

Chapter 659A — Unlawful Discrimination in Employment, Public Accommodations
and Real Property Transactions; Administrative and Civil Enforcement

2001 EDITION

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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 one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers. "Person" also includes a public body as defined in ORS 30.260.

(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]

PURPOSE AND POLICY

659A.003 Purpose of ORS chapter 659A. The purpose of this chapter is to encourage the fullest utilization of available manpower by removing arbitrary standards of race, religion, color, sex, marital status, national origin or age 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 discrimination of any kind based on race, religion, color, sex, marital status or national origin. 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 discrimination because of race, religion, color, sex, marital status or national origin are based.

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

(3) An adequate administrative machinery for the orderly resolution of complaints of discrimination through a procedure involving investigation, conference, conciliation and persuasion; to encourage the use in good faith of such machinery by all parties to a complaint of discrimination; and to discourage unilateral action which makes moot the outcome of final administrative or judicial determination on the merits of such a complaint. [Formerly 659.022]

Note: Sections 1 to 4, chapter 482, Oregon Laws 2001, provide:

Sec. 1. Task Force on Promotional and Career Opportunities for Women in Oregon. (1) There is created the Task Force on Promotional and Career Opportunities for Women in Oregon consisting of nine members. The members shall be appointed on or before October 1, 2001, as follows:

(a) The Speaker of the House of Representatives shall appoint three members, one of whom shall serve as chair of the task force;

(b) The President of the Senate shall appoint two members;

(c) The Commissioner of the Bureau of Labor and Industries shall appoint one member;

- (d) The Governor shall appoint two members; and
- (e) The Attorney General shall appoint one member.

(2) The goals of the task force are to:

(a) Issue a report that documents:

(A) The manner in which ORS chapters 652 and 659 and related regulations on pay equity are enforced in this state;

(B) The earnings of Oregon women broken down by income levels, occupation, education, length of employment if available, age, race and ethnicity and number of persons in a household in comparison to equivalent categories for Oregon men;

(C) The number and type of businesses owned by women in Oregon and business resources available to women;

(D) The amount and type of public education conducted concerning issues about pay for women in the workforce;

(E) The impact of domestic violence on women in the workforce; and

(F) The availability of child care options and resources at Oregon workplaces.

(b) Make recommendations for necessary corrective action relating to issues of women in the workforce.

(3) The task force shall make every effort to obtain input from advocacy groups for women, businesses, labor organizations and any other groups that may provide useful information.

(4) The task force is subject to the provisions of ORS 171.605 to 171.635 and has the authority contained in ORS 171.505 and 171.510. The task force shall report to the appropriate committees of the Senate and the House of Representatives of the Seventy-second Legislative Assembly not later than March 1, 2003. The task force shall conclude all of its activities under this section not later than March 1, 2003, and may take no further action under this section after March 1, 2003.

(5) The Employment Department shall provide staff necessary to the performance of the functions of the task force.

(6) Members of the task force are entitled to compensation and expenses under ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds available for that purpose.

(7) All agencies, departments and officers of this state are directed to assist the task force in the performance of its functions, and to furnish such information and advice as the members of the task force consider necessary to perform their functions.

(8) Official action by the task force created under this section shall require the approval of a majority of the members.

(9) The task force is an advisory panel only. The State of Oregon and the members of the task force have no right or obligation to implement the evaluations, determinations, findings or recommendations of the task force without further legislation specifically authorizing such implementation. [2001 c.482 §1]

Sec. 2. The Employment Department may accept contributions of funds from the United States, its agencies or from any other source, public or private, and agree to conditions thereon not inconsistent with the purposes of the task force. [2001 c.482 §2]

Sec. 3. All moneys received by the Employment Department under section 2 of this 2001 Act shall be paid into the State Treasury and deposited in the General Fund to the credit of the department. The moneys are appropriated continuously to the department for the purposes of section 1 of this 2001 Act. [2001 c.482 §3]

Sec. 4. Sections 1 to 3 of this 2001 Act are repealed January 1, 2004. [2001 c.482 §4]

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

(2) The opportunity to obtain employment without discrimination because of race, religion, color, sex, marital status, national origin, age or disability hereby is recognized as and declared to be a civil right. However, this section shall not be construed to prevent a bona fide church or sectarian religious institution, including but not limited to a school, hospital or church camp, from preferring an employee or applicant for employment of one religious sect or persuasion over another when:

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

(b) In the opinion of such bona fide church or sectarian religious institution, such a preference will best serve the purposes of such 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 which has no necessary relationship to the church or institution, or to its primary purposes. [Formerly 659.020]

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

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, RELIGION, COLOR, SEX, 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, religion, color, sex, national origin, marital status or age prohibited. (1) It is an unlawful employment practice:

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

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

(c) For a labor organization, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older or because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262, of any individual to exclude or to expel from its membership such individual or to discriminate in any way against any such 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 which expresses directly or indirectly any limitation, specification or discrimination as to an individual's race, religion, color, sex, 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. But identifying employees according to race, religion, color, sex, 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 such a designation expresses an intent to limit, specify or discriminate on the basis of race, religion, color, sex, national origin, marital status or age.

(e) For an employment agency to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against any individual:

(A) On the basis of the individual's race, color, national origin, sex, religion, marital status or age, if the individual is 18 years of age or older;

(B) Because of the race, color, national origin, sex, religion, marital status or age of any other person with whom the individual associates; or

(C) Because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262.

However, it is not an unlawful employment practice for an employment agency to classify or refer for employment any individual where such classification or referral results from a bona fide occupational requirement 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 chapter 660, 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 chapter 660 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. [Formerly 659.030]

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 of physician 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 which is vacant and suitable. A certificate by the attending physician that the physician 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 which is suitable prior to becoming medically stationary.

(E) Seven days from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years 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) Any violation of this section is an unlawful employment practice. [Formerly 659.415]

659A.046 Reemployment of injured worker in other available and suitable work; termination of right to reemployment; certificate of physician; 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 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 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 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) Any violation of this section is an unlawful employment practice.

(6) This section applies only to employers who employ six or more persons. [Formerly 659.420]

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. [Formerly 659.417]

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 as 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. In accordance with the provisions of ORS 183.310 to 183.550, any agency referred to in subsection (1) of this section may adopt rules to define entry level and light duty assignments. However, the rulemaking power for all agencies referred to in subsection (1)(c) of this section shall be exercised by the Administrator of the Personnel Division.

(3) In accordance with any applicable provision of ORS chapter 240, the Administrator of the Personnel Division may compel compliance with this section, ORS 659A.043 and 659A.046 by any agency referred to in subsection (1)(c) of this section. [Formerly 659.412]

(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 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 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]

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 DISCRIMINATION AGAINST DISABLED PERSONS

659A.100 Definitions for ORS 659A.100 to 659A.145. As used in ORS 659A.100 to 659A.145, unless the context requires otherwise:

(1) "Disabled person" means a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(2) As used in subsection (1) of this section:

(a) "Major life activity" includes, but is not limited to self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(b) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(c) "Is regarded as having such an impairment" means that the individual:

(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer or supervisor as having such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or

(C) Has none of the impairments described in subparagraph (A) or (B) of this paragraph, but is treated by an

employer or supervisor as having a mental or physical impairment that substantially limits one or more major life activities.

(d) “Substantially limits” means:

(A) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(B) The impairment significantly restricts the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(3) “Drug” means a controlled substance, as classified in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C.A. 812, as amended, and as modified under ORS 475.035.

(4) “Illegal use of drugs” means any use of drugs, the possession or distribution of which is unlawful under state law or under the Controlled Substances Act, 21 U.S.C.A. 812, 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 659.400]

659A.103 Policy. (1) It is declared to be the public policy of Oregon to guarantee disabled persons 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, and to secure housing accommodations of their choice, without discrimination.

(2) The right to otherwise lawful employment without discrimination because of disability where the reasonable demands of the position do not require such a distinction, and the right to use and enjoy places of public accommodation, resort or amusement, and to purchase or rental of property without discrimination because of disability, are hereby recognized and declared to be the rights of all the people of this state. It is hereby declared to be the policy of the State of Oregon to protect these rights and ORS 659A.100 to 659A.145 shall be construed to effectuate such policy. [Formerly 659.405]

659A.106 Employers to whom ORS 659A.100 to 659A.145 apply. The requirements of ORS 659A.100 to 659A.145 apply only to employers who employ six or more persons. The requirements of ORS 659A.100 to 659A.145 do not apply to the Oregon National Guard. [2001 c.621 §23]

659A.109 Discrimination against worker for using procedures in ORS 659A.100 to 659A.145 prohibited. 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 659A.100 to 659A.145 or has given testimony under the provisions of such sections. [Formerly 659.410]

659A.112 Discrimination against disabled person in employment prohibited. (1) It is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because an otherwise qualified person is a disabled person.

(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 is a disabled person.

(b) The employer participates in a contractual or other arrangement or relationship that has the effect of subjecting an otherwise qualified job applicant or employee who is a disabled person 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 an otherwise qualified person because the person is known to have a relationship or association with a disabled person.

(e) The employer does not make reasonable accommodation to the known physical or mental limitations of an

otherwise qualified disabled person 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 an otherwise qualified disabled person, 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 that screen out or tend to screen out a disabled person or a class of disabled persons 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]

659A.115 Qualification for position. For the purposes of ORS 659A.112, a disabled person is otherwise qualified for a position if the person, 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]

659A.118 Reasonable accommodation. (1) For the purposes of ORS 659A.112, reasonable accommodation of an otherwise qualified disabled person may include:

- (a) Making existing facilities used by employees readily accessible to and usable by disabled persons.
- (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.100 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 a person with a disability arising out of transsexualism. [Formerly 659.439]

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.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 persons:

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

(c) A person 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 a person described in subsection (2)(a) or (b) of this section is no longer engaging in the illegal use of drugs. [Formerly 659.442]

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. A person who is homosexual or bisexual is not a disabled person 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 a person with one or more of the following conditions is not a disabled person 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]

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 is a disabled person 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 persons 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]

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 is a disabled person, 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]

659A.139 Construction of ORS 659A.112 to 659A.139. ORS 659A.112 to 659A.139 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. [Formerly 659.449]

659A.142 Discrimination against disabled persons by employment agency, labor organization or place of public accommodation prohibited; mental disorder treatment not evidence of inability to manage property. (1) 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 is a disabled person, or to classify or refer for employment any individual because that individual is a disabled person.

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

(3) 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 a disabled person.

(4) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to acquire, rent or maintain property. [Formerly 659.425]

659A.145 Discrimination against disabled persons in real property transactions prohibited; advertising discriminatory preference prohibited; when necessary modification to be allowed; assisting discriminatory practices prohibited. (1) A person, because of a disability of a purchaser, lessee or renter, a disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any person associated with a purchaser, lessee or renter, shall not discriminate by:

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

(b) Expelling a purchaser, lessee or renter;

(c) Making any distinction or restriction against a purchaser, lessee or renter 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 therewith; or

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

(2) For purposes of this subsection, discrimination includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a 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; or

(b) A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(3) A person shall 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 leasing of real property which indicates any preference, limitation, specification or discrimination against a disabled person.

(4) A person whose business includes engaging in residential real estate related transactions, as defined in ORS 659A.421 (2)(b), shall not discriminate against any person in making available such a transaction, or in the terms or

conditions of such a transaction, because of a disability.

(5) A real estate broker or principal real estate broker shall 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 a person is a disabled person.

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

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

(8) A person shall 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 disabled person or persons.

(9) Any violation of this section is an unlawful practice. [Formerly 659.430]

Note: The amendments to 659A.145 (formerly 659.430) by section 56, chapter 300, Oregon Laws 2001, become operative July 1, 2002. See section 85, chapter 300, Oregon Laws 2001. The text that is operative until July 1, 2002, including amendments by section 24, chapter 621, Oregon Laws 2001, is set forth for the user's convenience.

659A.145. (1) No person, because of a disability of a purchaser, lessee or renter, a disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any person associated with a purchaser, lessee or renter, shall discriminate by:

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

(b) Expelling a purchaser, lessee or renter;

(c) Making any distinction or restriction against a purchaser, lessee or renter 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 therewith; or

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

(2) For purposes of this subsection, discrimination includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a 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; or

(b) A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

(3) No person shall 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 which indicates any preference, limitation, specification or discrimination against a disabled person.

(4) No person whose business includes engaging in residential real estate related transactions, as defined in ORS 659A.421 (2)(b), shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of a disability.

(5) No real estate broker or salesperson shall 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 a person is a disabled person.

(6) No person shall assist, induce, incite or coerce another person to permit an act or engage in a practice that violates this section.

(7) No person shall coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(8) No person shall, 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 disabled person or persons.

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

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.

(4) “Family member” means the spouse of an employee, the biological, adoptive or foster parent or child 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 the person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, and who is a physician licensed to practice medicine and surgery, including a doctor of osteopathy, a podiatrist, a dentist, a clinical psychologist, an optometrist, a naturopath, a nurse practitioner, a direct entry midwife, a nurse-midwife or a clinical social worker, authorized to practice and performing within the scope of their professional license as provided for by law. “Health care provider” includes a Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Massachusetts, who is primarily responsible for the treatment of the eligible employee or a family member of the eligible employee. “Health care provider” includes a chiropractor, but only to the extent the chiropractor provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(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]

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, a 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 employee from performing any available job duties offered by the employer.

(b) An 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 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 employee may take family leave for the purposes specified in ORS 659A.159 (1)(a) in two or more nonconsecutive 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) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an employee or a family member of the 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 employee's exempt status under the federal Fair Labor Standards Act. [Formerly 659.478]

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 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, family leave is not required to be granted with pay.

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

(3) An employee taking family leave for the purpose specified in ORS 659A.159 (1)(a) is entitled to utilize any paid accrued sick leave in addition to paid leave that may be utilized under subsection (2) of this section.

(4) 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.

(5) Except as provided by subsection (3) of this section, ORS 659A.150 to 659A.186 do not require an employer to provide or allow the use of any form of paid sick leave, paid medical leave or paid family leave in any situation in which the employer would not normally provide or allow use of paid sick leave, paid medical leave or paid family leave. [Formerly 659.486]

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 duration, 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. A covered employer who denies family leave to an eligible employee in the manner required by ORS 659A.150 to 659A.186 commits an unlawful employment practice. [Formerly 659.492]

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]

WHISTLEBLOWING

(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 disregard 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]

Note: Section 91 (3), chapter 621, Oregon Laws 2001, provides:

Sec. 91. (3) The amendments to ORS 659.530 [renumbered 659A.215] by section 45 of this 2001 Act apply only to unlawful practices that occur on or after the effective date of this 2001 Act [January 1, 2002]. Any unlawful practice under ORS 659.505 to 659.545 [renumbered 659A.200 to 659A.224] that occurs before the effective date of this 2001 Act shall continue to be governed by the statute of limitations provided by ORS 659.530 (1999 Edition). [2001 c.621 §91(3)]

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 enforcement 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]

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 pursuant 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, whichever 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.

(3) A civil action may be brought under ORS 659A.885 for a violation of this section. [Formerly 659.380]

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 described in ORS 348.594 (2)(d).

(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, as described in ORS 348.594 (2)(d), offering only degrees with titles in theology or religious occupations. [2001 c.621 §93]

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]

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) All persons within the jurisdiction of this state shall be 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, religion, sex, marital status, color or national origin.

(2) 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]

659A.406 Aiding or abetting certain discrimination prohibited. 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 person acting on behalf of such place to make any distinction, discrimination or restriction on account of race, religion, color, sex, marital status or national origin. [Formerly 30.685]

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 of minors in places of public accommodation where alcoholic beverages are served, and except for special rates or services offered to persons 55 years of age and 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 such 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, religion, sex, marital status, color, national origin or age if the individual is 18 years of age and older. [Formerly 659.037]

UNLAWFUL DISCRIMINATION IN REAL PROPERTY TRANSACTIONS

659A.420 “Purchaser” defined for ORS 659A.421. As used in ORS 659A.421, unless the context requires otherwise, “purchaser” includes an occupant, prospective occupant, lessee, prospective lessee, buyer or prospective buyer. [Formerly 659.031]

659A.421 Discrimination in selling, renting or leasing real property prohibited. (1) No person shall, because of race, color, sex, marital status, source of income, familial status, religion or national origin 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 which indicates any preference, limitation, specification or discrimination based on race, color, sex, marital status, source of income, religion or national origin.
- (f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this subsection and subsection (3) of this section.
- (g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected by this section.

(2)(a) No person whose business includes engaging in residential real estate related transactions shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, sex, marital status, source of income, familial status, religion or national origin.

(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) For securing residential real estate; or

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

(3) No real estate licensee shall 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, sex, marital status, source of income, familial status, religion or national origin.

(4) No person shall, 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, sex, marital status, source of income, familial status, religion or national origin.

(5) For purposes of subsections (1) to (4) of this section, “source of income” does not include federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income derived in an illegal manner.

(6) Subsections (1) and (3) of this section do not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of subsections (1) and (3) 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 which 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 shall not fail to meet the requirements for housing for older persons if:

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

(B) The housing includes unoccupied units. However, such units 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) In the sale, lease or rental of real estate, no person shall disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

(9) The provisions of subsection (1)(a) to (d) and (f) of this section that prohibit actions based upon familial status or sex 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.

(10) Any violation of this section is an unlawful practice. [Formerly 659.033]

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 such 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 of Labor and Industries and the commissioner under this chapter and may prescribe the duties and responsibilities of such employees. The commissioner may delegate any of the powers under this chapter to the deputy commissioner employed under this subsection.

(4) The commissioner or the designee of the commissioner may issue subpoenas to require the production of evidence necessary for the performance of any of the duties under this chapter.

(5) No person delegated any powers or duties under this section and ORS 659A.805 shall act as prosecutor and examiner in processing any violation under this chapter. [Formerly 659.100]

659A.805 Rules for carrying out ORS chapter 659A. (1) In accordance with any applicable provision of ORS 183.310 to 183.550, 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 discrimination will be made against the person because of race, religion, sex, marital status, color or national origin.

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

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

(c) Whether a statement or inquiry soliciting information as to race, religion, color, sex, marital status, national origin or age communicates an idea independent of an intention to limit, specify or discriminate as to race, religion, color, sex, marital status, national origin or age.

(d) Whether the independent idea communicated is relevant to a legitimate objective of the kind of transaction which 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 discriminate as to race, religion, color, sex, marital status, national origin or age. [Formerly 659.103]

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, local, regional or statewide, as in the judgment of the commissioner will aid in effectuating the purposes of this chapter. The commissioner may empower them:

(a) To study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, religion, color, sex or national origin.

(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) Such 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 such agencies and councils and for the expenses of such assistance. [Formerly 659.115]

(Complaint, Investigation and Hearing Procedures)

659A.820 Complaints. (1) 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 may be signed by the complainant or the attorney for 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.

(2) 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.

(3) Any employer whose employees, or any of them, refuse or threaten to refuse to abide by the provisions of this chapter or to cooperate in carrying out the purposes of this chapter may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

(4) The commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the complaint. The notice shall include the date, place and circumstances of the alleged unlawful practice. [2001 c.621 §2]

Note: Section 91 (1) and (2), chapter 621, Oregon Laws 2001, provides:

Sec. 91. (1) Sections 1 to 15, 22, 23, 25, 26, 28, 31 to 34, 65 and 66 of this 2001 Act, the repeal of statutes by section 90 of this 2001 Act and the amendments to statutes by sections 16 to 21, 24, 27, 29, 30, 35 to 44, 46 to 64 and 67 to 89 of this 2001 Act apply only to complaints filed under section 2 or 3 of this 2001 Act [659A.820 or 659A.825] on or after the effective date of this 2001 Act [January 1, 2002] and to civil actions commenced under section 15 of this 2001 Act [659A.885] on or after the effective date of this 2001 Act.

(2) Notwithstanding the repeal of statutes by section 90 of this 2001 Act and the amendments to statutes by sections 16 to 21, 24, 27, 29, 30, 35 to 44, 46 to 64 and 67 to 89 of this 2001 Act, all complaints filed under ORS 659.040 (1999 Edition) or 659.045 (1999 Edition), and civil actions commenced under ORS 659.121 (1999 Edition), shall continue to be governed by the statutes in effect immediately before the effective date of this 2001 Act, unless otherwise specifically provided by law. [2001 c.621 §91(1),(2)]

659A.825 Complaints filed by Attorney General or commissioner; temporary cease and desist orders in certain cases. (1) 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. 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.

(2) If the commissioner files a complaint under this section alleging an unlawful practice other than an unlawful employment practice, 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]

Note: See note under 659A.820.

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) 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.

(3) Except as provided in subsection (4) of 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.

(4) 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.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 a violation of ORS 659A.145 or 659A.421 or of an equivalent federal 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) 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]

659A.835 Investigation; finding of substantial evidence. (1) 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. If by reason of the investigation 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 as respondents. The commissioner may name additional persons as respondents under this subsection only during the course of the investigation.

(2) 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]

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 resolve 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. [2001 c.621 §6]

659A.845 Formal charges. 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. The commissioner shall serve the formal charges on all respondents found to have engaged in the unlawful practice. [2001 c.621 §7]

659A.850 Hearing; orders. (1) 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 183.310 to 183.550. 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.

(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 carry out the purposes of this chapter, to eliminate the effects of the unlawful practice that the respondent is found to have engaged in, and to 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. [2001 c.621 §8]

659A.855 Civil penalty for certain complaints filed by commissioner. (1) 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.

(2) Civil penalties under this section may not exceed \$1,000 for each violation. Civil penalties under this section shall be imposed in the manner provided by ORS 183.090.

(3) 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 Division of State Lands for the benefit of the Common School Fund. The division shall issue a receipt for the money to the commissioner. [2001 c.621 §9]

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 claiming a violation of ORS 659A.145 or 659A.421 or of an equivalent federal 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) The filing of a complaint under ORS 659A.820 by a person claiming a violation of ORS 659A.145 or 659A.421 or of an equivalent federal 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.

(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) This section shall not be construed to limit or alter in any way the authority or power of the commissioner, or to 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]

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.

(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) 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.

(5) 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]

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. [2001 c.621 §14]

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 such other equitable relief as 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 for the following unlawful practices: ORS 25.424, 399.235, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150

to 659A.186, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.318 and 659A.421 (1) or (3).

(3) In any action under subsection (1) of this section alleging a violation of ORS 659A.040, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262, 659A.318 or 659A.421 (1) or (3):

(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 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.

(5) All persons against whom any distinction, discrimination or restriction on account of race, religion, sex, marital status, color or national origin has been made by any place of public accommodation, as defined in ORS 659A.400, by any person acting on behalf of such place or by any person aiding or abetting such place or person in violation of ORS 659A.406 may bring an action against the operator or manager of such place, the employee or person acting on behalf of such place or the aider or abettor of such 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). [2001 c.621 §15]

Note: See note under 659A.820.

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]