualified veteran or  
28 disabled veteran to a vacant civil service position if the results of a veteran's  
29 or disabled veteran's application examination, when combined with the  
30 veteran's or disabled veteran's preference, are equal to or higher than the  
31 results of an application examination for an applicant who is not a veteran

or disabled veteran.

(5) If a public employer does not appoint a veteran or disabled veteran to a vacant civil service position, upon written request of the veteran or disabled veteran, the employer, in writing, shall provide the employer's reasons for the decision not to appoint the veteran or disabled veteran to the position. The employer may base a decision not to appoint the veteran or disabled veteran solely on the veteran's or disabled veteran's merits or qualifications with respect to the vacant civil service position.

(6) Violation of this section is an unlawful employment practice.

(7) A veteran or disabled veteran claiming to be aggrieved by a violation of this section may file a verified written complaint with the Commissioner of the Bureau of Labor and Industries in accordance with ORS 659A.820.

**SECTION 3.** ORS 408.237 is amended to read:

408.237. (1) *[As used in this section:]*

*[(a) "Eligibility list" means a list of ranked eligible candidates for a civil service position who have become eligible for the position through a test or series of tests and who will be considered for the civil service position in ranked order.]*

*[(b) "Transferable skill" means a skill that a veteran has obtained through military education or experience that substantially relates, directly or indirectly, to the civil service position for which the veteran is applying.]* **Preference granted to veterans under ORS 408.230 shall be applied in accordance with this section and ORS 408.225 and 408.230.**

(2)(a) When an interview is a component of the selection process for a civil service position or for an eligibility list for a civil service position, a public employer shall interview each veteran **who, as determined by the public employer, shows sufficient evidence that the veteran has the requested skills, required skills and transferable skills for the civil service position or eligibility list.***[:]*

*[(a) Whom the public employer determines meets the minimum qualifications and special qualifications for the civil service position or eligibility list;*

and]

*[(b) Who submits application materials that the public employer determines show sufficient evidence that the veteran has the transferable skills required and requested by the public employer for the civil service position or eligibility list.]*

**(b) If a public employer conducts interviews under this subsection and does not interview a veteran who has applied for the civil service position or eligibility list, the public employer shall provide the veteran with a written explanation of the reason an interview with the veteran was not conducted. The explanation must set forth in detail the skills that the veteran lacked and what further evidence would have been required to show that the veteran has the requested skills, required skills or transferable skills.**

(3) A public employer is not required to comply with subsection (2) of this section if the employer conducts interviews only as part of the process of selecting a candidate for a civil service position from an eligibility list.

(4) A public employer may consult with the Oregon Military Department and the Department of Veterans' Affairs to determine whether certain military education or experience produces a transferable skill.

(5) The *[Department of Veterans' Affairs]* **Employment Department** shall provide training to veterans on how to show evidence of transferable skills in an application for a civil service position or eligibility list.

(6) Violation of subsection (2) of this section is an unlawful employment practice under ORS chapter 659A.

(7) A veteran claiming to be aggrieved by a violation of subsection (2) of this section may file a complaint under ORS 659A.820.

**SECTION 4.** ORS 659A.885 is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but

not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

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

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

(2) An action may be brought under subsection (1) of this section alleging a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 [(2)], 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 or ORS 653.547 and 653.549.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 or ORS 653.547 and 653.549:

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

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

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

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

(4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

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

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

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

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



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

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

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

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

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

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

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

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

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

(a) “Aggrieved person” includes a person who believes that the person:

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

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

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

**SECTION 5. ORS 408.235 is repealed.**

**SECTION 6. The amendments to ORS 408.225, 408.230, 408.237 and 659A.885 by sections 1 to 4 of this 2016 Act and the repeal of ORS 408.235 by section 5 of this 2016 Act apply to selection processes for civil service positions and eligibility lists for civil service positions undertaken by public employers on or after the effective date of this 2016 Act.**