

Chapter 659A

2009 EDITION

Unlawful Discrimination in Employment, Public Accommodations and Real Property Transactions; Administrative and Civil Enforcement

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DEFINITIONS

659A.001 Definitions. As used in this chapter:

(1) “Bureau” means the Bureau of Labor and Industries.

(2) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.

(3) “Employee” does not include any individual employed by the individual’s parents, spouse or child or in the domestic service of any person.

(4) “Employer” means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

(5) “Employment agency” includes any person undertaking to procure employees or opportunities to work.

(6)(a) “Familial status” means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

(A) A parent or another person having legal custody of the individual; or

(B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(b) “Familial status” includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(7) “Labor organization” includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(8) “National origin” includes ancestry.

(9) “Person” includes:

(a) One or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(b) A public body as defined in ORS 30.260.

(c) For purposes of ORS 659A.145 and 659A.421 and the application of any federal housing law, a fiduciary, mutual company, trust or unincorporated organization.

(10) “Respondent” means any person against whom a complaint or charge of an unlawful practice is filed with the commissioner or whose name has been added to

such complaint or charge pursuant to ORS 659A.835.

(11) “Unlawful employment practice” means a practice specifically denominated as an unlawful employment practice in this chapter. “Unlawful employment practice” includes a practice that is specifically denominated in another statute of this state as an unlawful employment practice and that is specifically made subject to enforcement under this chapter.

(12) “Unlawful practice” means any unlawful employment practice or any other practice specifically denominated as an unlawful practice in this chapter. “Unlawful practice” includes a practice that is specifically denominated in another statute of this state as an unlawful practice and that is specifically made subject to enforcement under this chapter, or a practice that violates a rule adopted by the commissioner for the enforcement of the provisions of this chapter. [2001 c.621 §1; 2008 c.36 §4]

PURPOSE AND POLICY**659A.003 Purpose of ORS chapter**

659A. The purpose of this chapter is to encourage the fullest utilization of the available workforce by removing arbitrary standards of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability as a barrier to employment of the inhabitants of this state, and to ensure the human dignity of all people within this state and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of unlawful discrimination of any kind based on race, color, religion, sex, sexual orientation, national origin, marital status, age, disability or familial status. To accomplish this purpose, the Legislative Assembly intends by this chapter to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability or familial status are based.

(2) An adequate remedy for persons aggrieved by certain acts of unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, disability or familial status, or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of unlawful discrimination through a procedure involving investigation, conference, conciliation and persuasion, to encourage the use in good faith of the machinery by all

parties to a complaint of unlawful discrimination and to discourage unilateral action that makes moot the outcome of final administrative or judicial determination on the merits of the complaint. [Formerly 659.022; 2005 c.22 §467; 2007 c.100 §2; 2007 c.903 §1a]

659A.004 Short title. The amendments to ORS 10.030, 20.107, 30.860, 93.270, 109.035, 166.155, 166.165, 174.100, 179.750, 192.630, 240.306, 338.125, 353.100, 418.648, 418.925, 421.352, 430.550, 443.739, 458.505, 659.850, 659A.003, 659A.006, 659A.030, 659A.403, 659A.406, 659A.409, 659A.421, 659A.805, 659A.815, 659A.885, 660.139 and 744.353 by sections 1 to 31, 33 and 34, chapter 100, Oregon Laws 2007, and the repeal of ORS 236.380 by section 32, chapter 100, Oregon Laws 2007, may be cited as the Oregon Equality Act. [2007 c.100 §42; 2007 c.903 §17]

659A.006 Declaration of policy against unlawful discrimination; opportunity to obtain employment without unlawful discrimination recognized as a civil right; exception of religious group. (1) It is declared to be the public policy of Oregon that practices of unlawful discrimination against any of its inhabitants because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability or familial status are a matter of state concern and that this discrimination not only threatens the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

(2) The opportunity to obtain employment or housing or to use and enjoy places of public accommodation without unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability hereby is recognized as and declared to be a civil right.

(3) It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing or the use of facilities based on a bona fide religious belief about sexual orientation as long as the housing or the use of facilities is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(4) It is not an unlawful employment practice for a bona fide church or other religious institution, including but not limited to a school, hospital or church camp, to prefer an employee, or an applicant for employment, of one religious sect or persuasion over another if:

(a) The religious sect or persuasion to which the employee or applicant belongs is the same as that of the church or institution;

(b) In the opinion of the church or institution, the preference will best serve the purposes of the church or institution; and

(c) The employment involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(5) It is not an unlawful employment practice for a bona fide church or other religious institution to take any employment action based on a bona fide religious belief about sexual orientation:

(a) In employment positions directly related to the operation of a church or other place of worship, such as clergy, religious instructors and support staff;

(b) In employment positions in a non-profit religious school, nonprofit religious camp, nonprofit religious day care center, nonprofit religious thrift store, nonprofit religious bookstore, nonprofit religious radio station or nonprofit religious shelter; or

(c) In other employment positions that involve religious activities, as long as the employment involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity that has no necessary relationship to the church or institution. [Formerly 659.020; 2007 c.100 §3; 2007 c.903 §2]

659A.009 Declaration of policy against discrimination in employment because of age. It is declared to be the public policy of Oregon that the available workforce should be utilized to the fullest extent possible. To this end, the abilities of an individual, and not any arbitrary standards that discriminate against an individual solely because of age, should be the measure of the individual's fitness and qualification for employment. [Formerly 659.015; 2005 c.22 §468]

659A.012 State agencies to carry out policy against discrimination in employment; evaluation of supervisors; affirmative action reports. (1) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, disability or age, every state agency shall be required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance.

(2) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without

discrimination because of race, religion, color, sex, marital status, national origin, age or disability, every state agency shall be required to present the affirmative action objectives and performance of that agency of the current biennium and those for the following biennium to the Governor of the State of Oregon and to the Legislative Assembly. These plans shall be reviewed as part of the budget review process. [Formerly 659.025]

659A.015 Affirmative action reports to include information on contracts to minority businesses. In carrying out the policy of affirmative action, every state agency shall include in its affirmative action reports under ORS 659A.012 information concerning its awards of construction, service and personal service contracts awarded to minority businesses. [Formerly 659.027]

**UNLAWFUL EMPLOYMENT
DISCRIMINATION BECAUSE OF RACE,
COLOR, RELIGION, SEX, SEXUAL
ORIENTATION, NATIONAL ORIGIN,
MARITAL STATUS OR AGE**

659A.029 "Because of sex" defined for ORS 659A.030. For purposes of ORS 659A.030, the phrase "because of sex" includes, but is not limited to, because of pregnancy, childbirth and related medical conditions or occurrences. Women affected by pregnancy, childbirth or related medical conditions or occurrences shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work by reason of physical condition, and nothing in this section shall be interpreted to permit otherwise. [Formerly 659.029]

659A.030 Discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status or age prohibited. (1) It is an unlawful employment practice:

(a) For an employer, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to refuse to hire or employ the individual or to bar or discharge the individual from employment. However, discrimination is not an unlawful employment practice if the discrimination results from a bona fide occupational qualification reason-

ably necessary to the normal operation of the employer's business.

(b) For an employer, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to discriminate against the individual in compensation or in terms, conditions or privileges of employment.

(c) For a labor organization, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to exclude or to expel from its membership the individual or to discriminate in any way against the individual or any other person.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment that expresses directly or indirectly any limitation, specification or discrimination as to an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or on the basis of an expunged juvenile record, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification. Identification of prospective employees according to race, color, religion, sex, sexual orientation, national origin, marital status or age does not violate this section unless the Commissioner of the Bureau of Labor and Industries, after a hearing conducted pursuant to ORS 659A.805, determines that the designation expresses an intent to limit, specify or discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, marital status or age.

(e) For an employment agency, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, to classify or refer

for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against the individual. However, it is not an unlawful employment practice for an employment agency to classify or refer for employment an individual when the classification or referral results from a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business.

(f) For any person to discharge, expel or otherwise discriminate against any other person because that other person has opposed any unlawful practice, or because that other person has filed a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so.

(g) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.

(2) The provisions of this section apply to an apprentice under ORS 660.002 to 660.210, but the selection of an apprentice on the basis of the ability to complete the required apprenticeship training before attaining the age of 70 years is not an unlawful employment practice. The commissioner shall administer this section with respect to apprentices under ORS 660.002 to 660.210 equally with regard to all employees and labor organizations.

(3) The compulsory retirement of employees required by law at any age is not an unlawful employment practice if lawful under federal law.

(4)(a) It is not an unlawful employment practice for an employer or labor organization to provide or make financial provision for child care services of a custodial or other nature to its employees or members who are responsible for a minor child.

(b) As used in this subsection, "responsible for a minor child" means having custody or legal guardianship of a minor child or acting in loco parentis to the child.

(5) This section does not prohibit an employer from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual. [Formerly 659.030; 2007 c.100 §4]

659A.033 Violation of ORS 659A.030 by denying religious leave or prohibiting certain religious observances or practices; determination of reasonable accommodation. (1) An employer violates ORS 659A.030 if:

(a) The employer does not allow an employee to use vacation leave, or other leave

available to the employee, for the purpose of allowing the employee to engage in the religious observance or practices of the employee; and

(b) Reasonably accommodating use of the leave by the employee will not impose an undue hardship on the operation of the business of the employer as described in subsection (4) of this section.

(2) Subsection (1) of this section applies only to leave that is not restricted as to the manner in which the leave may be used and that the employer allows the employee to take by adjusting or altering the work schedule or assignment of the employee.

(3) An employer violates ORS 659A.030 if:

(a) The employer imposes an occupational requirement that restricts the ability of an employee to wear religious clothing, to take time off for a holy day or to take time off to participate in a religious observance or practice;

(b) Reasonably accommodating those activities does not impose an undue hardship on the operation of the business of the employer as described in subsection (4) of this section; and

(c) The activities have only a temporary or tangential impact on the employee's ability to perform the essential functions of the employee's job.

(4) A reasonable accommodation imposes an undue hardship on the operation of the business of the employer for the purposes of this section if the accommodation requires significant difficulty or expense. For the purpose of determining whether an accommodation requires significant difficulty or expense, the following factors shall be considered:

(a) The nature and the cost of the accommodation needed.

(b) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation.

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of persons employed by the employer and the number, type and location of the employer's facilities.

(d) The type of business operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or

fiscal relationship of the facility or facilities of the employer.

(e) The safety and health requirements in a facility, including requirements for the safety of other employees and any other person whose safety may be adversely impacted by the requested accommodation. [2009 c.744 §2]

659A.036 Short title. ORS 659A.033 shall be known and may be cited as the "Oregon Workplace Religious Freedom Act." [2009 c.744 §5]

Note: 659A.036 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

UNLAWFUL EMPLOYMENT DISCRIMINATION AGAINST INJURED WORKERS

(Unlawful Discrimination Against Injured Workers)

659A.040 Discrimination against worker applying for workers' compensation benefits prohibited. (1) It is an unlawful employment practice for an employer to discriminate against a worker with respect to hire or tenure or any term or condition of employment because the worker has applied for benefits or invoked or utilized the procedures provided for in ORS chapter 656 or has given testimony under the provisions of those laws.

(2) This section applies only to employers who employ six or more persons. [2001 c.621 §32]

659A.043 Reinstatement of injured worker to former position; certificate evidencing ability to work; effect of collective bargaining agreement; termination of right to reinstatement; when reinstatement right terminates. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is available even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position that is vacant and suitable. A certificate by the attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 that the physician or nurse practitioner approves the worker's return to the worker's regular employment or other suitable employment shall

be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(E) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years elapse from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

(4) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(a)(D) of this section and

who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:

(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and

(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.

(5) Any violation of this section is an unlawful employment practice. [Formerly 659.415; 2003 c.811 §§21,22; 2005 c.22 §§469,470; 2007 c.365 §11; 2007 c.633 §§4,5]

659A.046 Reemployment of injured worker in other available and suitable work; termination of right to reemployment; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Notwithstanding subsection (1) of this section, the right to reemployment under this section terminates when whichever of the following events first occurs:

(a) The worker cannot return to reemployment at any position with the employer either by determination of the attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 or upon appeal of that determination, by determination of a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

(b) The worker is eligible and participates in vocational assistance under ORS 656.340.

(c) The worker accepts suitable employment with another employer after becoming medically stationary.

(d) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(e) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has released the worker for reemployment unless the worker requests reemployment within that time period.

(f) Three years elapse from the date of injury.

(4) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:

(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and

(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.

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

(7) This section applies only to employers who employ six or more persons. [Formerly 659.420; 2003 c.811 §§23,24; 2007 c.365 §12; 2007 c.633 §§6,7]

659A.049 Rights of reinstatement and reemployment protected. The rights of reinstatement afforded by ORS 659A.043 and 659A.046 shall not be forfeited if the worker refuses to return to the worker's regular or other offered employment without release to such employment by the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245. [Formerly 659.417; 2003 c.811 §§25,26; 2007 c.365 §13]

659A.052 Reemployment rights of injured state workers; rules. (1) For the purpose of administration of ORS 659A.043 and 659A.046:

(a) An injured worker employed at the time of injury by any agency in the legislative department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in any agency in the legislative department.

(b) An injured worker employed at the time of injury by any agency in the judicial department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in any agency in the judicial department.

(c) An injured worker employed at the time of injury by any agency of the executive or administrative department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in any agency of the executive or administrative department.

(2) Notwithstanding ORS 659A.043 and 659A.046, an injured worker referred to in subsection (1) of this section has preference for entry level and light duty assignments with agencies described in subsection (1) of this section. The legislative and judicial departments of the government of this state may adopt rules to define entry level and light duty assignments. The Administrator of the Personnel Division by rule shall adopt a process to identify entry level and light duty assignments within the executive or administrative department of the government of this state.

(3) In accordance with any applicable provision of ORS chapter 240, the Administrator of the Personnel Division shall compel compliance with this section and ORS 659A.043 and 659A.046 by any agency of the executive or administrative department of the government of this state. [Formerly 659.412; 2005 c.22 §471; 2009 c.315 §1]

(Benefits for Injured State Workers and Covered Dependents)

659A.060 Definitions for ORS 659A.060 to 659A.069. As used in ORS 659A.060 to 659A.069, unless the context requires otherwise:

(1) "Group health benefits" means that form of health benefits provided by the State of Oregon to cover groups of employees, with or without one or more members of their families or one or more dependents. The group health benefits which are continued under ORS 659A.060 to 659A.069 shall be the same as the worker and the worker's dependents had immediately prior to the injury or illness, and includes, but is not limited to, medical care, dental care, vision care or prescription drug coverage, or any combination thereof, that the worker had elected prior to the injury or illness. If the plan elected prior to the injury or illness is no longer available, the worker shall have the same plan selection rights as do active employees.

(2) "Worker" means any state employee who has filed a workers' compensation claim pursuant to ORS chapter 656. [Formerly 659.450]

659A.063 State to continue group health benefits for injured worker and covered dependents; when ended. (1) The State of Oregon shall cause group health benefits to continue in effect with respect to that worker and any covered dependents or family members by timely payment of the premium that includes the contribution due from the state under the applicable benefit plan, subject to any premium contribution due from the worker that the worker paid before the occurrence of the injury or illness. If the premium increases or decreases, the

State of Oregon and worker contributions shall be adjusted to remain consistent with similarly situated active employees. The State of Oregon shall continue the worker's health benefits in effect until whichever of the following events occurs first:

(a) The worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has determined the worker to be medically stationary and a notice of closure has been entered;

(b) The worker returns to work for the State of Oregon, after a period of continued coverage under this section, and satisfies any probationary or minimum work requirement to be eligible for group health benefits;

(c) The worker takes full or part-time employment with another employer that is comparable in terms of the number of hours per week the worker was employed with the State of Oregon or the worker retires;

(d) Twelve months have elapsed since the date the State of Oregon received notice that the worker filed a workers' compensation claim pursuant to ORS chapter 656;

(e) The claim is denied and the claimant fails to appeal within the time provided by ORS 656.319 or the Workers' Compensation Board or a workers' compensation hearings referee or a court issues an order finding the claim is not compensable;

(f) The worker does not pay the required premium or portion thereof in a timely manner in accordance with the terms and conditions under this section;

(g) The worker elects to discontinue coverage under this section and notifies the State of Oregon in writing of this election;

(h) The worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has released the worker to modified or regular work, the work has been offered to the worker and the worker refuses to return to work; or

(i) The worker has been terminated from employment for reasons unrelated to the workers' compensation claim.

(2) If the workers' compensation claim of a worker for whom health benefits are provided pursuant to subsection (1) of this section is denied and the worker does not appeal or the worker appeals and does not prevail, the State of Oregon may recover from the worker the amount of the premiums plus interest at the rate authorized by ORS 82.010. The State of Oregon may recover the payments through a payroll deduction not to exceed 10 percent of gross pay for each pay period.

(3) The State of Oregon shall notify the worker of the provisions of ORS 659A.060 to 659A.069, and of the remedies available for breaches of ORS 659A.060 to 659A.069, within a reasonable time after the State of Oregon receives notice that the worker will be absent from work as a result of an injury or illness for which a workers' compensation claim has been filed pursuant to ORS chapter 656. The notice from the State of Oregon shall include the terms and conditions of the continuation of health benefits and what events will terminate the coverage.

(4) If the worker fails to make timely payment of any premium contribution owing, the State of Oregon shall notify the worker of impending cancellation of the health benefits and provide the worker with 30 days to pay the required premium prior to canceling the policy.

(5) It is an unlawful employment practice for the State of Oregon to discriminate against a worker, as defined in ORS 659A.060, by terminating the worker's group health benefits while that worker is absent from the place of employment as a result of an injury or illness for which a workers' compensation claim has been filed pursuant to ORS chapter 656, except as provided for in this section. [Formerly 659.455; 2003 c.811 §§27,28; 2007 c.365 §14]

659A.066 Worker may continue benefits after employer's obligation ends. If the State of Oregon's obligation to continue paying premiums for health benefits under ORS 659A.063 expires or terminates, the worker may continue coverage by paying the entire premium pursuant to ORS 743.530. [Formerly 659.460]

659A.069 Discrimination against state worker applying for benefits under ORS 659A.060 to 659A.069 prohibited. It is an unlawful employment practice for the State of Oregon to discriminate against a worker with respect to hire or tenure or any term or condition of employment because the worker has applied for benefits or invoked or utilized the procedures provided for in ORS 659A.060 to 659A.069 or has given testimony under the provisions of those laws. [2001 c.621 §34]

UNLAWFUL EMPLOYMENT DISCRIMINATION AND REQUIRED LEAVE RELATED TO MILITARY SERVICE

(Unlawful Discrimination for Service in Uniformed Service)

659A.082 Discrimination against person for service in uniformed service prohibited. (1) As used in this section:

(a) "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full-time duty in the National Guard, funeral honors duty or an examination to determine fitness for service in a uniformed service.

(b) "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard or military reserve forces.

(2) It is an unlawful employment practice for an employer to discriminate against a person because of the person's service in a uniformed service by:

(a) If the employer is a public body, denying a public officer or public employee the status or rights provided by ORS 408.240 to 408.280 and 408.290.

(b) Denying any of the following because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service:

(A) Initial employment;

(B) Reemployment following a leave from employment taken by reason of service in a uniformed service;

(C) Retention in employment;

(D) Promotion; or

(E) Any other term, condition or privilege of employment, including but not limited to compensation.

(c) Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights provided by this section.

(3) An employer does not commit an unlawful employment practice under subsection (2)(b) of this section if the employer acted based on a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.

(4) Subsection (2)(b) and (c) of this section shall be construed to the extent possible in a manner that is consistent with similar provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994. [2009 c.378 §2]

(Leave of Absence for State Service)

659A.086 Employment rights of members of organized militia when called into active state service. (1) An employee shall be granted a leave of absence by the em-

ployer of the employee to perform active state service if:

(a) The employee is a member of the organized militia of this state and is called into active service of the state under ORS 399.065 (1) or active state duty under ORS 399.075.

(b) The employee is a member of the organized militia of another state and is called into active state service by the Governor of the respective state.

(2) The employer shall grant the employee a leave of absence until release from active state service permits the employee to resume the duties of employment. The regular employment position of an employee on a leave of absence for active state service under this section is considered vacant only for the period of the leave of absence. The employee is not subject to removal or discharge from the position as a consequence of the leave of absence.

(3) Upon the termination of the leave of absence for active state service, an employee shall:

(a) Resume the duties of employment within seven calendar days; and

(b) Be restored to the employee's position or an equivalent position by the employer without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employee benefit or right that had been earned at the time of the leave of absence.

(4) An employer is not required to pay wages or other monetary compensation to an employee during a leave of absence required under subsection (1) of this section.

(5) Notwithstanding subsection (4) of this section:

(a) The State of Oregon shall continue coverage under an employer-sponsored health plan to an employee of the State of Oregon and any other individual provided coverage under the employee's plan on the day before the date the employee goes on leave for a period not exceeding a total of 12 months during a leave of absence required under subsection (1) of this section.

(b) An employer other than the State of Oregon may continue coverage under an employer-sponsored health plan to an employee and any other individual provided coverage under the employee's plan on the day before the date the employee goes on leave during a leave of absence required under subsection (1) of this section.

(6)(a) Notwithstanding subsection (4) of this section, the State of Oregon, a county, a municipality or other political subdivision of this state may establish and administer a donated leave program that:

(A) Allows an employee who is on a leave of absence required under subsection (1) of this section to receive donated leave; and

(B) Allows an employee to voluntarily donate vacation time to an eligible employee on a leave of absence required under subsection (1) of this section.

(b) An employee who is on a leave of absence required under subsection (1) of this section and who receives donated leave under paragraph (a) of this subsection may receive an amount of donated leave that supplements any pay received as a member of the organized militia, but may not receive more than the amount the employee was earning in total compensation on the date the employee began the leave of absence.

(7) For the purpose of calculating total compensation under subsection (6) of this section, the State of Oregon, a county, a municipality or other political subdivision of this state shall:

(a) Include any amounts attributable to hours of overtime that equal the average number of hours of overtime for the same employee class;

(b) Determine the average number of hours of overtime for an employee class based on a reasonable expectation of the average number of hours of overtime employees in that class would perform over the course of a calendar year; and

(c) Maintain records of the average number of hours of overtime for each employee class for each calendar year.

(8) As used in this section:

(a) "Employee" means any individual, other than a copartner of the employer or an independent contractor, who renders personal services in this state to an employer who pays or agrees to pay wages or other compensation to the individual for those services.

(b) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or a collective bargaining agreement as having common characteristics.

(c) "Employer" means any person who employs one or more employees in this state. The term includes the State of Oregon or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter, but does not include the federal government.

(d) "Total compensation" means the total of an employee's base salary, differentials and overtime. [Formerly 399.230]

Note: 659A.086 and 659A.088 were enacted into law by the Legislative Assembly but were not added to or

made a part of ORS chapter 659A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659A.088 Violation of ORS 659A.086 as unlawful employment practice; complaint; remedies and penalties. (1) Any violation of ORS 659A.086 (1) to (3) by an employer is an unlawful employment practice.

(2) Complaints alleging a violation of ORS 659A.086 (1) to (3) may be filed by employees with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. The commissioner shall enforce ORS 659A.086 in the manner provided in ORS chapter 659A regarding other unlawful employment practices.

(3) Violation of ORS 659A.086 (1) to (3) subjects the violator to the same civil remedies and penalties as provided in ORS chapter 659A. [Formerly 399.235]

Note: See note under 659A.086.

(Oregon Military Family Leave Act)

659A.090 Definitions for ORS 659A.090 to 659A.099. As used in ORS 659A.090 to 659A.099:

(1) Notwithstanding ORS 659A.001, “employee” means an individual who performs services for compensation for an employer for an average of at least 20 hours per week. “Employee” includes all individuals employed at any site owned or operated by an employer, but does not include independent contractors.

(2) Notwithstanding ORS 659A.001, “employer” means:

(a) A person, firm, corporation, partnership, legal representative or other business entity that engages in any business, industry, profession or activity in this state and that employs 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which leave is taken under ORS 659A.093 or the year immediately preceding the year in which the leave is to be taken;

(b) The state, and a department, agency, board or commission of the state; and

(c) A local government, including, but not limited to, a county, city, town, municipal corporation, independent public corporation or political subdivision of the state.

(3) “Period of military conflict” means a period of war:

(a) Declared by the United States Congress;

(b) Declared by executive order of the President of the United States; or

(c) In which a reserve component of the Armed Forces of the United States is ordered

to active duty pursuant to Title 32 of the United States Code or section 12301 or 12302 of Title 10 of the United States Code. [2009 c.559 §3]

659A.093 Employer required to provide leave; job protection; benefits; notice to employer; use of accrued leave; rules. (1) During a period of military conflict, an employee who is a spouse of a member of the Armed Forces of the United States, the National Guard or the military reserve forces of the United States who has been notified of an impending call or order to active duty or who has been deployed is entitled to a total of 14 days of unpaid leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment and when the military spouse is on leave from deployment.

(2) An employee who takes leave authorized under this section is entitled to be restored to a position of employment and to the continuation of benefits as provided in ORS 659A.171.

(3) An employee who intends to take leave as authorized under this section must provide the employer with notice of the intention to take leave within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment.

(4) An employee who takes leave authorized under this section may elect to substitute any accrued leave to which the employee is entitled for any part of the leave provided under this section.

(5) Leave taken under this section shall be included in the total amount of leave authorized under ORS 659A.162.

(6) The Bureau of Labor and Industries may adopt rules necessary for the implementation and administration of ORS 659A.090 to 659A.099. [2009 c.559 §4]

659A.096 Denial of leave, retaliation and discrimination prohibited. It is an unlawful practice for an employer to:

(1) Deny military family leave to an employee who is entitled to such leave under ORS 659A.090 to 659A.099; or

(2) Retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions of ORS 659A.090 to 659A.099, submitted a request for military family leave or invoked any provision of ORS 659A.090 to 659A.099. [2009 c.559 §5]

659A.099 Short title. ORS 659A.090 to 659A.099 may be cited as the Oregon Military Family Leave Act. [2009 c.559 §2]

**UNLAWFUL DISCRIMINATION
AGAINST
PERSONS WITH DISABILITIES**

659A.100 [Formerly 659.400; 2003 c.254 §1; 2007 c.70 §289; 2009 c.508 §3; renumbered 659A.122 in 2009]

659A.103 Policy. (1) It is declared to be the public policy of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, to engage in remunerative employment, to use and enjoy places of public accommodation, resort or amusement, to participate in and receive the benefits of the services, programs and activities of state government and to secure housing accommodations of their choice, without discrimination on the basis of disability.

(2) The guarantees expressed in subsection (1) of this section are hereby declared to be the policy of the State of Oregon to protect, and ORS 659A.103 to 659A.145 shall be construed to effectuate such policy. [Formerly 659.405; 2003 c.254 §2; 2007 c.70 §290; 2009 c.508 §4]

659A.104 Description of disability for purposes of ORS 659A.103 to 659A.145. (1) An individual has a disability for the purposes of ORS 659A.103 to 659A.145 if the individual meets any one of the following criteria:

(a) The individual has a physical or mental impairment that substantially limits one or more major life activities of the individual.

(b) The individual has a record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. For the purposes of this paragraph, an individual has a record of having a physical or mental impairment if the individual has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

(c) The individual is regarded as having a physical or mental impairment that substantially limits one or more major life activities of the individual. For the purposes of this paragraph:

(A) An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity of the individual.

(B) An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

(2) Activities and functions that are considered major life activities for the purpose of determining if an individual has a disability include but are not limited to:

- (a) Caring for oneself;
- (b) Performing manual tasks;
- (c) Seeing;
- (d) Hearing;
- (e) Eating;
- (f) Sleeping;
- (g) Walking;
- (h) Standing;
- (i) Lifting;
- (j) Bending;
- (k) Speaking;
- (L) Breathing;
- (m) Learning;
- (n) Reading;
- (o) Concentrating;
- (p) Thinking;
- (q) Communicating;
- (r) Working;
- (s) Socializing;
- (t) Sitting;
- (u) Reaching;
- (v) Interacting with others;
- (w) Employment;
- (x) Ambulation;
- (y) Transportation;
- (z) Operation of a major bodily function, including but not limited to:
 - (A) Functions of the immune system;
 - (B) Normal cell growth; and
 - (C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and
- (aa) Ability to acquire, rent or maintain property.

(3) An individual is substantially limited in a major life activity if the individual has an impairment, had an impairment or is perceived as having an impairment that materially restricts one or more major life activities of the individual. An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual. An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active.

(4) When determining whether an impairment substantially limits a major life ac-

tivity of an individual, the determination shall be made without regard to the ameliorative effects of mitigating measures, including:

- (a) Medication;
- (b) Medical supplies, equipment or appliances;
- (c) Low vision devices or other devices that magnify, enhance or otherwise augment a visual image, except that ordinary eyeglasses or contact lenses or other similar lenses that are intended to fully correct visual acuity or eliminate refractive error may be considered when determining whether an impairment substantially limits a major life activity of an individual;
- (d) Prosthetics, including limbs and devices;
- (e) Hearing aids, cochlear implants or other implantable hearing devices;
- (f) Mobility devices;
- (g) Oxygen therapy equipment or supplies;
- (h) Assistive technology;
- (i) Reasonable accommodations or auxiliary aids or services; or
- (j) Learned behavioral or adaptive neurological modifications.

(5) Nothing in subsection (4)(c) of this section authorizes an employer to use qualification standards, employment tests or other selection criteria based on an individual's uncorrected vision unless the standard, test or other selection criteria, as used by the employer, are shown to be job-related for the position in question and is consistent with business necessity. [2009 c.508 §2]

659A.106 Employers to whom ORS 659A.103 to 659A.145 apply. The requirements of ORS 659A.103 to 659A.145 apply only to employers who employ six or more persons. The requirements of ORS 659A.103 to 659A.145 do not apply to the Oregon National Guard. [2001 c.621 §23]

659A.109 Discrimination against individual for using procedures in ORS 659A.103 to 659A.145 prohibited. It is an unlawful employment practice for an employer to discriminate against an individual with respect to hire or tenure or any term or condition of employment because the individual has applied for benefits or invoked or used the procedures provided for in ORS 659A.103 to 659A.145 or has given testimony under the provisions of ORS 659A.103 to 659A.145. [Formerly 659.410; 2009 c.508 §5]

659A.112 Employment discrimination.

(1) It is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employ-

ment or to discriminate in compensation or in terms, conditions or privileges of employment on the basis of disability.

(2) An employer violates subsection (1) of this section if the employer does any of the following:

(a) The employer limits, segregates or classifies a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because the applicant or employee has a disability.

(b) The employer participates in a contractual or other arrangement or relationship that has the effect of subjecting a qualified job applicant or employee with a disability to the discrimination prohibited by ORS 659A.112 to 659A.139, including but not limited to participating in a relationship with an employment or referral agency, a labor union, an organization providing fringe benefits to an employee of the employer, or an organization providing training and apprenticeship programs.

(c) The employer utilizes standards, criteria or methods of administration that have the effect of discrimination on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

(d) The employer excludes or otherwise denies equal jobs or benefits to a qualified individual because the individual is known to have a relationship or association with an individual with a disability.

(e) The employer does not make reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability who is a job applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(f) The employer denies employment opportunities to a job applicant or employee who is a qualified individual with a disability, if the denial is based on the need of the employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant.

(g) The employer uses qualification standards, employment tests or other selection criteria, including those based on an individual's uncorrected vision or unaided hearing, that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criterion, as used by the employer, is shown to be job-related for the position in question and is consistent with business necessity.

(h) The employer fails to select and administer tests relating to employment in the most effective manner to ensure that when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or other characteristics of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant. The provisions of this paragraph do not limit the ability of an employer to select or administer tests designed to measure sensory, manual or speaking skills of an employee or job applicant. [Formerly 659.436; 2007 c.70 §291; 2009 c.508 §6]

659A.115 Qualification for position.

For the purposes of ORS 659A.112, an individual is qualified for a position if the individual, with or without reasonable accommodation, can perform the essential functions of the position. For the purpose of determining the essential functions of the position, due consideration shall be given to the employer's determination as to the essential functions of a position. If an employer has prepared a written description before advertising or interviewing applicants for a job, the position description shall be considered evidence of the essential functions of the job. [Formerly 659.437; 2007 c.70 §292; 2009 c.508 §7]

659A.118 Reasonable accommodation.

(1) For the purposes of ORS 659A.112, reasonable accommodation may include:

(a) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.

(b) Job restructuring, part-time or modified work schedules or reassignment to a vacant position.

(c) Acquisition or modification of equipment or devices.

(d) Appropriate adjustment or modification of examinations, training materials or policies.

(e) The provision of qualified readers or interpreters.

(2) Notwithstanding any other provision of ORS 659A.103 to 659A.145, an employer may not be found to have engaged in an unlawful employment practice solely because the employer fails to provide reasonable accommodation to an individual with a disability arising out of transsexualism.

(3) An employer is not required to provide a reasonable accommodation to an individual who satisfies the criteria for being an individual with a disability for the purposes of ORS 659A.103 to 659A.145 solely because the individual meets the criterion described

in ORS 659A.104 (1)(c). [Formerly 659.439; 2007 c.70 §293; 2009 c.508 §8]

659A.121 Undue hardship. (1) For the purposes of ORS 659A.112, an accommodation imposes an undue hardship on the operation of the business of the employer if the accommodation requires significant difficulty or expense.

(2) For the purpose of determining whether an accommodation requires significant difficulty or expense, the following factors shall be considered:

(a) The nature and the cost of the accommodation needed.

(b) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation.

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer's facilities.

(d) The type of operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer. [Formerly 659.440]

659A.122 Definitions for ORS 659A.124, 659A.127 and 659A.130. As used in this section and ORS 659A.124, 659A.127 and 659A.130:

(1) "Drug" means a controlled substance, as classified in schedules I through V of section 202 of the federal Controlled Substances Act, as amended, and as modified under ORS 475.035.

(2) "Illegal use of drugs" means any use of drugs, the possession or distribution of which is unlawful under state law or under the federal Controlled Substances Act, as amended, but does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized under the Controlled Substances Act or under other provisions of state or federal law. [Formerly 659A.100]

Note: 659A.122 was made a part of 659A.103 to 659A.145 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

659A.124 Illegal use of drugs. (1) Subject to the provisions of subsection (2) of this section, the protections of ORS 659A.112 do not apply to any job applicant or employee who is currently engaging in the illegal use

of drugs if the employer takes action based on that conduct.

(2) The protections of ORS 659A.112 apply to the following individuals:

(a) An individual who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs.

(b) An individual who is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs.

(c) An individual who is erroneously regarded as engaging in the illegal use of drugs.

(3) An employer may adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subsection (2)(a) or (b) of this section is no longer engaging in the illegal use of drugs. [Formerly 659.442; 2009 c.508 §9]

659A.127 Permitted employer action. ORS 659A.112 to 659A.139 do not affect the ability of an employer to do any of the following:

(1) An employer may prohibit the transfer, offering, sale, purchase or illegal use of drugs at the workplace by any employee. An employer may prohibit possession of drugs except for drugs prescribed by a licensed health care professional.

(2) An employer may prohibit the use of alcohol at the workplace by any employee.

(3) An employer may require that employees not be under the influence of alcohol or illegally used drugs at the workplace.

(4) An employer may require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988.

(5) An employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment, job performance and behavior to which the employer holds other employees, even if the unsatisfactory performance or behavior is related to the alcoholism of or the illegal use of drugs by the employee.

(6) An employer may require that employees comply with all federal and state statutes and regulations regarding alcohol and the illegal use of drugs. [Formerly 659.444]

659A.130 Conditions that do not constitute impairment. (1) For the purposes of ORS 659A.112 to 659A.139, homosexuality and bisexuality are not physical or mental

impairments. An individual who is homosexual or bisexual does not have a disability for the purposes of ORS 659A.112 to 659A.139 solely by reason of being homosexual or bisexual.

(2) For the purposes of ORS 659A.112 to 659A.139, the following conditions are not physical or mental impairments, and an individual with one or more of the following conditions does not have a disability for the purposes of ORS 659A.112 to 659A.139 solely by reason of that condition:

(a) Transvestism, pedophilia, exhibitionism, voyeurism or other sexual behavior disorders.

(b) Compulsive gambling, kleptomania or pyromania.

(c) Psychoactive substance use disorders resulting from current illegal use of drugs. [Formerly 659.446; 2007 c.70 §294; 2009 c.508 §10]

659A.133 Medical examinations and inquiries of job applicants. (1) Except as provided in this section, an employer violates ORS 659A.112 if the employer conducts a medical examination of a job applicant, makes inquiries of a job applicant as to whether the applicant has a disability or makes inquiries as to the nature or severity of any disability of the applicant.

(2) An employer may make inquiries into the ability of a job applicant to perform job-related functions.

(3) An employer may require a medical examination after an offer of employment has been made to a job applicant and before the commencement of the employment duties of the applicant, and condition the employment on the results of the examination, if the following conditions are met:

(a) All individuals entering the employ of the employer must be subject to the examination regardless of disability.

(b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except as follows:

(A) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(C) Officers and employees of the Bureau of Labor and Industries investigating compliance with ORS 659A.112 to 659A.139 shall be provided relevant information on request.

(c) The results of an examination authorized under this subsection may only be used in the manner provided for in ORS 659A.112 to 659A.139. [Formerly 659.447; 2007 c.70 §295; 2009 c.508 §11]

659A.136 Medical examinations and inquiries of employees. (1) Except as provided in this section, an employer may not require that an employee submit to a medical examination, may not make inquiries of an employee as to whether the employee has a disability, and may not make inquiries of an employee as to the nature or severity of any disability of the employee, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(2) An employer may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site. An employer may make inquiries into the ability of an employee to perform job-related functions.

(3) Information obtained under subsection (2) of this section relating to the medical condition or history of any employee is subject to the same restrictions applicable to information acquired from medical examinations authorized under ORS 659A.133. [Formerly 659.448; 2007 c.70 §296; 2009 c.508 §12]

659A.139 Construction of ORS 659A.103 to 659A.145. (1) ORS 659A.103 to 659A.145 shall be construed to the extent possible in a manner that is consistent with any similar provisions of the federal Americans with Disabilities Act of 1990, as amended by the federal ADA Amendments Act of 2008 and as otherwise amended.

(2) The determination of whether an individual has a disability as provided in ORS 659A.104 (1) shall be construed in favor of broad coverage of individuals under ORS 659A.103 to 659A.145, to the maximum extent permitted by the terms of ORS 659A.103 to 659A.145. [Formerly 659.449; 2009 c.508 §13]

659A.142 Discrimination against individual with disability by employment agency, labor organization, place of public accommodation or state government prohibited; mental disorder treatment not evidence of inability to manage property. (1) As used in this section, “state government” has the meaning given that term in ORS 174.111.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual has a disability, or to classify or refer for employment any individual because that individual has a disability.

(3) It is an unlawful employment practice for a labor organization, because an individual has a disability, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(4) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 659A.400, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is an individual with a disability.

(5)(a) It is an unlawful practice for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual has a disability.

(b) Paragraph (a) of this subsection is intended to ensure equal access to available services, programs and activities of state government.

(c) Paragraph (a) of this subsection is not intended to:

(A) Create an independent entitlement to any service, program or activity of state government; or

(B) Require state government to take any action that state government can demonstrate would result in a fundamental alteration in the nature of a service, program or activity of state government or would result in undue financial or administrative burdens on state government.

(6) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence of an individual’s inability to acquire, rent or maintain property. [Formerly 659.425; 2003 c.254 §3; 2007 c.70 §297; 2009 c.508 §14]

659A.144 Required accommodations in transient lodging; liability; limitations on applicability. (1) As used in this section:

(a) “Lift system” means a system that:

(A) Is used to transfer a person to a bed, toilet, shower or bathtub, but does not provide the person with independent mobility;

(B) May be a manual lift, an electronic lift or a lift that uses a track system; and

(C) May require operation by an assistant.

(b) “Transient lodging” means a unit consisting of a room or suite of rooms that:

(A) Is not occupied as a principal residence;

(B) Is typically occupied for periods of fewer than 30 consecutive days; and

(C) Includes services that are part of the regularly charged cost of occupancy, including maid and linen services.

(2) A transient lodging provider shall ensure that at least one room or suite of rooms of the transient lodging facility has a lift system or multiple lift systems that enable a person with a disability to access the following in the room or suite of rooms occupied by the person with a disability:

- (a) A bed;
- (b) A toilet; and
- (c) A shower or bathtub.

(3) A lift system shall be made available by a transient lodging provider at no cost to a person with a disability, but the person is responsible for providing:

(a) The person's own sling or other personal equipment that is required to use the lift system; and

(b) Any assistant necessary for the operation of the lift system.

(4) A transient lodging provider is not liable for any injury caused by the use of a lift system, unless the injury is caused by the gross negligence or recklessness of the provider in relation to the provision and maintenance of the lift system.

(5)(a) The requirements of this section apply only to transient lodging facilities that:

(A) Consist of 175 or more rooms or suites of rooms; and

(B) Are newly constructed or that are altered in a manner that affects or could affect the usability of the facility in a manner that requires the facility to be in compliance with the accessibility standards established by the Americans with Disabilities Act of 1990.

(b) For the purpose of this subsection, the usability of a facility is not affected by cosmetic changes, including, but not limited to, changes in:

- (A) Floor coverings;
- (B) Wall coverings;

(C) Soft or hard surfaces, including upholstery, drapery, window treatments, countertops, vanities and cabinetry; and

(D) Furnishings, including furniture or fixtures.

(6) Any violation of this section is an unlawful practice. [2009 c.841 §2]

Note: Section 3, chapter 841, Oregon Laws 2009, provides:

Sec. 3. Section 2 of this 2009 Act [659A.144] applies to transient lodging facilities that, following the construction or alteration described in section 2 (5) of this 2009 Act, are first available for occupancy on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.841 §3]

659A.145 Discrimination against individual with disability in real property transactions prohibited; advertising discriminatory preference prohibited; allowance for reasonable modification; assisting discriminatory practices prohibited. (1) As used in this section:

(a) " Dwelling " has the meaning given that term in ORS 659A.421.

(b) " Purchaser " has the meaning given that term in ORS 659A.421.

(2) A person may not discriminate because of a disability of a purchaser, a disability of an individual residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any individual associated with a purchaser by doing any of the following:

(a) Refusing to sell, lease, rent or otherwise make available any real property to a purchaser.

(b) Expelling a purchaser.

(c) Making any distinction or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or the furnishing of any facilities or services in connection with the real property.

(d) Attempting to discourage the sale, rental or lease of any real property.

(e) Representing that a dwelling is not available for inspection, sale, rental or lease when the dwelling is in fact available for inspection, sale, rental or lease.

(f) Refusing to permit, at the expense of the individual with a disability, reasonable modifications of existing premises occupied or to be occupied by the individual if the modifications may be necessary to afford the individual full enjoyment of the premises. However, in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a reasonable modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(g) Refusing to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling.

(h) Failing to design and construct a covered multifamily dwelling as required by the Fair Housing Act (42 U.S.C. 3601 et seq.).

(3) A person may not publish, circulate, issue or display or cause to be published, circulated, issued or displayed any communication, notice, advertisement, or sign of any kind relating to the sale, rental or lease

ing of real property that indicates any preference, limitation, specification or discrimination against an individual on the basis of disability.

(4) A person whose business includes engaging in residential real estate related transactions, as defined in ORS 659A.421 (3), may not discriminate against any individual in making a transaction available, or in the terms or conditions of the transaction, because of a disability.

(5) A real estate broker or principal real estate broker may not accept or retain a listing of real property for sale, lease or rental with an understanding that the purchaser, lessee or renter may be discriminated against solely because an individual has a disability.

(6) A person may not deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any individual in the terms or conditions of the access, membership or participation, because that individual has a disability.

(7) A person may not assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this section.

(8) A person may not coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this section.

(9) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of an individual who has a disability.

(10) In the sale, lease or rental of real property, a person may not disclose to any person that an occupant or owner of the real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

(11) Any violation of this section is an unlawful practice. [Formerly 659.430; 2007 c.70 §298; 2007 c.903 §3a; 2008 c.36 §5; 2009 c.109 §1; 2009 c.508 §16]

FAMILY LEAVE

659A.150 Definitions for ORS 659A.150 to 659A.186. As used in ORS 659A.150 to 659A.186:

(1) "Covered employer" means an employer described in ORS 659A.153.

(2) "Eligible employee" means any employee of a covered employer other than those employees exempted under the provisions of ORS 659A.156.

(3) "Family leave" means a leave of absence described in ORS 659A.159, except that "family leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.

(4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.

(5) "Health care provider" means:

(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:

(A) A physician licensed to practice medicine under ORS 677.110, including a doctor of osteopathy;

(B) A podiatrist licensed under ORS 677.825;

(C) A dentist licensed under ORS 679.090;

(D) A psychologist licensed under ORS 675.030;

(E) An optometrist licensed under ORS 683.070;

(F) A naturopath licensed under ORS 685.080;

(G) A registered nurse licensed under ORS 678.050;

(H) A nurse practitioner certified under ORS 678.375;

(I) A direct entry midwife licensed under ORS 687.420;

(J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;

(K) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600; or

(L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but

not limited to a Christian Science practitioner.

(6) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy, or period of absence for prenatal care. [Formerly 659.470; 2005 c.171 §1; 2007 c.633 §1; 2007 c.777 §1; 2009 c.442 §43]

659A.153 Covered employers. (1) The requirements of ORS 659A.150 to 659A.186 apply only to employers who employ 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.

(2) The requirements of ORS 659A.150 to 659A.186 do not apply to any employer who offers to an eligible employee a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, providing, as one of its options, employee leave at least as generous as the leave required by ORS 659A.150 to 659A.186. [Formerly 659.472]

659A.156 Eligible employees; exceptions. (1) All employees of a covered employer are eligible to take leave for one of the purposes specified in ORS 659A.159 (1)(b) to (d) except:

(a) An employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence.

(b) An employee who worked an average of fewer than 25 hours per week for the covered employer during the 180 days immediately preceding the date on which the family leave would commence.

(2) All employees of a covered employer are eligible to take leave for the purpose specified in ORS 659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence. [Formerly 659.474]

659A.159 Purposes for which family leave may be taken. (1) Family leave under ORS 659A.150 to 659A.186 may be taken by an eligible employee for any of the following purposes:

(a) To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability.

(b) To care for a family member with a serious health condition.

(c) To recover from or seek treatment for a serious health condition of the employee that renders the employee unable to perform at least one of the essential functions of the employee's regular position.

(d) To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care.

(2) Leave under subsection (1)(a) of this section must be completed within 12 months after birth or placement of the child, and an eligible employee is not entitled to any period of family leave under subsection (1)(a) of this section after the expiration of 12 months after birth or placement of the child. [Formerly 659.476]

659A.162 Length of leave; conditions; rules. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee is entitled to up to 12 weeks of family leave within any one-year period.

(2)(a) In addition to the 12 weeks of leave authorized by subsection (1) of this section, an eligible female employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the employer.

(b) An eligible employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

(3) When two family members work for the same covered employer, the eligible employees may not take concurrent family leave unless:

(a) One employee needs to care for the other employee who is suffering from a serious health condition; or

(b) One employee needs to care for a child who has a serious health condition while the other employee is also suffering a serious health condition.

(4) An eligible employee may take family leave for the purposes specified in ORS 659A.159 (1)(a) in two or more nonconsec-

utive periods of leave only with the approval of the employer.

(5) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

(6) A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.

(7) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an eligible employee or a family member of the eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this subsection shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek will not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act. [Formerly 659.478; 2007 c.633 §2]

659A.165 Notice to employer. (1) Except as provided in subsection (2) of this section, a covered employer may require an eligible employee to give the employer written notice at least 30 days before commencing family leave. The employer may require the employee to include an explanation of the need for the leave in the notice.

(2) An eligible employee may commence taking family leave without prior notice under the following circumstances:

(a) An unexpected serious health condition of an employee or family member of an employee;

(b) An unexpected illness, injury or condition of a child of the employee that requires home care; or

(c) A premature birth, unexpected adoption or unexpected foster placement.

(3) If an employee commences leave without prior notice under subsection (2) of this section, the employee must give oral notice to the employer within 24 hours of the commencement of the leave, and must provide the written notice required by subsection (1) of this section within three days after the employee returns to work. The oral notice required by this subsection may be given by any other person on behalf of the employee taking the leave.

(4) If the employee fails to give notice as required by subsections (1) and (3) of this

section, the employer may reduce the period of family leave required by ORS 659A.162 by three weeks, and the employee may be subject to disciplinary action under a uniformly applied policy or practice of the employer. [Formerly 659.480]

659A.168 Medical verification and scheduling of treatment. (1) Except as provided in subsection (2) of this section, a covered employer may require medical verification from a health care provider of the need for the leave if the leave is for a purpose described in ORS 659A.159 (1)(b) to (d). If an employee is required to give notice under ORS 659A.165 (1), the employer may require that medical verification be provided by the employee before the leave period commences. If the employee commences family leave without prior notice pursuant to ORS 659A.165 (2), the medical verification must be provided by the employee within 15 days after the employer requests the medical verification. The employer may require an employee to obtain the opinion of a second health care provider designated by the employer, at the employer's expense. If the opinion of the second health care provider conflicts with the medical verification provided by the employee, the employer may require the two health care providers to designate a third health care provider to provide an opinion at the employer's expense. The opinion of the third health care provider shall be final and binding on the employer and employee. In addition to the medical verifications provided for in this subsection, an employer may require subsequent medical verification on a reasonable basis.

(2) A covered employer may require medical verification for leave taken for the purpose described in ORS 659A.159 (1)(d) only after an employee has taken more than three days of leave under ORS 659A.159 (1)(d) during any one-year period. Any medical verification required under this subsection must be paid for by the covered employer. An employer may not require an employee to obtain the opinion of a second health care provider for the purpose of medical verification required under this subsection.

(3) Subject to the approval of the health care provider, the employee taking family leave for a serious health condition of the employee or a family member of the employee shall make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operations. [Formerly 659.482]

659A.171 Job protection; benefits. (1) After returning to work after taking family leave under the provisions of ORS 659A.150 to 659A.186, an eligible employee is entitled to be restored to the position of employment

held by the employee when the leave commenced if that position still exists, without regard to whether the employer filled the position with a replacement worker during the period of family leave. If the position held by the employee at the time family leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment. If an equivalent position is not available at the job site of the employee's former position, the employee may be offered an equivalent position at a job site located within 20 miles of the job site of the employee's former position.

(2) Except for employee benefits used during the period of leave, the taking of family leave under ORS 659A.150 to 659A.186 shall not result in the loss of any employment benefit accrued before the date on which the leave commenced.

(3) This section does not entitle any employee to:

(a) Any accrual of seniority or employment benefits during a period of family leave; or

(b) Any right, benefit or position of employment other than the rights, benefits and position that the employee would have been entitled to had the employee not taken the family leave.

(4)(a) Before restoring an employee to a position under subsection (1) of this section, an employer may require that the employee receive certification from the employee's health care provider that the employee is able to resume work. Certification under this subsection may only be required pursuant to a uniformly applied practice or policy of the employer.

(b) This subsection does not affect the ability of an employer to require an employee during a period of family leave to report periodically to the employer on the employee's status and on the employee's intention to return to work.

(5) Benefits are not required to continue to accrue during a family leave unless continuation or accrual is required under an agreement of the employer and the employee, a collective bargaining agreement or an employer policy. Notwithstanding ORS 652.610 (3), if the employer is required or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for an employee during the period of family leave that should have been paid by the employee, the employer may deduct from the employee's pay such amounts upon the employee's return to work until the amount the employer advanced toward the payments is

paid. In no event may the total amount deducted for insurance under the provisions of this subsection exceed 10 percent of the employee's gross pay each pay period.

(6) Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of health, disability, life or other insurance coverage for an employee under the provisions of subsection (5) of this section, and the employee does not return to employment with the employer after taking family leave, the employer may deduct amounts paid by the employer from any amounts owed by the employer to the employee, or may seek to recover those amounts by any other legal means, unless the employee fails to return to work because of:

(a) A continuation, reoccurrence or onset of a serious health condition that would entitle the employee to leave for one of the purposes specified by ORS 659A.159 (1)(b) or (c); or

(b) Other circumstances beyond the control of the employee. [Formerly 659.484]

659A.174 Use of paid leave. (1) Except as provided in subsection (2) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy, family leave is not required to be granted with pay.

(2) An employee taking family leave is entitled to use any paid accrued sick leave or any paid accrued vacation leave during the period of family leave, or to use any other paid leave that is offered by the employer in lieu of vacation leave during the period of family leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement, the employer may determine the particular order in which accrued leave is to be used in circumstances in which more than one type of accrued leave is available to the employee. [Formerly 659.486; 2007 c.635 §1]

659A.177 Special rules for teachers. (1) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher requests leave for one of the purposes specified in ORS 659A.159 (1)(b) or (c), the need for the leave is foreseeable, and the employee will be on leave for more than 20 percent of the total number of working days in the period during which the leave would extend, the employer of the teacher may require that the employee elect one of the two following options:

(a) The employee may elect to take leave for a period or periods of a particular dura-

tion, not to exceed the duration of the anticipated medical treatment; or

(b) The employee may elect to transfer temporarily to an available alternative position that better accommodates recurring periods of leave than the regular position of the employee. The teacher must be qualified for the alternative position, and the position must have pay and benefits that are equivalent to the pay and benefits of the employee's regular position.

(2) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family leave for the purpose specified in ORS 659A.159 (1)(c) more than five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family leave until the end of the term if:

(a) The leave is of at least three weeks' duration; and

(b) The employee's return to employment would occur during the three-week period before the end of the term.

(3) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family leave for one of the purposes specified in ORS 659A.159 (1)(a) or (b) during the five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family leave until the end of the term if:

(a) The leave is of at least two weeks' duration; and

(b) The employee's return to employment would occur during the two-week period before the end of the term.

(4) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family leave for one of the purposes specified in ORS 659A.159 (1)(a) or (b) during the three-week period before the end of the term, and the duration of the leave is greater than five working days, the employer of the teacher may require that the employee continue on family leave until the end of the term.

(5) The provisions of this section apply only to an employee who is employed principally in an instructional capacity by a public kindergarten, elementary school, secondary school or education service district. [Formerly 659.488]

659A.180 Postings by employer. A covered employer shall post a notice of the requirements of ORS 659A.150 to 659A.186 in every establishment of the employer in which employees are employed. The Bureau of Labor and Industries shall provide notices to

covered employers meeting the requirements of this section. [Formerly 659.490]

659A.183 Denying family leave to eligible employee prohibited; retaliation prohibited. It is an unlawful practice for a covered employer to:

(1) Deny family leave to which an eligible employee is entitled under ORS 659A.150 to 659A.186; or

(2) Retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions of ORS 659A.150 to 659A.186, submitted a request for family leave or invoked any provision of ORS 659A.150 to 659A.186. [Formerly 659.492; 2007 c.777 §2]

659A.186 Exclusivity of provisions; construction. (1) ORS 659A.150 to 659A.186 do not limit any right of an employee to family medical leave to which the employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy.

(2) ORS 659A.150 to 659A.186 shall be construed to the extent possible in a manner that is consistent with any similar provisions of the federal Family and Medical Leave Act of 1993. Family leave taken under ORS 659A.150 to 659A.186 must be taken concurrently with any leave taken under the federal Family and Medical Leave Act of 1993. [Formerly 659.494]

LEAVE TO ATTEND CRIMINAL PROCEEDING

659A.190 Definitions for ORS 659A.190 to 659A.198. As used in ORS 659A.190 to 659A.198:

(1) "Covered employer" means an employer who employs six or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to attend a criminal proceeding or in the year immediately preceding the year in which an eligible employee takes leave to attend a criminal proceeding.

(2) "Crime victim" means a person who has suffered financial, social, psychological or physical harm as a result of a person felony, as defined in the rules of the Oregon Criminal Justice Commission, and includes a member of the immediate family of the person.

(3) "Criminal proceeding" has the meaning given that term in ORS 131.005 and includes a juvenile proceeding under ORS chapter 419C or any other proceeding at

which a crime victim has a right to be present.

(4) "Eligible employee" means an employee who:

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 days immediately before the date the employee takes leave to attend a criminal proceeding; and

(b) Is a crime victim.

(5) "Immediate family" means spouse, domestic partner, father, mother, sibling, child, stepchild and grandparent. [2003 c.603 §2]

659A.192 Leave to attend criminal proceeding; undue hardship on employer; scheduling criminal proceeding. (1) As used in this section, "undue hardship" means a significant difficulty and expense to a business and includes consideration of the size of the covered employer's business and the covered employer's critical need for the employee.

(2) Except as provided in subsection (3) of this section, a covered employer shall allow an eligible employee to take leave from employment to attend a criminal proceeding.

(3) A covered employer may limit the amount of leave an eligible employee takes to attend a criminal proceeding if the employee's leave creates an undue hardship to the covered employer's business.

(4) An eligible employee may notify the prosecuting attorney if taking leave to attend a criminal proceeding would cause undue hardship to the covered employer. The prosecuting attorney shall then notify the court or hearing body. The court or hearing body must take the schedule of the employee into consideration when scheduling a criminal proceeding. [2003 c.603 §3]

659A.194 Denying leave to employee prohibited; civil action. (1) A covered employer who denies leave to an eligible employee or who discharges, threatens to discharge, intimidates or coerces because the employee takes leave to attend a criminal proceeding commits an unlawful employment practice.

(2) Any person claiming to be aggrieved by an unlawful employment practice specified in subsection (1) of this section may file a civil action under ORS 659A.885. The provisions of ORS 659A.800 to 659A.865 do not apply to an unlawful employment practice specified in subsection (1) of this section. [2003 c.603 §4]

659A.196 Notice to employer; records confidential. (1) An eligible employee shall give the covered employer:

(a) Reasonable notice of the employee's intention to take leave to attend a criminal proceeding; and

(b) Copies of any notices of scheduled criminal proceedings that the employee receives from a law enforcement agency under ORS 147.417.

(2) All records kept by a covered employer regarding an eligible employee's leave under ORS 659A.192 or notices received under subsection (1) of this section are subject to the laws relating to confidentiality. [2003 c.603 §5]

659A.198 Use of paid leave. (1) Except as provided in subsections (2) and (3) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy, a covered employer is not required to grant leave with pay under ORS 659A.192 to an eligible employee to attend a criminal proceeding.

(2) An eligible employee who takes leave to attend a criminal proceeding may use any paid accrued vacation leave during the period of leave or may use any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or an employer policy, the covered employer may determine the order in which accrued leave is to be used when more than one type of accrued leave is available to the employee. [2003 c.603 §6]

WHISTLEBLOWING

(Disclosures by Employee of Violation of State or Federal Law)

659A.199 Prohibited conduct by employer. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.

(2) The remedies provided by this chapter are in addition to any common law remedy or other remedy that may be available to an employee for the conduct constituting a violation of this section. [2009 c.524 §2]

(Disclosures by Public Employees)

659A.200 Definitions for ORS 659A.200 to 659A.224. As used in ORS 659A.200 to 659A.224:

(1) "Disciplinary action" includes but is not limited to any discrimination, dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.

(2) "Employee" means a person employed by or under contract with:

(a) The state or any agency of or political subdivision in the state;

(b) Any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;

(c) Employees of the public corporation created under ORS 656.751;

(d) Employees of a contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement; and

(e) Any person authorized by contract to act on behalf of the state, agency or subdivision.

(3) "Public employer" means:

(a) The state or any agency of or political subdivision in the state; and

(b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee. [Formerly 659.505]

659A.203 Prohibited conduct by public employer. (1) Subject to ORS 659A.206, except as provided in ORS 659A.200 to 659A.224, it is an unlawful employment practice for any public employer to:

(a) Prohibit any employee from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly or legislative committee staff acting under the direction of a member of the Legislative Assembly the activities of:

(A) The state or any agency of or political subdivision in the state; or

(B) Any person authorized to act on behalf of the state or any agency of or political subdivision in the state.

(b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure

of any information that the employee reasonably believes is evidence of:

(A) A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;

(B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or

(C) Subject to ORS 659A.212 (2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States.

(c) Require any employee to give notice prior to making any disclosure or engaging in discussion described in this section, except as allowed in ORS 659A.206 (1).

(d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions described in this section.

(2) No public employer shall invoke or impose any disciplinary action against an employee for employee activity described in subsection (1) of this section or ORS 659A.212. [Formerly 659.510]

659A.206 Effect on public employer's authority over employees. ORS 659A.200 to 659A.224 are not intended to:

(1) Prohibit a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to official legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency or subdivision;

(2) Permit an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and policies pertaining to leaves, unless the employee is requested by a member of the Legislative Assembly or a legislative committee to appear before a legislative committee;

(3) Authorize an employee to represent the employee's personal opinions as the opinions of the agency or subdivision;

(4) Except as specified in ORS 659A.212 (2), authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation;

(5) Restrict or preclude disciplinary action against an employee if the information disclosed by the employee is known by the employee to be false, if the employee discloses the information with reckless disre-

gard for its truth or falsity, or if the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety; or

(6) Restrict or impair any judicial right of action an employee or an employer has under existing law. [Formerly 659.515]

659A.209 Effect on public record disclosures. ORS 659A.200 to 659A.224 are not intended to:

(1) Allow disclosure of records exempt from disclosure except as provided in ORS 192.501 to 192.505.

(2) Prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action. [Formerly 659.520]

659A.212 Policy on cooperation with law enforcement officials; duty to report person subject to warrant for arrest. (1) In order to protect the safety of the citizens of this state, it is the policy of this state that all public employers and their employees cooperate with law enforcement officials in the apprehension of persons subject to a felony or misdemeanor warrant for arrest.

(2) Notwithstanding any other law, when an employee reasonably believes that a person receiving services, benefits or assistance from the state or any agency or political subdivision in the state is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States, the employee shall promptly and without delay report to the employee's immediate supervisor or a person designated by the agency by rule to receive such report.

(3) The supervisor or person designated by the agency shall notify the Oregon State Police promptly and without delay of the information supplied by the employee.

(4) The notification required by subsections (2) and (3) of this section shall include disclosure of the name and address of the person, available information concerning the felony or misdemeanor warrant for arrest and other available identifying information.

(5) Information disclosed under this section shall only be used by law enforcement officials to verify the existence of a felony or misdemeanor warrant for arrest of the person and to apprehend the person if a felony or misdemeanor warrant for arrest exists. [Formerly 659.525]

659A.215 Remedies not exclusive. The remedies provided for violations of ORS 659A.203 and 659A.218 under this chapter are in addition to any appeal proceeding available under ORS 240.560 for a state employee or under any comparable provisions for employees of political subdivisions. [Formerly 659.530]

659A.218 Disclosure of employee's name without consent prohibited. (1) The identity of the employee who discloses any of the following shall not be disclosed by a public employer without the written consent of the employee during any investigation of the information provided by the employee, relating to:

(a) Matters described in ORS 659A.203 (1)(b).

(b) Reports required by ORS 659A.212 (2).

(2) Violation of this section is an unlawful employment practice. [Formerly 659.535]

659A.221 Uniform application to all public employers; optional procedure for disclosures; rules. (1) The Bureau of Labor and Industries by rule shall ensure that the requirements of ORS 659A.200 to 659A.224 are applied uniformly to all public employers. Each public employer may adopt rules, consistent with Bureau of Labor and Industries rules, that apply to that public employer and that also implement ORS 659A.200 to 659A.224.

(2) A public employer may establish by rule an optional procedure whereby an employee who wishes to disclose information described in ORS 659A.203 (1)(b) may disclose information first to the supervisor, or if the supervisor is involved, to the supervisor next higher, but the employer must protect the employee against retaliatory or disciplinary action by any supervisor for such disclosure. [Formerly 659.540]

659A.224 Short title. ORS 659A.200 to 659A.224 shall be known as the Whistleblower Law. [Formerly 659.545]

(Initiating or Aiding Administrative, Criminal or Civil Proceeding)

659A.230 Discrimination for initiating or aiding in criminal or civil proceedings prohibited; remedies not exclusive. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported criminal activity by any person, has in good faith caused a complainant's information or complaint to be filed against any person, has in good faith cooperated with any law enforce-

ment agency conducting a criminal investigation, has in good faith brought a civil proceeding against an employer or has testified in good faith at a civil proceeding or criminal trial.

(2) For the purposes of this section, “complainant’s information” and “complaint” have the meanings given those terms in ORS 131.005.

(3) The remedies provided by this chapter are in addition to any common law remedy or other remedy that may be available to an employee for the conduct constituting a violation of this section. [Formerly 659.550]

659A.233 Discrimination for reporting certain violations or testifying at unemployment compensation hearing prohibited. It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported possible violations of ORS chapter 441 or of ORS 443.400 to 443.455 or has testified in good faith at an unemployment compensation hearing or other hearing conducted pursuant to ORS chapter 657. [Formerly 659.035]

(Legislative Testimony)

659A.236 Discrimination for testifying before Legislative Assembly, committee or task force prohibited. It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment solely for the reason that the employee has testified before the Legislative Assembly or any of its interim or statutory committees, including advisory committees and subcommittees thereof, or task forces. [Formerly 659.270]

UNLAWFUL EMPLOYMENT DISCRIMINATION RELATING TO EMPLOYEE HOUSING

659A.250 Definitions for ORS 659A.250 to 659A.262. (1) For purposes of ORS 659A.250 to 659A.262, “access” means ingress to and egress from residential areas which are concentrated in a central location. It shall not include:

(a) The right to enter the individual residences of employees unless a resident of the household consents to the entry;

(b) The right to use any services provided by the employer for the exclusive use of the employees;

(c) The right to enter single residences shared by employees and employers where a separate entrance to the employee’s quarter is not provided; or

(d) The right to enter work areas.

(2) “Authorized person” means government officials, medical doctors, certified education providers, county health care officials, representatives of religious organizations and any other providers of services for farmworkers funded in whole or part by state, federal or local government.

(3) “Housing” means living quarters owned, rented or in any manner controlled by an employer and occupied by the employee.

(4) “Invited person” means persons invited to a dwelling unit by an employee or a member of the employee’s family residing with the employee. [Formerly 659.280]

659A.253 Restriction of access to employee housing owned or controlled by employer prohibited; telephone accessibility. (1) Employers shall not restrict access by authorized persons or invited persons to any housing owned, rented or in any manner controlled by the employer where employees are residing. Authorized persons or invited persons must announce their presence on the premises upon request. Authorized persons shall, upon request, provide credentials identifying the person as representing a qualifying agency or organization.

(2)(a) A person need not disclose to the employer the name of the employee who issued the invitation prior to gaining access to the housing, but an invited person must do so in order to assert a right to access as an invited person in any judicial proceeding concerning the right to access provided in this section. If an invited person does not disclose the name of the inviter to the employer, the employer may deny access until the invited person obtains an order pursuant to ORS 659A.262.

(b) Invited persons shall not be allowed to enter work areas or to interfere with any employee’s work or performance of duties on behalf of the employer.

(3)(a) The employer shall ensure to the employees residing in housing owned or controlled by an employer and occupied by employees the availability of:

(A) A reasonably accessible operating telephone, whether pay or private, available 24 hours a day for emergency use; and

(B) An operating telephone, whether pay or private, located within two miles of the housing, accessible and available so as to provide reasonable opportunity for private use by employees.

(b) An employer may request a waiver from the requirements of paragraph (a) of this subsection if the employer demonstrates to the bureau that:

(A) Compliance would constitute an unreasonable hardship for the employer; and

(B) The camp meets any requirements established by the Department of Consumer and Business Services for an emergency medical plan.

(4) A complaint may not be filed under ORS 659A.820 for violations of this section. [Formerly 659.285]

659A.256 Regulations by employers concerning use and occupancy of employee housing; requirements; notice. Employers may adopt reasonable rules and regulations concerning the use and occupancy of such housing including hours of access which must be posted in a conspicuous place at least three days prior to enforcement. Such rules shall be enforceable as to employees, invited persons and those authorized persons who are not governmental officials or who are not visiting the camp for emergency purposes only if:

(1) Their purpose is to promote the safety or welfare of the employees and authorized persons allowed access;

(2) They preserve the employer's property from abusive use;

(3) They are reasonably related to the purpose for which they are adopted;

(4) They apply to all employees on the premises in a fair manner; and

(5) They are sufficiently explicit in the prohibition, direction or limitation of the employee's conduct to fairly inform the employees of what must be done to comply. [Formerly 659.290]

659A.259 Eviction from employee housing or discrimination against employee for reporting violations of ORS 659A.250 to 659A.262 prohibited; enforcement. (1) It is an unlawful employment practice for an employer to expel or evict from housing referred to in ORS 659A.250 to 659A.262 or to discharge, demote, suspend from employment or in any other manner discriminate or retaliate against an employee or any member of the employee's household for the reason that the employee or any member of the employee's household has:

(a) Reported or complained concerning possible violations of ORS 659A.250 to 659A.262; or

(b) Conferred with or invited to residential areas, any authorized person or invited person.

(2) An employee or any member of the employee's household may file a complaint

under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover the relief as provided by ORS 659A.885 (1) and (3). [Formerly 659.295]

659A.262 Warrant on behalf of person entitled to access to housing; vacation of warrant; rules. (1) In the event that any person claiming to be an authorized or invited person is denied access to housing, the person may apply to any magistrate having jurisdiction to issue warrants, for an order authorizing the person to gain access to the housing.

(2) The application pursuant to this section shall be sworn and shall include allegations of the facts and circumstances under which the person alleges that the person is entitled to access under ORS 659A.250 to 659A.262.

(3) If, on ex parte review of the application, it appears from the sworn allegations of the application that the person is entitled to access to the housing, the magistrate shall promptly issue an order restraining the owner of the housing from interfering with the access of the applicant to the housing.

(4) No fee, bond or undertaking shall be required in connection with proceedings under this section.

(5) On sufficient cause, the magistrate may enter further orders for the protection of residents of the housing, including the temporary sealing of the application, or portions thereof.

(6) Any person subject to an order referred to in subsections (1) to (5) of this section may request that the order be vacated or modified by filing a written motion with the court which issued the order.

(7) Upon receipt of a motion to modify or vacate the order, the court shall schedule a hearing.

(8) If after the hearing, the court determines that the applicant is not entitled to access, the court shall vacate or modify the order.

(9) The Bureau of Labor and Industries may adopt rules to carry out the provisions of ORS 659A.250 to 659A.262. [Formerly 659.297]

PROTECTIONS BECAUSE OF DOMESTIC VIOLENCE, SEXUAL ASSAULT OR STALKING

(Leave)

659A.270 Definitions for ORS 659A.270 to 659A.285. As used in ORS 659A.270 to 659A.285:

(1) "Covered employer" means an employer who employs six or more individuals

in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to address domestic violence, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic violence, sexual assault or stalking.

(2) “Eligible employee” means an employee who:

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 days immediately before the date the employee takes leave; and

(b) Is a victim of domestic violence, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, sexual assault or stalking.

(3) “Protective order” means an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee’s minor child or dependent.

(4) “Victim of domestic violence” means:

(a) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(b) Any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805.

(5) “Victim of sexual assault” means:

(a) An individual against whom a sexual offense has been committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805.

(6) “Victim of stalking” means:

(a) An individual against whom stalking has been committed as described in ORS 163.732; or

(b) Any other individual designated as a victim of stalking by rule adopted under ORS 659A.805.

(7) “Victim services provider” means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, sexual assault or stalking. [2007 c.180 §2]

659A.272 Employer required to provide leave. Except as provided in ORS 659A.275, a covered employer shall allow an eligible employee to take reasonable leave from employment for any of the following purposes:

(1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee’s minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking.

(2) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or stalking of the eligible employee or the employee’s minor child or dependent.

(3) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking.

(4) To obtain services from a victim services provider for the eligible employee or the employee’s minor child or dependent.

(5) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee’s minor child or dependent. [2007 c.180 §3]

659A.275 Undue hardship. (1) As used in this section, “undue hardship” means a significant difficulty and expense to a covered employer’s business and includes consideration of the size of the employer’s business and the employer’s critical need for the eligible employee.

(2) A covered employer may limit the amount of leave an eligible employee takes under ORS 659A.272 if the employee’s leave creates an undue hardship on the employer’s business. [2007 c.180 §4]

659A.277 Denying leave to employee prohibited; civil action. It is an unlawful employment practice for a covered employer to deny leave to an eligible employee or to discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee takes leave as provided in ORS 659A.272. [2007 c.180 §5]

659A.280 Notice to employer; records confidential. (1) An eligible employee shall give the covered employer reasonable advance notice of the employee’s intention to take leave for the purposes identified in ORS 659A.272, unless giving the advance notice is not feasible.

(2) The covered employer may require the eligible employee to provide certification that:

(a) The employee or the employee's minor child or dependent is a victim of domestic violence, sexual assault or stalking; and

(b) The leave taken is for one of the purposes identified in ORS 659A.272.

(3) The eligible employee shall provide the certification within a reasonable time after receiving the covered employer's request for the certification.

(4) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the employee's minor child or dependent was a victim of domestic violence, sexual assault or stalking.

(b) A copy of a protective order or other evidence from a court or attorney that the eligible employee appeared in or was preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking.

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the employee's minor child or dependent was undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking.

(5) All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285, including the fact that the employee has requested or obtained leave under ORS 659A.272, are confidential and may not be released without the express permission of the employee, unless otherwise required by law. [2007 c.180 §6]

659A.285 Use of paid leave. (1) Except as provided in subsections (2) and (3) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy, a covered employer is not required to grant leave with pay to an eligible employee under ORS 659A.272.

(2) An eligible employee who takes leave pursuant to ORS 659A.272 may use any paid accrued vacation leave or may use any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or an employer policy, the covered employer may determine the order in which paid accrued leave is to be used

when more than one type of paid accrued leave is available to the employee. [2007 c.180 §7]

(Prohibited Conduct)

659A.290 Prohibited conduct by employer; records confidential. (1) As used in this section:

(a) "Reasonable safety accommodation" may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, sexual assault or stalking.

(b) "Victim of domestic violence" has the meaning given that term in ORS 659A.270.

(c) "Victim of sexual assault" has the meaning given that term in ORS 659A.270.

(d) "Victim of stalking" has the meaning given that term in ORS 659A.270.

(2) It is an unlawful employment practice for an employer to:

(a) Refuse to hire an otherwise qualified individual because the individual is a victim of domestic violence, sexual assault or stalking.

(b) Discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an individual with regard to promotion, compensation or other terms, conditions or privileges of employment because the individual is a victim of domestic violence, sexual assault or stalking.

(c) Refuse to make a reasonable safety accommodation requested by an individual who is a victim of domestic violence, sexual assault or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer, as determined under ORS 659A.121.

(3)(a) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, sexual assault or stalking.

(b) An individual must provide a certification required under paragraph (a) of this subsection within a reasonable time after receiving the employer's request for certification.

(c) Any of the following constitutes sufficient certification:

(A) A copy of a police report indicating that the individual was or is a victim of domestic violence, sexual assault or stalking.

(B) A copy of a protective order or other evidence from a court or attorney that the individual appeared in or is preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking.

(C) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking.

(d) All records and information kept by an employer regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual, unless otherwise required by law. [2009 c.478 §2]

**MISCELLANEOUS UNLAWFUL
EMPLOYMENT DISCRIMINATION
(Prohibited Testing)**

659A.300 Requiring breathalyzer, polygraph, psychological stress or brain-wave test or genetic test prohibited; exceptions. (1) Except as provided in this section, it is an unlawful employment practice for any employer to subject, directly or indirectly, any employee or prospective employee to any breathalyzer test, polygraph examination, psychological stress test, genetic test or brain-wave test.

(2) As used in this section:

(a) "Breathalyzer test" means a test to detect the presence of alcohol in the body through the use of instrumentation or mechanical devices.

(b) "Genetic test" has the meaning given in ORS 192.531.

(c) "Polygraph examination or psychological stress test" means a test to detect deception or to verify the truth of statements through the use of instrumentation or mechanical devices.

(d) An individual is "under the influence of intoxicating liquor" when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work rules if there is no applicable collective bargaining provision.

(3) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a polygraph examination to an individual, if the individual consents to the examination, during the course of criminal or civil judicial proceedings in which the individual is a party or witness or during the course of a criminal investigation conducted by a law enforcement agency, as defined in

ORS 181.010, a district attorney or the Attorney General.

(4) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test.

(5) Subsection (1) of this section does not prohibit the administration of a genetic test to an individual if the individual or the individual's representative grants informed consent in the manner provided by ORS 192.535, and the genetic test is administered solely to determine a bona fide occupational qualification. [Formerly 659.227]

659A.303 Employer prohibited from obtaining, seeking to obtain or using genetic information; remedies. (1) It is an unlawful employment practice for an employer to seek to obtain, to obtain or to use genetic information of an employee or a prospective employee, or of a blood relative of the employee or prospective employee, to distinguish between or discriminate against or restrict any right or benefit otherwise due or available to an employee or a prospective employee.

(2) An employee or prospective employee may bring a civil action under ORS 659A.885 for a violation of this section.

(3) For purposes of this section, "blood relative," "genetic information" and "obtain genetic information" have the meanings given those terms in ORS 192.531. [Formerly 659.036]

659A.306 Requiring employee to pay for medical examination as condition of continued employment prohibited; exceptions. (1) It is an unlawful employment practice for any employer to require an employee, as a condition of continuation of employment, to pay the cost of any medical examination or the cost of furnishing any health certificate.

(2) Notwithstanding subsection (1) of this section, it is not an unlawful employment practice for an employer to require the payment of medical examination or health certificate costs:

(a) From health and welfare fringe benefit moneys contributed entirely by the employer; or

(b) By the employee if the medical examination or health certificate is required pur-

suant to a collective bargaining agreement, state or federal statute or city or county ordinance. [Formerly 659.330]

(Miscellaneous Provisions)

659A.309 Discrimination solely because of employment of another family member prohibited; exceptions. (1) Except as provided in subsection (2) of this section, it is an unlawful employment practice for an employer solely because another member of an individual's family works or has worked for that employer to:

(a) Refuse to hire or employ an individual;

(b) Bar or discharge from employment an individual; or

(c) Discriminate against an individual in compensation or in terms, conditions or privileges of employment.

(2) An employer is not required to hire or employ and is not prohibited from barring or discharging an individual if such action:

(a) Would constitute a violation of any law of this state or of the United States, or any rule promulgated pursuant thereto, with which the employer is required to comply;

(b) Would constitute a violation of the conditions of eligibility for receipt by the employer of financial assistance from the government of this state or the United States;

(c) Would place the individual in a position of exercising supervisory, appointment or grievance adjustment authority over a member of the individual's family or in a position of being subject to such authority which a member of the individual's family exercises; or

(d) Would cause the employer to disregard a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(3) As used in this section, "member of an individual's family" means the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of the individual. [Formerly 659.340]

659A.312 Leave of absence to donate bone marrow; verification by employer.

(1) It is an unlawful employment practice for an employer to deny to grant already accrued paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. The total length of the leaves shall be determined by the employee, but shall not exceed the amount of already accrued paid leave or 40 work hours, which-

ever is less, unless agreed to by the employer.

(2) The employer may require verification by a physician of the purpose and length of each leave requested by the employee to donate bone marrow. If there is a medical determination that the employee does not qualify as a bone marrow donor, the paid leave of absence used by the employee prior to that medical determination is not affected.

(3) An employer shall not retaliate against an employee for requesting or using accrued paid leave of absence as provided by this section.

(4) This section does not:

(a) Prevent an employer from providing leave for bone marrow donations in addition to leave required under this section.

(b) Affect an employee's rights with respect to any other employment benefit.

(5) This section applies only to employees who work an average of 20 or more hours per week. [Formerly 659.358]

659A.315 Restricting use of tobacco in nonworking hours prohibited; exceptions.

(1) It is an unlawful employment practice for any employer to require, as a condition of employment, that any employee or prospective employee refrain from using lawful tobacco products during nonworking hours, except when the restriction relates to a bona fide occupational requirement.

(2) Subsection (1) of this section does not apply if an applicable collective bargaining agreement prohibits off-duty use of tobacco products. [Formerly 659.380; 2005 c.199 §3]

659A.318 Discrimination relating to academic degree in theology or religious occupations prohibited.

(1) If an employer requires an applicant or employee to have an academic degree from a post-secondary institution to qualify for a position, but does not require a degree with a specific title, it is an unlawful employment practice for the employer to refuse to hire or promote or in any manner discriminate or retaliate against the applicant or employee only because the applicant or employee meets the educational requirements for the position by having a degree with a title in theology or religious occupations from a school that, when the degree was issued, was a school described in ORS 348.594 (2)(d) on the date preceding July 15, 2005, or was a school exempt from ORS 348.594 to 348.615 under ORS 348.604.

(2) If an employer other than a public body, as defined in ORS 192.410, offers employees benefits of tuition reimbursement, educational debt reduction, educational incentive or educational contribution or gift match for educational services provided by a

post-secondary institution and the employer does not restrict the program to specific institutions or degrees with specific titles, it is an unlawful employment practice for the employer to refuse to offer the benefit to or in any manner discriminate or retaliate against an employee because the employee attends or seeks to attend a school that is:

(a) A school that was, on the date before July 15, 2005, described in ORS 348.594 (2)(d); or

(b) Exempt from ORS 348.594 to 348.615 under ORS 348.604. [2001 c.621 §93; 2005 c.546 §11]

659A.321 Seniority systems and benefit plans not unlawful employment practices. It is not an unlawful employment practice for an employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this chapter. However, except as otherwise provided by law, no such employee benefit plan shall excuse the failure to hire any individual and no such seniority system or employee benefit plan shall require the involuntary retirement of any individual 18 years of age or older because of the age of such individual. [Formerly 659.028]

ACCESS TO PUBLIC ACCOMMODATIONS

(Unlawful Discrimination in Public Accommodations)

659A.400 Place of public accommodation defined. (1) A place of public accommodation, subject to the exclusion in subsection (2) of this section, means any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise.

(2) However, a place of public accommodation does not include any institution, bona fide club or place of accommodation which is in its nature distinctly private. [Formerly 30.675]

659A.403 Discrimination in place of public accommodation prohibited. (1) Except as provided in subsection (2) of this section, all persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without 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.

(2) Subsection (1) of this section does not prohibit:

(a) The enforcement of laws governing the consumption of alcoholic beverages by minors and the frequenting by minors of places of public accommodation where alcoholic beverages are served; or

(b) The offering of special rates or services to persons 50 years of age or older.

(3) It is an unlawful practice for any person to deny full and equal accommodations, advantages, facilities and privileges of any place of public accommodation in violation of this section. [Formerly 30.670; 2003 c.521 §1; 2005 c.131 §1; 2007 c.100 §5]

659A.406 Aiding or abetting certain discrimination prohibited. Except as otherwise authorized by ORS 659A.403, it is an unlawful practice for any person to aid or abet any place of public accommodation, as defined in ORS 659A.400, or any employee or person acting on behalf of the place of public accommodation to make 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. [Formerly 30.685; 2003 c.521 §2; 2007 c.100 §6]

659A.409 Notice that discrimination will be made in place of public accommodation prohibited; age exceptions. Except as provided by laws governing the consumption of alcoholic beverages by minors and the frequenting by minors of places of public accommodation where alcoholic beverages are served, and except for special rates or services offered to persons 50 years of age or older, it is an unlawful practice for any person acting on behalf of any place of public accommodation as defined in ORS 659A.400 to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind to the effect that any of the accommodations, advantages, facilities, services or privileges of the place of public accommodation will be refused, withheld from or denied to, or that any discrimination will be made against, any person 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. [Formerly 659.037; 2003 c.521 §3; 2005 c.131 §2; 2007 c.100 §7]

(Access to Employee Toilet Facilities)

659A.411 Definitions for ORS 659A.411 to 659A.415. As used in ORS 659A.411 to 659A.415:

(1) "Customer" means an individual who is lawfully on the premises of a place of public accommodation.

(2) "Eligible medical condition" means the use of an ostomy device or a diagnosis

of Crohn’s disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome or other medical condition that can cause a person to require access to a toilet facility without delay.

(3) “Place of public accommodation” has the meaning given that term in ORS 659A.400. [2009 c.415 §1]

Note: 659A.411 to 659A.415 and 659A.417 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 659A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659A.413 Denial of access prohibited; exception. (1) A place of public accommodation that has an employee toilet facility shall allow a customer to use that facility during normal business hours if:

(a) The customer requesting the use of the employee toilet facility suffers from an eligible medical condition;

(b) Three or more employees of the place of public accommodation are working at the time the customer requests use of the employee toilet facility;

(c) The customer presents a letter or other document from a physician, physician assistant, nurse or nurse practitioner indicating that the customer suffers from an eligible medical condition, or presents an identification card that was issued by a national organization that advocates for persons with eligible medical conditions and that indicates that the person suffers from an eligible medical condition;

(d) The employee toilet facility is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the place of public accommodation; and

(e) A public restroom is not immediately available to the customer.

(2) This section does not apply to a gas station, as defined in ORS 646.932, with a building of 800 square feet or less. [2009 c.415 §2]

Note: See note under 659A.411.

659A.415 Liability for damages; physical changes not required. (1) Places of public accommodation, and employees of places of public accommodation, are not liable for any damages suffered by a customer, or by any person accompanying a customer, while using an employee toilet facility pursuant to ORS 659A.413 unless the damages are the result of an intentional tort or gross negligence.

(2) A place of public accommodation is not required to make any physical changes to an employee toilet facility by reason of ORS 659A.413. [2009 c.415 §3]

Note: See note under 659A.411.

659A.417 Violation of ORS 659A.413. Violation of ORS 659A.413 is a Class D violation. [2009 c.415 §4]

Note: See note under 659A.411.

UNLAWFUL DISCRIMINATION IN REAL PROPERTY TRANSACTIONS

659A.420 [Formerly 659.031; repealed by 2008 c.36 §17]

659A.421 Discrimination in selling, renting or leasing real property prohibited. (1) As used in this section:

(a) “Dwelling” means:

(A) A building or structure, or portion of a building or structure, that is occupied, or designed or intended for occupancy, as a residence by one or more families; or

(B) Vacant land offered for sale or lease for the construction or location of a building or structure, or portion of a building or structure, that is occupied, or designed or intended for occupancy, as a residence by one or more families.

(b) “Purchaser” includes an occupant, prospective occupant, renter, prospective renter, lessee, prospective lessee, buyer or prospective buyer.

(c) “Real property” includes a dwelling.

(d) “Source of income” does not include federal rent subsidy payments under 42 U.S.C. 1437f, income derived from a specific occupation or income derived in an illegal manner.

(2) A person may not, because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of any person:

(a) Refuse to sell, lease or rent any real property to a purchaser.

(b) Expel a purchaser from any real property.

(c) Make any distinction, discrimination or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(h) Deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation.

(i) Represent to a person that a dwelling is not available for inspection, sale or rental when the dwelling in fact is available for inspection, sale or rental.

(j) Otherwise make unavailable or deny a dwelling to a person.

(3)(a) A person whose business includes engaging in residential real estate related transactions may not discriminate against any person in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(b) As used in this subsection, "residential real estate related transaction" means any of the following:

(A) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(ii) Secured by residential real estate; or

(B) The selling, brokering or appraising of residential real property.

(4) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(5) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(6) This section does not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

(7)(a) This section does not apply to familial status distinction, discrimination or restriction with respect to housing for older persons.

(b) As used in this subsection, "housing for older persons" means housing:

(A) Provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined by the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing qualifies as housing for older persons under this subparagraph if:

(i) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and

(ii) Policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older are published and adhered to.

(c) Housing does not fail to meet the requirements for housing for older persons if:

(A) Persons residing in the housing as of September 13, 1988, do not meet the requirements of paragraph (b)(B) or (C) of this subsection. However, new occupants of the housing shall meet the age requirements of paragraph (b)(B) or (C) of this subsection; or

(B) The housing includes unoccupied units that are reserved for occupancy by persons who meet the age requirements of paragraph (b)(B) or (C) of this subsection.

(d) Nothing in this section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(8) The provisions of subsection (2)(a) to (d) and (f) of this section that prohibit actions based upon sex, sexual orientation or familial status do not apply to the renting of space within a single-family residence if the owner actually maintains and occupies the residence as the owner's primary residence and all occupants share some common space within the residence.

(9) Any violation of this section is an unlawful practice. [Formerly 659.033; 2007 c.100 §8; 2007 c.903 §4a; 2008 c.36 §6]

659A.424 [2003 c.378 §2; 2007 c.100 §9; repealed by 2007 c.903 §§15,15a]

659A.425 Violation based on facially neutral housing policy. (1) As used in this section:

(a) “Facially neutral housing policy” means a guideline, practice, rule or screening or admission criterion, regarding a real property transaction, that applies equally to all persons.

(b) “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income or disability.

(c) “Real property transaction” means an act described in ORS 659A.145 or 659A.421 involving the renting or leasing of residential real property subject to ORS chapter 90.

(2) A court or the Commissioner of the Bureau of Labor and Industries may find a person to have violated ORS 659A.145 or 659A.421 if:

(a) The person applies a facially neutral housing policy to a member of a protected class in a real property transaction involving a residential tenancy subject to ORS chapter 90; and

(b) Application of the policy adversely impacts members of the protected class to a greater extent than the policy impacts persons generally.

(3) In determining under subsection (2) of this section whether a violation has occurred and, if a violation has occurred, what relief should be granted, a court or the commissioner shall consider:

(a) The significance of the adverse impact on the protected class;

(b) The importance and necessity of any business purpose for the facially neutral housing policy; and

(c) The availability of less discriminatory alternatives for achieving the business purpose for the facially neutral housing policy. [2008 c.36 §2]

ADMINISTRATIVE ACTIONS FOR UNLAWFUL DISCRIMINATION

(Enforcement Powers of Bureau of Labor and Industries)

659A.800 Elimination and prevention of discrimination by Bureau of Labor and Industries; subpoenas. (1) The Bureau of Labor and Industries may take all steps necessary to eliminate and prevent unlawful practices. To eliminate the effects of unlawful discrimination, the bureau may promote voluntarily affirmative action by employers, labor organizations, governmental agencies, private organizations and individuals and may accept financial assistance and grants or funds for this purpose.

(2) The bureau is given general jurisdiction and power for the purpose of eliminating and preventing unlawful practices.

(3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner and such other personnel as may be necessary to carry into effect the powers and duties conferred upon the bureau and the commissioner under this chapter and may prescribe the duties and responsibilities of the employees. The commissioner may delegate any of the powers under this chapter to the deputy commissioner employed under this subsection.

(4) In the manner described in ORS 651.060, the commissioner may conduct investigations, issue subpoenas and subpoenas duces tecum, administer oaths, obtain evidence and take testimony in all matters relating to the duties required under this chapter.

(5) A person delegated any powers or duties under this section and ORS 659A.805 may not act as prosecutor and examiner in processing any violation under this chapter. [Formerly 659.100; 2007 c.277 §4]

659A.805 Rules for carrying out ORS chapter 659A. (1) In accordance with any applicable provision of ORS chapter 183, the Commissioner of the Bureau of Labor and Industries may adopt reasonable rules:

(a) Establishing what acts and communications constitute a notice, sign or advertisement that public accommodation or real property will be refused, withheld from, or denied to any person or that the person will be unlawfully discriminated against because of race, color, religion, sex, sexual orientation, national origin, marital status, disability or:

(A) With respect to public accommodation, age.

(B) With respect to real property transactions, familial status or source of income.

(b) Establishing what inquiries in connection with employment and prospective employment express a limitation, specification or unlawful discrimination as to race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.

(c) Establishing what inquiries in connection with employment and prospective employment soliciting information as to race, color, religion, sex, sexual orientation, national origin, marital status, age or disability are based on bona fide occupational qualifications.

(d) For internal operation and practice and procedure before the commissioner under this chapter.

(e) Covering any other matter required to carry out the purposes of this chapter.

(2) In adopting rules under this section the commissioner shall consider the following factors, among others:

(a) The relevance of information requested to job performance in connection with which it is requested.

(b) Available reasonable alternative ways of obtaining requested information without soliciting responses as to race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, source of income or, with respect to real property transactions, familial status.

(c) Whether a statement or inquiry soliciting information as to race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, source of income or, with respect to real property transactions, familial status, communicates an idea independent of an intention to limit, specify or unlawfully discriminate as to race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, source of income or, with respect to real property transactions, familial status.

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind of transaction that it contemplates.

(e) The ease with which the independent idea relating to a legitimate objective of the kind of transaction contemplated could be communicated without connoting an intention to unlawfully discriminate as to race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, source of income or, with respect to real property transactions, familial status. [Formerly 659.103; 2003 c.521 §4; 2007 c.100 §10; 2007 c.903 §5a]

659A.810 Willful interference with administration of law and violation of orders of commissioner prohibited. (1) No person shall willfully resist, prevent, impede or interfere with the Commissioner of the Bureau of Labor and Industries or any authorized agents of the commissioner in the performance of duty under this chapter or willfully violate an order of the commissioner.

(2) An appeal or other procedure for the review of any such order is not deemed to be such willful conduct. [Formerly 659.110]

659A.815 Advisory agencies and intergroup-relations councils. (1) The Commissioner of the Bureau of Labor and Industries shall create such advisory agencies and intergroup-relations councils as the commissioner believes necessary to aid in

effectuating the purposes of this chapter. The commissioner may empower advisory agencies and councils:

(a) To study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, familial status or source of income.

(b) To foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of the state.

(c) To make recommendations to the commissioner for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education.

(2) The advisory agencies and councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary expenses in accordance with laws and regulations governing state officers.

(3) The commissioner may make provision for technical and clerical assistance to the advisory agencies and councils and for the expenses of the assistance. [Formerly 659.115; 2007 c.100 §11]

(Complaint, Investigation and Hearing Procedures)

659A.820 Complaints. (1) As used in this section, for purposes of a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, "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.

(2) Any person claiming to be aggrieved by an alleged unlawful practice may file with the Commissioner of the Bureau of Labor and Industries a verified written complaint that states the name and address of the person alleged to have committed the unlawful practice. The complaint must be signed by the complainant. The complaint must set forth the acts or omissions alleged to be an unlawful practice. The complainant may be required to set forth in the complaint such other information as the commissioner may require. Except as provided in ORS 654.062, a complaint under this section must be filed no later than one year after the alleged unlawful practice.

(3)(a) Except as provided in paragraph (b) of this subsection, a complaint may not be filed under this section if a civil action has been commenced in state or federal court alleging the same matters.

(b) The prohibition described in paragraph (a) of this subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law.

(4) If an employer has one or more employees who refuse or threaten to refuse to abide by the provisions of this chapter or to cooperate in carrying out the purposes of this chapter, the employer may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

(5) Except as provided in subsection (6) of this section, the commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the complaint. The commissioner shall include in the notice the date, place and circumstances of the alleged unlawful practice.

(6) The commissioner shall notify the person against whom a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law is made within 10 days of the filing of the complaint. The commissioner shall include in the notice:

(a) The date, place and circumstances of the alleged unlawful practice; and

(b) A statement that the person against whom the complaint is made may file an answer to the complaint. [2001 c.621 §2; 2007 c.71 §214; 2007 c.903 §6; 2008 c.36 §7; 2009 c.108 §1]

659A.825 Complaints filed by Attorney General or commissioner; temporary cease and desist orders in certain cases.

(1)(a) If the Attorney General or the Commissioner of the Bureau of Labor and Industries has reason to believe that any person has committed an unlawful practice, the Attorney General or the commissioner may file a complaint in the same manner as provided for a complaint filed by a person under ORS 659A.820.

(b) If the Attorney General or the commissioner has reason to believe that a violation of ORS 659A.403, 659A.406 or 659A.409 has occurred, the Attorney General or the commissioner may file a complaint under this section against any person acting on behalf of a place of public accommodation and against any person who has aided or abetted in that violation.

(c) If the Attorney General or the commissioner has reason to believe that an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal

housing law has occurred or is about to occur, the Attorney General or the commissioner may file a complaint in the same manner as a person filing a complaint under ORS 659A.820.

(2) If the commissioner files a complaint under this section alleging an unlawful practice other than an unlawful employment practice, or if a person files a complaint under ORS 659A.820 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the commissioner may also issue a temporary cease and desist order requiring any respondent named in the complaint to refrain from the unlawful practice alleged. A temporary cease and desist order under this section may contain any provision that could be included in a cease and desist order issued after a hearing under ORS 659A.850. [2001 c.621 §3; 2008 c.36 §8]

659A.830 Authority of commissioner.

(1) Except as provided in subsection (5) of this section, all authority of the Commissioner of the Bureau of Labor and Industries to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 ceases upon the filing of a civil action by the complainant alleging the same matters that are the basis of the complaint under ORS 659A.820.

(2)(a) Except as provided in paragraph (b) of this subsection, the commissioner may dismiss a complaint at any time after the complaint is filed. Upon the written request of the person who filed the complaint under ORS 659A.820, the commissioner shall dismiss the complaint. Upon dismissal of the complaint, the commissioner shall issue a 90-day notice if notice is required under ORS 659A.880.

(b) Paragraph (a) of this subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law. The commissioner shall dismiss a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law if the commissioner finds no substantial evidence that an unlawful practice or discriminatory housing practice has occurred or is about to occur.

(3) Except as provided in this section, all authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 ceases one year after the complaint is filed unless the commissioner has issued a finding of substantial evidence under ORS 659A.835 during the one-year period. Unless it is impracticable to do so, the commissioner shall make a final administrative disposition of a complaint alleging an unlawful practice un-

der ORS 659A.145 or 659A.421 or discrimination under federal housing law no later than one year after receipt of the complaint.

(4) The authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 alleging an unlawful practice under ORS 659A.403 or 659A.406 continues until the filing of a civil action by the complainant or until the commissioner dismisses the proceedings, enters into a settlement agreement or enters a final order in the matter after a hearing under ORS 659A.850.

(5) The authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not cease upon the filing of a civil action by the complainant, but ceases upon the commencement of a trial in the civil action.

(6) The authority of the commissioner to conduct investigations or other proceedings to resolve a complaint filed under ORS 659A.820 alleging a violation of ORS 659A.145 or 659A.421 or 659A.406 does not cease under subsection (3) of this section if the issuance of a finding of substantial evidence under ORS 659A.835 within the time allowed under subsection (3) of this section is not practicable. The commissioner shall notify the parties in writing of the reasons that the issuance of substantial evidence cannot be made within the time allowed.

(7) Nothing in this section affects the ability of the commissioner to enforce any order entered by the commissioner or to enforce any settlement agreement signed by a representative of the commissioner. [2001 c.621 §4; 2007 c.903 §7; 2008 c.36 §9]

659A.835 Investigation; finding of substantial evidence. (1) Except as provided in subsection (2) of this section, after the filing of any complaint under ORS 659A.820 or 659A.825, the Commissioner of the Bureau of Labor and Industries may investigate the complaint.

(2) The commissioner shall commence an investigation of any complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within 30 days after the filing of the complaint.

(3) If, by reason of an investigation under this section, the commissioner determines that additional persons should be named as respondents in the complaint, the commissioner may add the names of those persons to the complaint. The commissioner may name additional persons as respondents un-

der this subsection only during the course of the investigation. Within 10 days after identifying an additional person who will be named as a respondent, the commission shall serve the person with a copy of the complaint that identifies the alleged discriminatory housing practice and a notice that advises the person of the procedural rights and obligations of the person, including the person's right to file an answer to the complaint.

(4) If an investigation under this section discloses any substantial evidence supporting the allegations of a complaint, the commissioner shall issue a finding of substantial evidence. The finding must be sent to the respondent and the complainant and must be signed by the commissioner or the commissioner's designee. The finding must include at least the following information:

(a) The names of the complainant and the respondent;

(b) The allegations contained in the complaint;

(c) Facts found by the commissioner that are related to the allegations of the complaint; and

(d) A statement that the investigation of the complaint has disclosed substantial evidence supporting the allegations of the complaint. [2001 c.621 §5; 2007 c.903 §8]

659A.840 Settlement. (1) The Commissioner of the Bureau of Labor and Industries and any respondent named in a complaint may enter into a settlement at any time after the filing of a complaint. Upon issuing a finding of substantial evidence under ORS 659A.835, the commissioner may take immediate steps to settle the matter through conference, conciliation and persuasion, to eliminate the effects of the unlawful practice and to otherwise carry out the purposes of this chapter.

(2) The terms of any settlement agreement entered into under this chapter must be contained in a written settlement agreement signed by the complainant, the respondent and a representative of the commissioner. Such agreement may include any or all terms and conditions that may be included in a cease and desist order issued by the commissioner after a hearing under ORS 659A.850.

(3) A complainant may file a complaint with the commissioner at any time after a settlement agreement has been entered into under this chapter to seek enforcement of the terms of the agreement. A complaint under this subsection must be filed within one year after the act or omission alleged to be a violation of the terms of the agreement. The commissioner shall investigate and re-

solve the complaint in the same manner as provided in this chapter for a complaint filed under ORS 659A.820.

(4) In addition to the remedy provided under subsection (3) of this section, a complainant may seek to enforce a settlement agreement entered into under this chapter by writ of mandamus or a civil action seeking injunctive relief or specific performance of the agreement.

(5) The commissioner shall enter an order based on the terms of a settlement agreement that is signed by a representative of the commissioner and that is entered into after the issuance of formal charges under ORS 659A.845. In addition to enforcement in the manner provided by subsection (3) or (4) of this section, the order may be recorded in the County Clerk Lien Record in the manner provided by ORS 205.125 and enforced in the manner provided by ORS 205.126.

(6) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may be disclosed in any manner, including but not limited to disclosure under ORS 192.410 to 192.505, or be used as evidence in a subsequent proceeding under this chapter or under federal housing law, without the written consent of the persons concerned. [2001 c.621 §6; 2008 c.36 §10]

659A.845 Formal charges. (1) If the Commissioner of the Bureau of Labor and Industries issues a finding of substantial evidence under ORS 659A.835 and the matter cannot be settled through conference, conciliation and persuasion, or if the commissioner determines that the interest of justice requires that a hearing be held without first seeking settlement, the commissioner shall prepare formal charges. Formal charges must contain all information required for a notice under ORS 183.415 and must specify the allegations of the complaint to which the respondent will be required to make response. Formal charges shall also set the time and place for hearing the formal charges.

(2)(a) The commissioner shall serve the formal charges on all respondents found to have engaged in the unlawful practice.

(b) If the formal charges allege a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law, the commissioner shall serve on the named respondents and complainants the formal charges and a notice of the right of the respondents and complainants under ORS 659A.870 to opt for a court trial instead of a hearing under ORS 659A.850.

(3) The commissioner may not prepare formal charges alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law after trial has begun in a civil action that the complainant commenced under state or federal law and that seeks relief with respect to that unlawful or discriminatory practice. [2001 c.621 §7; 2007 c.903 §9; 2008 c.36 §11]

659A.850 Hearing; orders; fees. (1)(a) All proceedings before the Commissioner of the Bureau of Labor and Industries under this section shall be conducted as contested case proceedings under the provisions of ORS chapter 183. Except as provided in paragraph (b) of this subsection, the commissioner may appoint a special tribunal or hearing officer to hear the matter. The commissioner may affirm, reverse, modify or supplement the determinations, conclusions or order of any special tribunal or hearing officer appointed under this subsection. The scheduling of a hearing under this section does not affect the ability of the commissioner and any respondent to thereafter settle the matters alleged in the complaint through conference, conciliation and persuasion.

(b) In a proceeding under this section alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(A) Only an employee of the Bureau of Labor and Industries may be a member of a special tribunal or a hearing officer appointed to hear the matter.

(B) An aggrieved person may intervene as a party in the proceeding. The commissioner may award prevailing party costs and reasonable attorney fees to a person who intervenes.

(2) After considering all the evidence, the commissioner shall cause to be issued findings of facts and conclusions of law.

(3) The commissioner shall issue an order dismissing the formal charges against any respondent not found to have engaged in any unlawful practice alleged in the complaint.

(4) After a hearing under this section, the commissioner shall issue an appropriate cease and desist order against any respondent found to have engaged in any unlawful practice alleged in the complaint. The order must be signed by the commissioner and must take into account the need to supervise compliance with the terms of order. The order may require that the respondent:

(a) Perform an act or series of acts designated in the order that are reasonably calculated to:

(A) Carry out the purposes of this chapter;

(B) Eliminate the effects of the unlawful practice that the respondent is found to have engaged in, including but not limited to paying an award of actual damages suffered by the complainant and complying with injunctive or other equitable relief; and

(C) Protect the rights of the complainant and other persons similarly situated;

(b) Submit reports to the commissioner on the manner of compliance with other terms and conditions specified in the commissioner's order, and take other action as may be required to ensure compliance with the commissioner's order; and

(c) Refrain from any action specified in the order that would jeopardize the rights of the complainant or other persons similarly situated, or that would otherwise frustrate the purposes of this chapter.

(5) A cease and desist order issued under subsection (4) of this section may be recorded in the County Clerk Lien Record in the manner provided by ORS 205.125 and enforced in the manner provided by ORS 205.126. In addition to enforcement under ORS 205.126, the order may be enforced by writ of mandamus or a civil action to compel specific performance of the order.

(6) The commissioner may charge a respondent on a cease and desist order the actual collection fees charged to the bureau by any other governmental agency or any private collection agency assisting in the collection of the judgment. [2001 c.621 §8; 2007 c.903 §10; 2008 c.36 §12; 2009 c.110 §1; 2009 c.162 §2]

Note: Section 2, chapter 110, Oregon Laws 2009, provides:

Sec. 2. The amendments to ORS 659A.850 by section 1 of this 2009 Act apply only to proceedings commenced on or after the effective date of this 2009 Act [July 1, 2009]. [2009 c.110 §2]

659A.855 Civil penalty for certain complaints filed by commissioner. (1)(a) If the Commissioner of the Bureau of Labor and Industries files a complaint under ORS 659A.825 alleging an unlawful practice other than an unlawful employment practice, and the commissioner finds that the respondent engaged in the unlawful practice, the commissioner may, in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each respondent found to have committed the unlawful practice.

(b) Civil penalties under this subsection may not exceed \$1,000 for each violation.

(2)(a) Notwithstanding subsection (1)(b) of this section, if a complaint is filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law and the commissioner finds that

a respondent has engaged in an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the commissioner may assess against the respondent, in addition to any other relief available, a civil penalty:

(A) In an amount not exceeding \$11,000;

(B) Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$27,500 if the respondent has been adjudged to have engaged in one other discriminatory housing practice during the five-year period ending on the date of the filing of the formal charges leading to the hearing; or

(C) Except as provided in paragraph (b) of this subsection, in an amount not exceeding \$55,000 if the respondent has been adjudged to have engaged in two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the formal charges leading to the hearing.

(b) If acts constituting the discriminatory housing practice that is the object of the hearing were committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties listed in paragraph (a)(B) and (C) of this subsection may be imposed regardless of the period of time between the previous discriminatory housing practice and the discriminatory housing practice that is the object of this hearing.

(3) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

(4) All sums collected as civil penalties under this section must first be applied toward reimbursement of the costs incurred in determining the violations, conducting hearings and assessing and collecting the penalty. The remainder, if any, shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund. The department shall issue a receipt for the money to the commissioner. [2001 c.621 §9; 2007 c.903 §11]

659A.860 Settlement agreements and orders. (1) The terms and conditions of any order issued by the Commissioner of the Bureau of Labor and Industries under this chapter, and of any settlement agreement entered into by a respondent under this chapter and signed by a representative of the commissioner, are binding on the agents and successors in interest of the respondent.

(2) The commissioner may relax any terms or conditions of a settlement agreement or of a cease and desist order issued by the commissioner under this chapter, if the

performance of those terms and conditions would cause undue hardship on the respondent or another person and those terms and conditions are not essential to protecting the complainant's rights.

(3) Any person aggrieved by the violation of the terms and conditions of a cease and desist order, or of any settlement agreement signed by a representative of the commissioner, whether by a respondent or by any agent or successor in interest of the respondent, may bring a civil action in the manner provided by ORS 659A.885 (3) and recover the same relief as provided by ORS 659A.885 (3) for unlawful practices. [2001 c.621 §10]

659A.865 Retaliatory action prohibited. A respondent named in a complaint filed under ORS 659A.820 may not, with the intention of defeating a purpose of this chapter, take any action that deprives the person filing the complaint of any services, real property, employment or employment opportunities sought in the complaint during the period of time commencing with the date on which the respondent receives notice from the Commissioner of the Bureau of Labor and Industries that the complaint has been filed and ending on the date on which an administrative determination is made on the merits of the complaint or the matter is resolved by settlement. [2001 c.621 §11]

CIVIL ACTIONS FOR UNLAWFUL DISCRIMINATION

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

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

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

(4)(a) The filing of a complaint under ORS 659A.820 by a person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal

housing law does not constitute an election of remedies or a waiver of the right of the person to file a civil action with respect to the same matters, but a civil action may not be filed after a hearing officer has commenced a hearing on the record under this chapter with respect to the allegations of the complaint.

(b) A respondent or complainant named in a complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may elect to have the matter heard in circuit court under ORS 659A.885. The election must be made in writing and received by the commissioner within 20 days after service of formal charges under ORS 659A.845. If the respondent or the complainant makes the election, the commissioner shall pursue the matter in court on behalf of the complainant at no cost to the complainant.

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

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

(5) A person who has filed a complaint under ORS 659A.820 need not receive a 90-day notice under ORS 659A.880 before commencing a civil action that is based on the same matters alleged in the complaint filed with the commissioner.

(6) Except as provided in subsections (3) and (4) of this section, this section does not limit or alter in any way the authority or power of the commissioner, or limit or alter in any way any of the rights of an individual complainant, until and unless the complainant commences a civil action. [2001 c.621 §12; 2007 c.903 §12; 2008 c.36 §13]

659A.875 Time limitations. (1) Except as provided in subsection (2) of this section, a civil action under ORS 659A.885 alleging an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

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

659A.421 or discrimination under federal housing law.

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

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

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

(6) Notwithstanding ORS 30.275 (9), a civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820. [2001 c.621 §13; 2005 c.452 §1; 2008 c.36 §14]

659A.880 Ninety-day notice. (1) If a complaint filed under ORS 659A.820 alleges unlawful practices other than those unlawful practices described in ORS 659A.403 and 659A.406, the Commissioner of the Bureau of Labor and Industries shall issue a 90-day notice to the complainant if the commissioner dismisses the complaint within one year after the filing of the complaint, and the dismissal is for any reason other than the fact that a civil action has been filed by the complainant.

(2) If the complaint filed under ORS 659A.820 alleges unlawful practices other than those unlawful practices described in ORS 659A.145, 659A.403, 659A.406 and 659A.421, the commissioner shall issue a 90-day notice to the complainant on or before the one-year anniversary of the filing of the complaint unless a 90-day notice has previously been issued under subsection (1) of this section or the matter has been resolved by the execution of a settlement agreement.

(3) A 90-day notice under this section must be in writing and must notify the complainant that a civil action against the respondent under ORS 659A.885 may be filed within 90 days after the date of mailing of

the 90-day notice, and that any right to bring a civil action against the respondent under ORS 659A.885 will be lost if the action is not commenced within 90 days after the date of the mailing of the 90-day notice.

(4) This section does not apply to a complainant alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law. [2001 c.621 §14; 2008 c.36 §15]

659A.885 Civil action. (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 25.337, 25.424, 171.120, 408.230, 476.574, 652.355, 653.060, 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.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421.

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

(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) 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).

(7) 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.

(8) 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.

(9) In an action under subsection (1) or (7) 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. [2001 c.621 §15; 2003 c.521 §5; 2003 c.522 §1; 2003 c.572 §21; 2003 c.603 §7; 2003 c.637 §18; 2005 c.199 §1; 2007 c.100 §12; 2007 c.180 §8; 2007 c.278 §3; 2007 c.280 §1; 2007 c.525 §4; 2007 c.903 §13; 2008 c.36 §16; 2009 c.378 §4; 2009 c.478 §3; 2009 c.524 §3]

659A.890 Civil action for violation of ORS 659A.865. (1) Any person aggrieved by a violation of ORS 659A.865 may bring a civil action in the manner provided by ORS 659A.885 (3) and recover the same relief as provided by ORS 659A.885 (3) for unlawful practices.

(2) As a defense to any cause of action arising under this section, the defendant may plead and prove that either:

(a) Subsequent to the defendant's conduct on which the plaintiff bases the cause of action, the complaint under ORS 659A.820 has been dismissed by the Commissioner of the Bureau of Labor and Industries or deputy, or the court, either for want of evidence to proceed to a hearing or for lack of merit after such hearing; or

(b) In the case of the sale of real property, defendant's conduct giving rise to plaintiff's cause of action was neither committed within the first two years after notice by the commissioner or deputy of the filing of the complaint under ORS 659A.820, nor within any extended period of time obtained at the request of respondent for disposition of the case. [Formerly 659.105]

PENALTIES

659A.990 Penalties. Violation of ORS 659A.810 is punishable, upon conviction, by imprisonment in the county jail for not more than one year or by a fine of not more than \$500, or by both. [2001 c.621 §66]

