

CHAPTER 212

AN ACT

HB 3060

Relating to requiring contractors in public procurements to have policies to prevent certain discriminatory conduct; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 279A.

SECTION 2. (1) As used in this section:

(a) "Discrimination" means conduct that has the purpose or effect of creating employment conditions for an individual that are intimidating, hostile or offensive or that evince animosity, resentment, anger, prejudice or ill will in others primarily because of the individual's identification with or membership in a protected class.

(b) "Protected class" means a group of people that state or federal law protects from employment discrimination including, but not limited to, a group in which membership depends on an ascribed association or identification, or an individual's voluntary association or identification with other individuals, on the basis of one or more of these characteristics:

- (A) Race, color or ethnicity;
- (B) National origin;
- (C) Sex;
- (D) Gender, including actual or perceived gender identity;
- (E) Sexual orientation;
- (F) Disability;
- (G) Age;
- (H) Marital status; or
- (I) Religion.

(c) "Sexual assault" means any unwanted sexual contact, as defined in ORS 163.305.

(d) "Sexual harassment" means:

(A) A request or demand for sexual favors in an implicit or explicit exchange for an employment-related benefit or as a means of avoiding an employment-related detriment; or

(B) Unwelcome conduct of a sexual nature that has the purpose or effect of interfering with a person's ability to perform job duties or that creates an intimidating, offensive or hostile work environment.

(2)(a) Except as provided in subsection (4) of this section, a state contracting agency may not enter into a public contract with an anticipated contract price of \$150,000 or more with a prospective contractor that does not certify in a signed writing that the prospective contractor has a policy and practice of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class.

(b) A prospective contractor may not certify under paragraph (a) of this subsection that the prospective contractor has a policy and practice of preventing sexual harassment, sexual assault or discrimination against employees who are members of a protected class unless the policy and practice includes, at a minimum:

(A) A written notice to each employee that clearly prohibits and specifies disciplinary measures for conduct that constitutes sexual harassment, sexual assault or discrimination against a member of a protected class.

(B) A clear process that:

(i) Enables an employee that experiences or witnesses conduct that constitutes sexual harassment, sexual assault or discrimination against a member of a protected class to report and stop the conduct; and

(ii) Guides the prospective contractor in responding to a report under sub-subparagraph (i) of this subparagraph, resolving the issues identified in the report and disciplining employees who engage in prohibited conduct.

(C) A regular written procedure for submitting a report under subparagraph (B)(i) of this paragraph that identifies the specific individuals to whom an employee may submit the report and the individuals who have responsibility for resolving issues identified in the report.

(D) A practice of treating as confidential, to the extent permitted by law, any report that an employee makes under subparagraph (B)(i) of this paragraph.

(E) A prohibition against retaliating against an employee who experiences or witnesses, and reports, conduct that constitutes sexual harassment, sexual assault or discrimination against a member of a protected class.

(F) A prohibition against discrimination in providing benefits to an employee or a dependent of the employee based on the employee's membership in a protected class or the membership of the employee's dependent in a protected class.

(G) A prohibition on denying benefits to an employee or a dependent of the employee based solely on the employee's gender identity or the gender identity of the employee's dependent, if the prospective contractor provides health insurance or health care benefits.

(c) A prospective contractor may provide the written notice described in paragraph (b)(A) of this subsection by means of a printed or electronic employee handbook. The Oregon Department of Administrative Services may develop and make available on the department's website an electronic template to guide prospective contractors in meeting the notice requirements set forth in paragraph (b)(A) of this subsection and may provide other guidance to prospective contractors in meeting the requirements set forth in paragraph (b) of this subsection.

(3) Every public contract described in subsection (2)(a) of this section that a state contracting agency awards must require as a material term of the public contract that a contractor certify that the contractor has a policy and practice that meets the requirements described in subsection (2) of this section and will maintain the policy and practice in force during the entire term of the public contract.

(4) A state contracting agency may enter into a public contract described in subsection (2)(a) of this section with a prospective contractor that has not provided the certification described in subsection (2) of this section if:

(a) The state contracting agency conducted the procurement under ORS 279B.075, 279B.080 or 279B.085; or

(b) Only one prospective contractor submitted a bid or proposal in response to the state contracting agency's solicitation.

SECTION 3. Section 2 of this 2017 Act applies to procurements that a state contracting agency advertises or otherwise solicits or, if the state contracting agency does not advertise or solicit the procurement, to public contracts into which

the state contracting agency enters on or after the operative date specified in section 4 of this 2017 Act.

SECTION 4. (1) Section 2 of this 2017 Act becomes operative on January 1, 2018.

(2) The Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation or a state contracting agency that adopts rules under ORS 279A.065 may adopt rules and take any other action that is necessary to enable the Attorney General, the director or the state contracting agency, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the Attorney General, the director or the state contracting agency by section 2 of this 2017 Act.

SECTION 5. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Approved by the Governor June 6, 2017

Filed in the office of Secretary of State June 6, 2017

Effective date October 6, 2017
