

Chapter 659

1987 REPLACEMENT PART

Enforcement of Civil Rights; Unlawful Employment Practices

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ENFORCEMENT OF CIVIL RIGHTS

659.010 Definitions for ORS 659.010 to 659.110 and 659.400 to 659.435. As used in ORS 659 010 to 659 110 and 659 400 to 659 435, unless the context requires otherwise

(1) "Bureau" means the Bureau of Labor and Industries

(2) "Cease and desist order" means an order signed by the commissioner, taking into account the subject matter of the complaint and the need to supervise compliance with the terms of any specific order issued to eliminate the effects of any unlawful practice found, addressed to a respondent requiring the respondent to

(a) Perform an act or series of acts designated therein and reasonably calculated to carry out the purposes of ORS 30 670 to 30 685, 659 010 to 659 110 and 659 400 to 659 435, eliminate the effects of an unlawful practice found, and protect the rights of the complainant and other persons similarly situated,

(b) Take such action and submit such designated reports to the commissioner on the manner of compliance with other terms and conditions specified in the commissioner's order as may be required to assure compliance therewith, or

(c) Refrain from any action designated in the order which would jeopardize the rights of the complainant or other person similarly situated or frustrate the purpose of ORS 30 670 to 30 685, 659 010 to 659 110 and 659 400 to 659 435

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries

(4) "Conciliation agreement" means a written agreement settling and disposing of a complaint under ORS 659 010 to 659 110 and 659 400 to 659 435 signed by a respondent and an authorized official of the Bureau of Labor and Industries

(5) "Employee" does not include any individual employed by the individual's parents, spouse or child or in the domestic service of any person

(6) "Employer" means any person, including state agencies, political subdivisions and municipalities, who in this state, directly or through an agent, engages or utilizes the personal service of one or more employes reserving the right to control the means by which such service is or will be performed

(7) "Employment agency" includes any person undertaking to procure employes or opportunities to work

(8) "Entity" includes employers, labor organizations, employment agencies, places of public accommodation as defined in ORS 30 675 or vocational, professional or trade schools

(9) "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 employes

(10) "National origin" includes ancestry

(11) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers

(12) "Respondent" includes any person or entity against whom a complaint or charge of unlawful practices is filed with the commissioner or whose name has been added to such complaint or charge pursuant to ORS 659 050 (1)

(13) "Unlawful employment practice" includes only those unlawful employment practices specified in ORS 654 062 (5), 659 030, 659 035, 659 227, 659 270, 659 295, 659 330, 659 340, 659 360, 659 410, 659 415, 659 420 and 659 425

(14) "Unlawful practice" means any unlawful employment practice or any distinction, discrimination or restriction on account of race, religion, color, sex, marital status or national origin made by any place of public accommodation as defined in ORS 30 675, by any person acting on behalf of any such place or by any person aiding or abetting any such place or person in violation of ORS 30 685, or any violation of ORS 345 240, 659 033, 659 037, or rules adopted pursuant to ORS 659 103 (1), but does not include a refusal to furnish goods or services when the refusal is based on just cause [Amended by 1957 c 724 §3, 1959 c 547 §5, 1959 c 689 §13, 1961 c 247 §2, 1963 c 622 §3, 1969 c 618 §1, 1973 c 714 §5, 1977 c 770 §12, 1979 c 813 §1, 1983 c 225 §1, 1987 c 319 §5, 1987 c 393 §1]

659.015 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 [1959 c 547 §2, 1959 c 689 §2]

659.020 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 handicap 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 handicap 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 employe or applicant for employment of one religious sect or persuasion over another when

(a) That religious sect or persuasion to which the employe 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 [Amended by 1969 c 618 §2, 1977 c 770 §13, 1983 c 225 §2]

659.022 Purpose of ORS 659.010 to 659.110 and 659.400 to 659.435. The purpose of ORS 659 010 to 659 110 and 659 400 to 659 435 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, to insure 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 ORS 659 010 to 659 110 and 659 400 to 659 435 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 [1963 c 622 §2, 1969 c 618 §2a, 1977 c 770 §14]

659 024 [1959 c 547 §3, 1963 c 622 §5, 1965 c 575 §1, 1973 c 189 §2, repealed by 1977 c 770 §15]

659.025 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, handicap 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 handicap, 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 [Subsection (1) enacted as 1981 c 454 §1, subsection (2) enacted as 1981 c 242 §1]

Note 659 025 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation

659 026 [1959 c 689 §3, 1973 c 189 §3, repealed by 1977 c 770 §15]

659.027 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 659 025 information concerning its awards of construction, service and personal service contracts awarded to minority businesses [1983 c 183 §1]

Note 659 027 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. However, it was added to the Oregon Small Business Development Act of 1983. See ORS 280 905. See Preface to Oregon Revised Statutes for further explanation.

659.028 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. [1969 c 618 §8, 1981 c 643 §1, 1987 c 279 §1]

659.029 "Because of sex" defined. For purposes of ORS 659 030, 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 [1977 c 330 §2]

659.030 What are unlawful employment practices. (1) For the purposes of ORS 659 010 to 659.110, 659 227, 659 330, 659 340 and 659 400 to 659 435, 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 419 800 to 419 839, 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 discrim-

ination 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 419 800 to 419 835, 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 419 800 to 419 835, 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, after hearing conducted pursuant to ORS 659 103, 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 419 800 to 419 835

However, it shall not be an unlawful 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 employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden by this section, ORS 30 670, 30 685, 659 033 and 659 400 to 659 435, or because the person has filed a complaint, testified or assisted in any proceeding under ORS 659 010 to 659 110 and 659 400 to 659 435 or has attempted to do so

(g) For any person, whether an employer or an employe, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under ORS 659 010 to 659 110 and 659 400 to 659 435 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 employes and labor organizations

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

(4)(a) It shall not be 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 employes 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 [Amended by 1969 c 618 §3, 1977 c 770 §1, 1977 c 801 §1a, 1981 c 595 §1, 1981 c 643 §2, 1983 c 477 §1, 1983 c 820 §17, 1985 c 98 §4, 1985 c 151 §1, 1987 c 279 §2]

659.031 "Purchaser" defined for ORS 659.033. As used in ORS 659 033, unless the context requires otherwise, "purchaser" includes an occupant, prospective occupant, lessee, prospective lessee, buyer or prospective buyer [1959 c 584 §2, 1973 c 714 §6]

659 032 [1957 c 725 §2, repealed by 1959 c 584 §4]

659.033 Discrimination in selling, renting or leasing real property prohibited.

(1) No person shall, because of race, color, sex, marital 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, religion or national origin

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

(2) No real estate broker or salesman 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, religion or national origin.

(3) This section does not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex [1957 c 725 §3, 1959 c 584 §3, 1973 c 714 §7, 1975 c 384 §1]

659 034 [1957 c 725 §4, repealed by 1959 c 584 §4]

659.035 Discrimination or retaliation against employe for reporting certain violations or testifying at unemployment compensation hearing prohibited; enforcement.

(1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employe with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employe 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

(2) Complaints may be filed by employes, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659 040 to 659 110 and 659 121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659 010 to 659 110 and 659 121. [1981 c 470 §5, 1985 c 404 §3]

659.037 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 old and older, no person acting on behalf of any place of public accommodation as defined in ORS 30 675 shall 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 [1957 c 724 §10, 1973 c 714 §8, 1977 c 770 §2]

659.040 Complaints of unlawful employment practices. (1) Any person claiming to be aggrieved by an alleged unlawful employment practice, may, or the attorney of the person may, make, sign and file with the commissioner a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of and which complaint shall set forth the particulars thereof. The complainant may be required to set forth in the complaint such other information as the commissioner may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year after the alleged unlawful employment practice

(2) Whenever the Attorney General or commissioner has reason to believe that any person, employer, labor organization or employment agency has committed an unlawful employment

practice, the Attorney General or the commissioner may make, sign and file a complaint in the same manner as a complaint is filed under subsection (1) of this section

(3) Any employer whose employes, or any of them, refuse or threaten to refuse to abide by ORS 659 010 to 659 110 and 659 400 to 659 435 or to cooperate in carrying out the purposes of said statutes 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 charge. The notice shall include the date, place and circumstances of the alleged unlawful employment practice [Amended by 1957 c 724 §13, 1971 c 723 §1, 1977 c 453 §2, 1977 c 770 §3]

659.045 Complaints of discrimination in housing or in place of public accommodation or in private vocational, professional or trade school. (1) Any person claiming to be aggrieved by an alleged distinction, discrimination or restriction on account of race, religion, sex, marital status, color, national origin or age if the individual is 18 years of age or older made by any place of public accommodation as defined in ORS 30 675 or by any person acting on behalf of such place or in violation of ORS 30 685 or any person claiming to be aggrieved by a violation of ORS 345 240 or any person claiming to be aggrieved by a violation of ORS 659 033 may, or the attorney of the person may, make, sign and file with the Commissioner of the Bureau of Labor and Industries a verified complaint in writing which shall state the name and address of the person, the place of accommodation or the vocational, professional or trade school alleged to have committed the act complained of and which complaint shall set forth the particulars thereof. The complainant may be required to set forth in the complaint such other information as the commissioner may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year after the alleged distinction, discrimination or restriction

(2) The Attorney General or the Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint in a like manner as a complaint filed under subsection (1) of this section whenever the Attorney General or commissioner has reason to believe that any place of public accommodation or any person acting on behalf of such place or any person aiding or abetting such place or person has denied any person rights under ORS 30.670 or 30 685 or has violated ORS 659 037 or that a violation of ORS

345 240 has occurred or that any person has violated the provisions of ORS 659 033 [1957 c 724 §5 1969 c 618 §4, 1973 c 714 §9, 1977 c 453 §2 1977 c 770 §4]

659.050 Investigation of complaint; cease and desist order; penalty; written settlement; relaxation of terms; effect of violation of order or settlement. (1) After the filing of any complaint under ORS 659 040 or 659 045, the commissioner may cause prompt investigation to be made in connection therewith. If during the course of such investigation or upon the conclusion thereof it appears to the commissioner that additional persons should be named as respondents in the complaint the names of such persons may be added as respondents thereto. If the investigation discloses any substantial evidence supporting the allegations of the complaint the commissioner may cause immediate steps to be taken through conference, conciliation and persuasion to effect a settlement of the complaint and eliminate the effects of the unlawful practice and to otherwise carry out the purpose of ORS 659 010 to 659 110 and 659 400 to 659 435.

(2) After the filing of a complaint by the commissioner under ORS 659 045, 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. If the investigation discloses substantial evidence supporting the allegations of the complaint under ORS 659 045 (1) or (2), 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, and may issue a permanent cease and desist order requiring each such respondent to refrain from the unlawful practice found. A civil penalty imposed under this section shall not exceed \$1,000 for each violation.

(3) If the commissioner imposes a penalty or issues a temporary or permanent cease and desist order under subsection (2) of this section, the commissioner shall serve upon the respondent in accordance with ORCP 7 D, an order directing the respondent to pay the penalty to the commissioner and to cease and desist as therein described. The order shall include

(a) A reference to the particular statutes or rules involved in the violation,

(b) A short and concise statement of the matters which constitute the violation,

(c) A statement of the amount of the penalty imposed,

(d) A statement of the respondent's right to a contested case hearing and to be represented by

counsel at such a hearing, provided that any request for a contested case hearing must be received by the commissioner in writing within 20 days after receipt by the respondent of the order,

(e) A statement that the respondent must, within 20 days after receipt of the order, either pay in full the penalties assessed or present to the commissioner a written request for a contested case hearing as provided in this section,

(f) A statement that failure to make a written request to the commissioner for a contested case hearing within the time specified shall constitute a waiver of the right thereto, and

(g) A statement that unless the written requests provided for in paragraph (d) of this subsection are received by the commissioner within the time specified for making such requests, the order shall become final.

(4) Upon failure of the respondent to pay the amount specified in the order within the time specified, and upon failure to request a contested case hearing within the time specified, the order shall become final.

(5) All sums collected as penalties pursuant to this section shall be first applied toward reimbursement of the costs incurred in determining the violations, conducting hearings under this section and assessing and collecting such penalties. The remainder, if any, of the sums collected as penalties pursuant to this section shall be paid over by the commissioner to the Division of State Lands for the benefit of the common school fund of this state. The division shall issue a receipt for the money to the commissioner.

(6) The terms of any settlement of a complaint under this section shall be contained in a written conciliation agreement filed with the commissioner. Such agreement may include any or all terms and conditions which may be included in a cease and desist order.

(7) The commissioner may relax any terms or conditions of a conciliation agreement or cease and desist order, the performance of which would cause an undue hardship on the respondent or another person and are not essential to protection of the complainant's rights. In the absence of such relaxation by the commissioner, no respondent shall violate any terms or conditions of a cease and desist order or conciliation agreement to which the respondent was a party, nor shall the agent or successor in interest violate any terms or conditions thereof. [Amended by 1957 c 724 §6, 1963 c 622 §6, 1971 c 723 §2, 1975 c 503 §1, 1987 c 393 §2]

659.055 Complainant not to be deprived of services, real property or

employment pending determination of complaint. Prior to a final administrative determination on the merits of a complaint filed against the respondent under ORS 659 010 to 659 110 and 659 400 to 659 435 and subsequent to receipt of notice from the commissioner or deputy that such complaint has been filed subject to ORS 659 105, no respondent shall, with an intention to defeat a purpose of this chapter, take any action which makes unavailable to the complainant therein, any services, real property, employment or employment opportunities sought by said complaint upon administrative determination on the merits thereof [1963 c 622 §4]

659.060 Hearing on complaints; findings; orders. (1) In case of failure to resolve a complaint after reasonable effort under ORS 659 050, or if it appears to the commissioner that the interest of justice requires a hearing without first proceeding by conference, conciliation and persuasion, or if a written request is made by respondent in accordance with ORS 659 050, the commissioner shall cause to be prepared and served upon each respondent required to appear at such hearing such specific charges, in writing, as the respondent will be required to answer, together with a written notice of the time and place of such hearing

(2) All proceedings before the commissioner under this section shall be in conformity with the provisions of ORS 183 310 to 183 550

(3) After considering all the evidence, the commissioner shall cause to be issued findings of facts, and conclusions of law. The commissioner shall also issue an order dismissing the charge and complaint against any respondent not found to have engaged in any unlawful practice charged and an appropriate cease and desist order against any respondent found to have engaged in any unlawful practice charged

(4) Nothing stated in ORS 659 010 to 659 110 and 659 400 to 659 435 shall be construed to prevent a settlement of any case scheduled for hearing under the provisions of ORS 659 010 to 659 110 and 659 400 to 659 435 by conciliation, conference and persuasion, nor to prevent the commissioner from appointing a special tribunal or hearings examiner to hear and determine matters of fact, make conclusions of law and formulate an order appropriate to the facts as found under ORS 659 010 to 659 110 and 659 400 to 659 435, reserving to the commissioner or designee the decision to affirm, reverse, modify or supplement the determinations, conclusions or order of the special tribunal or hearings examiner. The provisions of this subsection shall apply

to all pending files in the Bureau of Labor and Industries as well as to files commenced on or after June 17, 1975 [Amended by 1957 c 724 §7, 1961 c 145 §1, 1963 c 622 §7, 1971 c 418 §20, 1971 c 723 §3, 1975 c 419 §1, 1987 c 393 §3]

659.070 Enforcement of conciliation agreements and orders; money damages as judgment. Any conciliation agreement or order issued by the commissioner under ORS 659 060 may be enforced by mandamus or injunction or by a suit in equity to compel specific performance of such order. Any such agreement or order which awards money damages, unless paid, shall constitute a judgment and may be filed in accordance with the provisions of ORS 18 320 to 18 370. Execution may be issued upon the order in the same manner as execution upon a judgment in a court of record [Amended by 1963 c 622 §10, 1983 c 225 §3]

659.080 [Amended by 1957 c 724 §8, 1961 c 145 §2, 1963 c 622 §11, repealed by 1971 c 734 §21]

659.085 Judicial review of orders under ORS 659.070. Judicial review of orders under ORS 659 070 shall be in accordance with ORS 183 310 to 183 550 [1971 c 734 §103]

659 090 [Repealed by 1971 c 734 §21]

659.095 Complainant authorized to file civil suit when conciliation agreement not obtained; termination or dismissal of proceedings. (1) If, within one year following the filing of a complaint pursuant to ORS 659 040 (1) or 659 045 (1) except a complaint alleging violations of ORS 30 670 or 30 685, the commissioner has been unable to obtain a conciliation agreement with a respondent, or has not caused to be prepared and attempted to serve the specific charges referred to in ORS 659 060 (1), the commissioner shall so notify the complainant in writing and within 90 days after the date of mailing of such notice, the complainant may file a civil suit as provided for in ORS 659 121. Within one year following the filing of the complaint, the commissioner may issue, or cause to be issued, an administrative determination. If no administrative determination has been issued at the end of the one-year period, the commissioner has no further authority to continue proceedings to resolve the complaint, except as provided in ORS 659 070 and 659 085. If prior to the expiration of one year from the filing of a complaint pursuant to this section the commissioner dismisses the complaint for any reason other than a dismissal pursuant to ORS 659 060 (3), or the complainant requests the commissioner to terminate proceedings with respect to the complaint, the commissioner shall notify the complainant of said

dismissal or termination in writing, and within 90 days after the date of mailing of such notice of dismissal or termination, a civil suit may be filed as provided for in ORS 659 121

(2) As used in this section, "administrative determination" means a written notice to the respondent and the complainant signed by the commissioner, or the commissioner's designee, which includes, but is not limited to, the following information

- (a) The name of the complainant,
- (b) The name of the respondent,
- (c) Allegations contained in the complaint,

(d) Facts found by the commissioner to have a bearing on the allegations contained in the complaint in the course of any investigation, conference or other information gathering function of the bureau as such facts relate to laws within the bureau's jurisdiction, and

(e) A statement as to whether investigation of the complaint has disclosed any substantial evidence supporting the allegations of the complaint [1977 c 453 §4, 1979 c 843 §1]

659.100 Elimination and prevention of discrimination by Bureau of Labor and Industries; subpoenas. (1) The Bureau of Labor and Industries may eliminate and prevent discrimination in employment because of race, religion, color, sex, national origin, marital status, physical or mental handicap or age if the individual is 18 years of age and over or by employers, employees, labor organizations, employment agencies or other persons and take other actions against discrimination because of race, religion, color, sex, national origin, marital status, physical or mental handicap or age if the individual is 18 years of age and over as provided in ORS 659 010 to 659 110 and 659 400 to 659 435 To eliminate the effects of discrimination the Bureau of Labor and Industries 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 of Labor and Industries may eliminate and prevent violations of ORS 659 033 and may eliminate and prevent discrimination or restrictions because of race, religion, color, sex, marital status, physical or mental handicap, national origin or age of any individual 18 years of age and older by vocational, professional and trade schools licensed under any law of the State of Oregon, or by any place of public accommodation as defined in ORS 30 675 or by any person

acting on behalf of such place or by any person aiding or abetting such place or person in violation of ORS 30 685 The Bureau of Labor and Industries hereby is given general jurisdiction and power for such purposes

(3) The commissioner 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 ORS 659 010 to 659 110 and 659 400 to 659 435 and may prescribe the duties and responsibilities of such employees The Commissioner of the Bureau of Labor and Industries may delegate any of the powers under ORS 659 010 to 659 110 and 659 400 to 659 435 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 ORS 659 010 to 659 115 and 659 400 to 659 435

(5) No person delegated any powers or duties under this section and ORS 659 103 shall act as prosecutor and examiner in processing any violation under ORS 659 010 to 659 110 and 659 400 to 659 435 [Amended by 1957 c 724 §9, 1959 c 547 §6, 1959 c 689 §14, 1961 c 145 §3, 1963 c 622 §8, part renumbered 659 103, 1969 c 618 §5, 1971 c 322 §1, 1973 c 714 §10, 1977 c 770 §5, 1981 c 643 §3, 1987 c 279 §3]

659 102 [Subsection (1) enacted as 1959 c 547 §4, subsection (2) enacted as 1959 c 689 §4, repealed by 1977 c 770 §15]

659.103 Rules for carrying out ORS 659.010 to 659.110 and 659.400 to 659.435. (1) In accordance with any applicable provision of ORS 183 310 to 183 550, the commissioner 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) Establishing rules for internal operation and rules of practice and procedure before the commissioner under ORS 659 010 to 659 110

(e) Establishing rules covering any other matter required to carry out the purpose of ORS 659 010 to 659 110 and 659 400 to 659 435

(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 part of 659 100, 1969 c 618 §6, 1973 c 714 §11]

659.105 Cause of action for violation of ORS 659.050 or 659.055; defenses. (1) Any person aggrieved by a violation of ORS 659 050 or 659 055 (7) shall have a cause of action against the violator thereof for damages sustained thereby and also for such additional sum as may be reasonable as exemplary damages

(2) As a defense to any cause of action arising under this section based on a violation of ORS 659 055 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 659 040 or 659 045 has been dismissed by the commissioner 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 of discrimination under ORS 659 010 to 659 110 and 659 400 to 659 435, nor within any extended period of time obtained at the request of respondent for disposition of the case. The two-year provision in this paragraph shall apply to all defenses with regard to which, on June 30, 1975, either 90 days has not expired after the notice or the extended period of time has not expired [1963 c 622 §9, 1975 c 503 §2, 1987 c 393 §4]

659.110 Wilful interference with administration of law and violation of orders of commissioner prohibited. (1) No person shall wilfully resist, prevent, impede or interfere with the commissioner or any authorized agents of the commissioner in the performance of duty under ORS 659 010 to 659 110 and 659 400 to 659 435 or wilfully 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 wilful conduct [Amended by 1957 c 724 §14]

659.115 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 state-wide, as in the judgment of the commissioner will aid in effectuating the purposes of ORS 659 010 to 659 110 and 659 400 to 659 435. 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, good will, 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 [1955 c 534 §1, 1969 c 618 §7]

659 120 [Repealed by 1955 c 534 §2]

659.121 Civil suit for injunctive relief from unlawful employment practices; time for commencement; jury trial; damages recoverable; effect on other remedies. (1)

Any person claiming to be aggrieved by an unlawful employment practice prohibited by ORS 659 030, 659 035, 659 227, 659 270, 659 295, 659 330, 659 340, 659 410, 659 415, 659 420 or 659 425 may file a civil suit in circuit court for injunctive relief and the court may order such other equitable relief as may be appropriate, including but not limited to reinstatement or the hiring of employes with or without back pay. Back pay liability shall not accrue from a date more than two years prior to the filing of a complaint with the Commissioner of the Bureau of Labor and Industries, pursuant to ORS 659 040, or if no such complaint has first been filed, then, more than two years prior to the filing of the civil suit provided for in ORS 659 040, 659 045, 659 095 and this section. In any suit brought under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal.

(2) Any person claiming to be aggrieved by alleged violations of ORS 659 033 (1) or (2) or 659 400 to 659 435 may file a civil action in circuit court to recover compensatory damages or \$200, whichever is greater, and punitive damages not to exceed \$2,500. At the request of any party the trial of such case shall be by jury. In addition to the relief which the court is authorized to award under subsection (1) of this section the court may also provide such equitable relief as it deems appropriate. In any action brought under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Any attorney fee agreement shall be subject to approval by the court.

(3) Where no complaint has been filed pursuant to ORS 659 040 (1) or 659 045 (1) and except as otherwise provided herein, the civil suit or action shall be commenced within one year of the occurrence of the alleged unlawful employment practice. Where a complaint has been filed pursuant to ORS 659 040 (1) or 659 045 (1) the civil suit or action provided for herein shall be commenced only in accordance with the time limitations provided for in ORS 659 095. The filing of a complaint with the commissioner under ORS 659 040 (1) or 659 045 (1) shall not be a condition precedent to the filing of civil suit or action under this section.

(4) 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 civil suit or action. The filing of a civil suit or action in either circuit court pursuant to subsection (1) of this section or federal district court under applicable federal law shall constitute both an election of remedies as to the rights of that individual with respect to those matters alleged in the complaint filed with the commissioner, and a waiver with respect to the right to file a complaint with the commissioner pursuant to ORS 659 040 (1) or 659 045 (1) [1977 c 453 §6, 1979 c 813 §2, 1981 c 897 §95, 1983 c 225 §4, 1987 c 822 §1]

659 130 [Repealed by 1955 c 534 §2]

659 131 [1977 c 771 §1, renumbered as (1),(2), (3) of 659 340]

659 136 [1977 c 771 §2 renumbered as (4) of 659 340]

659 140 [Repealed by 1955 c 534 §2]

DISCRIMINATION IN EDUCATION

659.150 Definition of "discrimination"; prohibition on discrimination in education; rules. (1) As used in this section, "discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, handicap, national origin, race, marital status, religion or sex.

(2) No person in Oregon shall be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

(3) The State Board of Education and the State Board of Higher Education shall establish rules necessary to insure compliance with subsection (2) of this section in the manner required by ORS 183 310 to 183 550 [1975 c 204 §1]

659.155 Sanctions for noncompliance with discrimination prohibitions. (1) Any public elementary or secondary school or community college determined by the Superintendent of Public Instruction to be in noncompliance with provisions of ORS 659 150 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Education.

(2) Any public institution of higher education determined by the Chancellor of the State Board of Higher Education to be in noncompliance with

provisions of ORS 659 150 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Higher Education [1975 c 204 §3]

659.160 Enforcement of ORS 659.150.

(1) Any person claiming to be aggrieved by unlawful discrimination in higher education as prohibited by ORS 659 150 may file a civil action in circuit court for equitable relief or, subject to the terms and conditions of ORS 30 265 to 30 300, damages, or both. The court may order such other relief as may be appropriate. Damages shall be \$200 or actual damages, whichever is greater.

(2) The action authorized by this section shall be filed within one year of the filing of a grievance.

(3) No action shall be filed unless, within 180 days of the alleged discrimination, a grievance has been filed with the community college board of education or the State Board of Higher Education.

(4) No action may be filed until 90 days after filing a grievance unless only injunctive relief is sought pursuant to ORCP 79. The right to temporary or preliminary injunctive relief shall be independent of the right to pursue any administrative remedy available to complainants pursuant to ORS 659 150.

(5) No action may be filed if the community college board of education or the State Board of Higher Education has obtained a conciliation agreement with the person filing the grievance or if a final determination of a grievance has been made except as provided in ORS 183 480.

(6) Notwithstanding the filing of a grievance, pursuant to subsection (3) of this section, any person seeking to maintain an action under this section shall also file a notice of claim within 180 days of the alleged discrimination as required by ORS 30 275.

(7) In an action brought under this section, the court may allow the prevailing plaintiff costs, disbursements and reasonable attorney fees. If the defendant prevails, the court may award costs, disbursements and reasonable attorney fees if it finds the action to be frivolous.

(8) Nothing in this section is intended to reduce the obligations of the education agencies under ORS 659 150 to 659 160 [1987 c 276 §2]

DISCRIMINATION AGAINST ATHLETES

659.175 Prohibition against discrimination for participation in sanctioned

athletic events. (1) No public or private organization or individual

(a) Shall infringe in any manner on the right of an athlete to compete in or train for any athletic event duly sanctioned by the national governing body for that sport as recognized by the United States Olympic Committee.

(b) Shall levy any form of punishment or sanction against any athlete for participating in any athletic event duly sanctioned by the national governing body for that sport as recognized by the United States Olympic Committee.

(2) This section applies only to those sports under the jurisdiction of the United States Olympic Committee and known to be "Olympic" sports [1983 c 823 §3]

Note: 659 175 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

UNLAWFUL EMPLOYMENT PRACTICES

659.210 Deceptive representations or advertisements by persons employing labor prohibited. No person, firm, company, corporation, or association of any kind employing labor, shall, either in person or through any agent, manager or other legal representatives, induce, influence, persuade or engage workers to change from one place to another in this state or bring workers of any class or calling into this state to work in any of the departments of labor by

(1) Any false or deceptive representation or false advertising, concerning the amount or character of the compensation to be paid for any work, or as to the existence or nonexistence of a strike, lockout or other labor troubles pending between employer or employees.

(2) Neglecting to state in the advertisement, proposal or inducement for the employment of workers that there is a strike, lockout or unsettled condition of labor, when such strike, lockout or unsettled condition of labor actually exists.

659.220 Right of worker to recover damages and attorney fees. (1) Any worker of this state, or any worker of another state, who is influenced, induced or persuaded to engage with any persons mentioned in ORS 659 210, through or by means of any of the things prohibited in that statute, shall have a right of action for

(a) Recovery of all damages sustained in consequence of the false or deceptive representations, false advertising and false pretenses used to

induce the worker to change the worker's place of employment against any persons, corporations, companies, or associations, directly or indirectly causing such damages, or \$500, whichever is greater, and

(b) Such reasonable attorney fees at trial and on appeal as the court fixes, to be taxed in any judgment recovered

(2) In any action brought under this section, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal [Amended by 1979 c 389 §1, 1981 c 897 §96]

659.225 Requiring breathalyzer or lie detector test prohibited; exception for breathalyzer test. (1) No person, or agent or representative of such person, shall require, as a condition for employment or continuation of employment, any person or employe to take a breathalyzer test, polygraph test or any other form of a so-called lie detector test. However, nothing in 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 employe to pay the cost of administering any such test.

(2) For the purposes of this section, 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 [1963 c 249 §1, 1981 c 301 §1]

659.227 Requiring breathalyzer, polygraph or psychological stress test prohibited; exceptions. (1) It is an unlawful employment practice for any employer to subject, directly or indirectly, any employe or prospective employe to any breathalyzer test, polygraph examination or psychological stress test.

(2) Complaints may be filed by employes, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659 040 to 659 110 and 659 121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659 010 to 659 110 and 659 121.

(3) As used in this section

(a) "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

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

(c) 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

(4) 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

(5) 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 employe to pay the cost of administering any such test [1979 c 318 §1, 1981 c 301 §2]

Note 659 227 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.230 Blacklisting and blackmailing prohibited. (1) No corporation, company or individual shall blacklist or publish, or cause to be blacklisted or published, any employe, mechanic or laborer discharged by such corporation, company or individual, with intent and for the purpose of preventing such employe, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual.

(2) No officer or agent of any corporation or any other person shall, in any manner, conspire or contrive by correspondence or otherwise to prevent an employe discharged by such corporation or such person from securing employment.

659.240 Use of force or misrepresentation to prevent employment prohibited. (1) No person shall, by force, threats, or intimidation, prevent, or endeavor to prevent, any person employed by another from continuing or performing work, or from accepting any new work or employment

(2) No person shall circulate any false written or printed matter, or be concerned in the circulation of any such matter, to induce others not to buy from or sell to or have dealings with any person, for the purpose or with the intent to prevent such person from employing any person, or to force or compel such person to employ or discharge from employment anyone, or to alter the mode of carrying on business, or to limit or increase the number of employes or the rate of wages or time of service

659.250 Fraudulently accepting advancement and refusing to work prohibited. (1) No person shall, with intent to defraud, sign for and accept or receive transportation to or in the direction of a place of employment provided by or at the instance or expense of the proposed employer, or knowingly or with intent to defraud accept or receive the benefit of any other pecuniary advancements made by or at the instance or expense of the employer, as advances against wages for labor to be performed, and neglect to render service or perform labor or pay in money equal in value to such transportation or other benefits accepted or received

(2) The failure of any person to render service, perform labor, or pay in money for such transportation or other benefits, shall be prima facie evidence of intent to defraud if

(a) At or prior to the time of advancing such transportation or other benefits, the employer has delivered directly to such laborer or has filed in duplicate with the employment agency through which any such laborer is secured, one copy of which shall be delivered to such laborer, a written or printed statement setting forth the wages to be paid, the character of the work to be performed, and the living and working conditions, and

(b) The wages to be paid, the character of the work to be performed and the living and working conditions are as represented in such written or printed statement

659.260 Employer prohibited from filing false statement with employment agency to secure labor. (1) No employer of labor shall directly or through any agent, knowing and with intent to deceive, file with any employment agency as a preliminary to securing labor, a false written or printed statement of wages to be

paid, work to be performed or living and working conditions

(2) The failure or refusal of such employer to employ any laborer, to whom such written or printed statement has been delivered, is prima facie evidence of intent to deceive

659.270 Discharge or discrimination against employe because of legislative testimony prohibited; enforcement. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate against an employe with regard to promotion, compensation or other terms, conditions or privileges of employment solely for the reason that the employe has testified before the Legislative Assembly or any of its interim or statutory committees, including advisory committees and subcommittees thereof, or task forces

(2) Complaints may be filed by employes, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659 040 to 659 110 and 659 121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659 010 to 659 110 and 659 121. [1980 s s c 1 §3]

Note 659 270 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation

659.280 Definitions for ORS 659.280 to 659.295. (1) For purposes of ORS 659 280 to 659 295, "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 employes 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 employes,

(c) The right to enter single residences shared by employes and employers where a separate entrance to the employe's quarter is not provided, or

(d) The right to enter work areas

(2) "Authorized person" means government officials, medical doctors, certified education providers and county health care officials

(3) "Housing" means living quarters owned, rented or in any manner controlled by an employer and occupied by the employe

(4) "Invited person" means persons invited to a dwelling unit by an employe or a member of the employe's family residing with the employe [1981 c 867 §2]

659.285 Restriction of access to employe housing owned or controlled by employer prohibited. (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 employes are residing. Authorized persons or invited persons must announce their presence on the premises upon request.

(2) Invited persons shall not be allowed to enter work areas or to interfere with any employe's work or performance of duties on behalf of the employer [1981 c 867 §3]

659.290 Regulations by employers concerning use and occupancy of employe 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 against the employe only if

(1) Their purpose is to promote the safety or welfare of the employes 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 employes on the premises in a fair manner, and

(5) They are sufficiently explicit in the prohibition, direction or limitation of the employe's conduct to fairly inform the employes of what must be done to comply [1981 c 867 §4].

659.295 Eviction from employe housing or discrimination against employe for reporting violations of ORS 659.280 to 659.295 prohibited; enforcement. (1) It is an unlawful employment practice for an employer to expel or evict from housing referred to in ORS 659.280 to 659.295 or to discharge, demote, suspend from employment or in any other manner discriminate or retaliate against an employe or any member of the employe's household for the reason that the employe or any member of the employe's household has

(a) Reported or complained concerning possible violations of ORS 659.280 to 659.295, or

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

(2) Complaints may be filed with the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of ORS 659.280 to 659.295 subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.110 and 659.121. A person denied access under ORS 659.285 is a person aggrieved for purposes of ORS 659.121 [1981 c 867 §5]

659.320 Employer failing to make agreed payments to employe benefit fund.

Whenever an employer has agreed in writing with any employe to make payments to a health and welfare, dental, pension, vacation, apprenticeship and industry fund or any other such plan for the benefit of the employes, or has entered into a collective bargaining agreement providing for such payments, it shall be unlawful for such an employer wilfully or with intent to defraud to fail to make the payments required by the terms of any such agreement [1957 c 548 §1, 1973 c 140 §1]

659.330 Requiring employe 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 employe, 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 employe if the medical examination or health certificate is required pursuant to a collective bargaining agreement, state or federal statute or city or county ordinance

(3) Complaints may be filed by employes, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110 and 659.121. [1979 c 595 §1]

Note: 659.330 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

659.340 Refusal to employ or otherwise discriminate solely because of employment of another family member prohibited; exceptions; enforcement. (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

(a) "Employer" has the meaning for that term provided in ORS 659 010

(b) "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

(4) Subsections (1) to (3) of this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659 040 to 659 110 for enforcement of an unlawful employment practice. Violation of subsections (1) to (3) of this section subjects the violator to the same civil and criminal penalties as provided for violation of ORS 659 010 to 659 110 [(1), (2), (3) formerly 659 131, (4) formerly 659 136, 1983 c 225 §5, 1985 c 565 §90]

Note 659 340 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 659 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation

659.360 Denial of parental leave prohibited. (1) It shall be an unlawful employment practice for an employer to refuse to grant an employee's request for a parental leave of absence for

(a) All or part of the time between the birth of that employee's infant and the time the infant reaches 12 weeks of age, or, in the case of a premature infant, until the infant has reached the developmental stage equivalent to 12 weeks as determined by an attending physician, or

(b) All or part of the 12-week period following the date an adoptive parent takes physical custody of a newly adopted child under six years of age

(2) The employer is not required to grant to an employee parental leave which would allow the employee and the other parent of the child, if also employed, parental leave totaling more than the amount specified in paragraphs (a) and (b) of subsection (1) of this section nor to grant to an employee parental leave for any period of time in which the child's other parent is also taking parental leave from employment

(3) The employee seeking parental leave shall be entitled to utilize any accrued vacation leave, sick leave or other compensatory leave, paid or unpaid, during the parental leave. The employer may require the employee seeking parental leave to utilize any accrued leave during the parental leave unless otherwise provided by an agreement of the employer and the employee, by collective bargaining agreement or by employer policy

(4) The employer may require an employee to give the employer written notice at least 30 days in advance of the anticipated date of delivery, stating the dates during which each parent intends to take parental leave. Duplicate copies of the notice shall be given to the employers of both parents. Both parents shall adhere to the dates stated in the notice unless

(a) The birth is premature,

(b) The mother is incapacitated due to birth such that she is unable to care for the child,

(c) The employee takes physical custody of the newly adopted child at an unanticipated time and is unable to give notice 30 days in advance, or

(d) The employer and employee agree to alter the dates of parental leave stated in the notice

(5) In cases of premature birth, incapacity or unanticipated taking of custody referred to in

subsection (4) of this section, the employer may require the employe to give notice of revised dates of parental leave within seven days after birth or taking of custody

(6) The parental leave required by subsection (1) of this section is not required to be granted with pay unless so specified by agreement of the employer and employe, by collective bargaining agreement or by employer policy

(7) The regular employment position of an employe on leave of absence under this section shall only be considered vacant for the period of the leave of absence, and the employe shall not be subject to removal or discharge from such position as a consequence of the parental leave of absence

(8) Upon the termination of the parental leave of absence of the employe under this section, an employe shall be restored to the former or an equivalent job without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employe benefit or right which had been earned at the time of the leave of absence but reduced by any paid leave that the employe used during the parental leave of absence. Benefits are not required to accrue during the parental leave of absence unless accrual is required under an agreement of the employer and the employe, a collective bargaining agreement or an employer policy. If the employer's circumstances have so changed that the employe cannot be reinstated to the former or equivalent job, the employe shall be reinstated in any other position which is available and suitable. However, the employer is not required to discharge any employe in order to reinstate the employe to any job other than the former or equivalent job unless required by an agreement of the employer and the employe, by collective bargaining agreement or by employer policy.

(9) If the employe fails to give the notice that may be required by subsection (4) of this section, the employer may require the parental leave to commence up to three weeks from the date of notice and may reduce the parental leave required by this section by three weeks.

(10) This section is not applicable if

(a) The employe was employed by the employer for fewer than 90 days immediately prior to the first day of the parental leave of absence,

(b) The employe is employed by the employer on a seasonal or temporary basis for a period of time defined at the time of hire to be less than six months,

(c) The employer employs fewer than 25 persons immediately prior to the first day of the leave of absence, or

(d) The employer offers to the employe a nondiscriminatory cafeteria plan, as defined by Section 125 of the Internal Revenue Code of 1986, providing as one of its options a parental leave benefit that is at least equivalent to the benefit required by this section.

(11) Nothing in this section is intended to reduce the rights to parental leave to which an employe may be entitled under any agreement between the employer and the employe, collective bargaining agreement or employer policy [1987 c 319 §2]

659.365 Procedure to enforce ORS 659.360 (1) Complaints may be filed by employes with the Commissioner of the Bureau of Labor and Industries. The Commissioner of the Bureau of Labor and Industries shall enforce ORS 659 360 in the manner as provided in ORS 659 010 to 659 110 and 659 121 for the enforcement of other unlawful employment practices.

(2) Violation of ORS 659 360 subjects the violator to the same civil remedies and penalties as provided in ORS 659 010 to 659 110 and 659 121 [1987 c 319 §3]

659.370 Posting of notice on ORS 659.360. A notice of the provisions of ORS 659 360 shall be provided by the Bureau of Labor and Industries and shall be posted in every establishment in which employes are employed [1987 c 319 §4]

CIVIL RIGHTS OF PHYSICALLY AND MENTALLY HANDICAPPED

659.400 Definitions for ORS 659.400 to 659 435. As used in ORS 659 400 to 659 435, unless the context requires otherwise

(1) "Employer" means any person who employs six or more persons and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard.

(2) "Handicapped 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.

(3) As used in subsection (2) 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 such an impairment

(c) "Is regarded as having 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 no physical or mental impairment but is treated by an employer or supervisor as having an impairment [1973 c 660 §2, 1979 c 640 §1]

659.405 Policy. (1) It is declared to be the public policy of Oregon to guarantee handicapped 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 handicap 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 handicap, 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 659 400 to 659 435 shall be construed to effectuate such policy [1973 c 660 §3, 1979 c 640 §2]

659.410 Discrimination against workers applying for workers' compensation benefits 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 656 001 to 656 794 and 656 802 to 656 807, or of 659 400 to 659 435 or has given testimony under the provisions of such sections [1973 c 660 §4]

659.415 Reinstatement of worker receiving compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement

(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, provided that the position is available and the worker is not disabled from performing the duties of such position. If the former position is not available, the worker shall be reinstated in any other position which is available and suitable. A certificate by a duly licensed physician that the physician approves the worker's return to the worker's regular 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) Any violation of this section is an unlawful employment practice [1973 c 660 §5, 1979 c 813 §3, 1981 c 874 §14]

659.417 Right of reinstatement protected. The rights of reinstatement afforded by ORS 659 415 and 659 420 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 [1987 c 884 §45]

659.420 Employment of injured worker in other available and suitable work; 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) 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.

(4) Any violation of this section is an unlawful employment practice [1973 c 660 §6, 1979 c 813 §4]

659.425 Discrimination against mentally or physically impaired persons in employment or public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property. (1) For the purpose of ORS 659 400

to 659 435, 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

(a) An individual has a physical or mental impairment which, with reasonable accommodation by the employer, does not prevent the performance of the work involved,

(b) An individual has a record of a physical or mental impairment, or

(c) An individual is regarded as having a physical or mental impairment

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

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

(4) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 30 675, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a handicapped person

(5) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to perform the duties of a particular job or position, or of a person's inability to acquire, rent or maintain property [1973 c 660 §7, 1979 c 640 §3]

659.430 Discrimination against handicapped persons in real property transactions prohibited; advertising discriminatory preference prohibited; assisting discriminatory practices prohibited. (1) No person because the purchaser, lessee or renter is a handicapped person shall

(a) Refuse to sell, lease or rent any real property to a purchaser, lessee or renter who is a handicapped person,

(b) Expel a purchaser, lessee or renter who is a handicapped person from any real property,

(c) Make any distinction, discrimination or restriction against a purchaser, lessee or renter who is a handicapped person 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) Attempt to discourage the sale, rental or lease of any real property to a handicapped person

(2) 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 handicapped person

(3) 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 with respect to the sale, rental or lease thereof solely because a person is a handicapped person

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

(5) Any violation of this section is an unlawful practice [1973 c 660 §8, 1979 c 640 §4, 1983 c 225 §6]

659.435 Enforcement powers of commissioner. Any person claiming to be aggrieved by an unlawful employment practice may file a complaint under ORS 659 040, and any person claiming to be aggrieved by an unlawful practice may file a complaint under ORS 659 045 The Commissioner of the Bureau of Labor and Industries may then proceed and shall have the same enforcement powers, and if the complaint is found to be justified the complainant shall be entitled to the same remedies, under ORS 659 050 to 659 085 as in the case of any other complaint filed under ORS 659 040 or 659 045 [1973 c 660 §9]

PENALTIES

659.990 Penalties. (1) Violation of ORS 659 110 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

(2) Violation of ORS 659 210 is punishable, upon conviction, by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year, or both

(3) Violation of ORS 659 230 by any officer or agent of a corporation or any other person is punishable, upon conviction, by a fine of not less than \$50 nor more than \$250, or by imprison-

ment in the county jail not less than 30 nor more than 90 days, or both

(4) Violation of ORS 659 240 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$200 or by imprisonment in the county jail for not less than one month nor more than six months

(5) Violation of ORS 659 250 or 659 260 is punishable, upon conviction, by a fine of not more than \$100 or imprisonment in the county jail for not more than 60 days, or both

(6) Any person who violates ORS 659 320, upon conviction, shall be required to make imme-

diately restitution of delinquent payments to the fund or funds mentioned in ORS 659 320 and shall be punished by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year, or both

(7) Violation of ORS 659 225 is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for not more than one year, or by both [Subsection (6) enacted as last sentence of 1957 c 548 §1, subsection (7) enacted as 1963 c 249 §2, 1973 c 140 §2]

LABOR AND INDUSTRIAL RELATIONS
