Chapter 659

1991 EDITION

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, 659.400 to 659.460 and 659.505 to 659.545. As used in ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545, 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, 659.400 to 659.460 and 659.505 to 659.545, 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, 659.400 to 659.460 and 659.505 to 659.545.

(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, 659.400 to 659.460 and 659.505 to 659.545 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 employees 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 employees 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)(a) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

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

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

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

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

(11) "National origin" includes ancestry.

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

(13) "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).

(14) "Unlawful employment practice" includes only those unlawful employment practices specified in ORS 399.235, 654.062 (5), 659.030, 659.035, 659.227, 659.270, 659.295, 659.330, 659.340, 659.358 (1) to (4), 659.360, 659.410, 659.415, 659.420, 659.425 and 659.570.

(15) "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, 659.430 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; 1989 c.317 §3; 1989 c.686 §1; 1991 c.652 §13; 1991 c.939 §5]

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 disability are a matter of state concern and that such discrimination threatens not only the rights and privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

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

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

(b) In the opinion of such bona fide church or sectarian religious institution, such a preference will best serve the purposes of such church or institution; and

(c) The employment involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity which has no necessary relationship to the church or institution, or to its primary purposes. [Amended by 1969 c.618 §2; 1977 c.770 §13; 1983 c.225 §2; 1989 c.224 §125]

659.022 Purpose of ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545. The purpose of ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 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, 659.400 to 659.460 and 659.505 to 659.545 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, disability or age, every state agency shall be required to include in the evaluation of all management personnel the manager's or supervisor's effectiveness in achieving affirmative action objectives as a key consideration of the manager's or supervisor's performance.

(2) To achieve the public policy of the State of Oregon for persons in the state to attain employment and advancement without discrimination because of race, religion, color, sex, marital status, national origin, age or disability, every state agency shall be required to present the affirmative action objectives and performance of that agency of the current biennium and those for the following biennium to the Governor of the State of Oregon and to the Legislative Assembly. These plans shall be reviewed as part of the budget review process. [Subsection (1)

enacted as 1981 c.454 §1; subsection (2) enacted as 1981 c.242 §1; 1989 c.224 §126]

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, 659.400 to 659.460 and 659.505 to 659.545, 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 discrimination results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(b) For an employer, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, religion, color, sex, national origin, marital status or age of any other person with whom the individual associates, or because of a juvenile record, that has been expunged pursuant to ORS 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 659.460, or because the person has filed a complaint, testified or assisted in any proceeding under ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 or has attempted to do so.

(g) For any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 or to attempt to do so.

(2) The provisions of this section apply to an apprentice under ORS chapter 660, but the selection of an apprentice on the basis of the ability to complete the required apprenticeship training before attaining the age of 70 years is not an unlawful employment practice. The commissioner shall administer this section with respect to apprentices under ORS chapter 660 equally with regard to all employees and labor organizations.

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

(4)(a) It 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 employees or members who are responsible for a minor child.

(b) As used in this subsection "responsible for a minor child" means having custody or legal guardianship of a minor child or acting in loco parentis to the child. [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, familial status, religion or national origin of any person:

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

(b) Expel a purchaser from any real property.

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

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

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

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this subsection and subsection (3) of this section.

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

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

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

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

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

(ii) For securing residential real estate; or

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

(3) No real estate licensee shall accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, sex, marital status, familial status, religion or national origin.

(4) No person shall, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, marital status, familial status, religion or national origin.

(5) Subsections (1) and (3) of this section do not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of subsections (1) and (3) of this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

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

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

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

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

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

(i) Significant facilities and services are specifically designed to meet the physical or social needs of older persons or, if provision of such facilities and services is not practicable, such housing is necessary to provide important housing opportunities of older persons;

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

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

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

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

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

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

(7) In the sale, lease or rental of real estate, no person shall disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome. [1957 c.725 §3; 1959 c.584 §3; 1973 c.714 §7; 1975 c.384 §1; 1989 c.523 §4; 1989 c.686 §2]

Note: Section 5, chapter 686, Oregon Laws 1989, provides:

Sec. 5. Notwithstanding sections 1 to 4 of this Act [659.010, 659.033, 659.121 and 659.430], the commissioner need not accept or investigate any complaints or otherwise expend any funds as a result of this Act until and unless the commissioner obtains full certification from the Secretary of Housing and Urban Development pursuant to 42 U.S.C. 3610, Public Law 100-430, section 8, and obtains additional funding as necessary to meet the fiscal impact of sections 1 to 4 of this Act upon the Bureau of Labor and Industries. [1989 c.686 §5]

659.034 [1957 c.725 §4; repealed by 1959 c.584 §4]

659.035 Discrimination or retaliation against employee for reporting certain violations or testifying at unemployment compensation hearing prohibited; enforcement. (1) It is an unlawful employment practice for:

(a) An employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported possible violations of ORS chapter 441 or of ORS 443.400 to 443.455 or has testified in good faith at an unemployment compensation hearing or other hearing conducted pursuant to ORS chapter 657; or

(b) A public employer to violate ORS 659.510 or 659.535.

(2) Complaints may be filed by employees, 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, 659.121 and 659.505 to 659.545.

(3) In addition to sanctions described in subsection (2) of this section, any person aggrieved by an unlawful employment practice prohibited by paragraph (b) of subsection (1) of this section may seek compensatory damages or $250, whichever is greater. [1981 c.470 §5; 1985 c.404 §3; 1989 c.890 §10]

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 employees, or any of them, refuse or threaten to refuse to abide by ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 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, 659.400 to 659.460 and 659.505 to 659.545.

(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, 659.400 to 659.460 and 659.505 to 659.545 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, 659.400 to 659.460 and 659.505 to 659.545 shall be construed to prevent a settlement of any case scheduled for hearing under the provisions of ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 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, 659.400 to 659.460 and 659.505 to 659.545, 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 disability 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 disability or age if the individual is 18 years of age and over as provided in ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545. 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 disability, 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, 659.400 to 659.460 and 659.505 to 659.545 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, 659.400 to 659.460 and 659.505 to 659.545 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 659.460.

(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, 659.400 to 659.460 and 659.505 to 659.545. [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; 1989 c.224 §127]

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, 659.400 to 659.460 and 659.505 to 659.545. (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 and 659.505 to 659.545.

(e) Establishing rules covering any other matter required to carry out the purpose of ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545.

(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, 659.400 to 659.460 and 659.505 to 659.545, 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 Willful interference with administration of law and violation of orders of commissioner prohibited. (1) No person shall willfully resist, prevent, impede or interfere with the commissioner or any authorized agents of the commissioner in the performance of duty under ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 or willfully violate an order of the commissioner.

(2) An appeal or other procedure for the review of any such order is not deemed to be such willful conduct. [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 statewide, as in the judgment of the commissioner will aid in effectuating the purposes of ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545. 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 399.235, 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 employees 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 (3), 659.295 or 659.400, 659.405, 659.410 (1), 659.415 to 659.435 and 659.550 may file a civil action in circuit court to recover compensatory damages or $200, whichever is greater, and punitive damages. In addition, the court may award relief authorized under subsection (1) of this section and such equitable relief as it considers appropriate. At the request of any party, the trial of such case shall be by jury. 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. Except as provided in subsection (5) of this section, 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).

(5)(a) Where a person claiming to be aggrieved by alleged violations of ORS 659.033 or 659.430 or applicable federal law files a civil suit or action in circuit court or in federal district court, that filing does not constitute an election of remedies until such time as the trial commences.

(b) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of specific charges issued by the commissioner if a hearings referee has commenced a hearing on the record under this chapter with respect to such charge.

(6) Notwithstanding any other provision of ORS 659.010 to 659.121, a civil complaint alleging violations of ORS 659.033 or 659.430 may be filed not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under ORS 659.010 to 659.121, whichever occurs last. The two-year period shall not include any time during which an administrative proceeding was pending with respect to the housing practice or breach. [1977 c.453 §6; 1979 c.813 §2; 1981 c.897 §95; 1983 c.225 §4; 1987 c.822 §1; 1989 c.165 §3; 1989 c.317 §4; 1989 c.686 §4; 1989 c.1044 §6; 1991 c.342 §2]

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, disability, 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; 1989 c.224 §128]

659.155 Sanctions for noncompliance with discrimination prohibitions. (1) Any public elementary or secondary school determined by the Superintendent of Public Instruction or any community college determined by the Commissioner for Community College Services 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; 1989 c.491 §64]

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 employee 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 employee 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, psychological stress or brain-wave test or genetic screening prohibited; exceptions. (1) Except as provided in subsection (5) of this section, it is an unlawful employment practice for any employer to subject, directly or indirectly, any employee or prospective employee to any breathalyzer test, polygraph examination, psychological stress test, genetic screening or brain-wave test.

(2) Complaints may be filed by employees, 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, 659.121 and 659.505 to 659.545.

(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 employee to pay the cost of administering any such test. [1979 c.318 §1; 1981 c.301 §2; 1989 c.892 §1]

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 employee, mechanic or laborer discharged by such corporation, company or individual, with intent and for the purpose of preventing such employee, 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 employee 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 employees 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 employee 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 employee with regard to promotion, compensation or other terms, conditions or privileges of employment solely for the reason that the employee has testified before the Legislative Assembly or any of its interim or statutory committees, including advisory committees and subcommittees thereof, or task forces.

(2) Complaints may be filed by employees, 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, 659.121 and 659.505 to 659.545. [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 employees unless a resident of the household consents to the entry;

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

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

(d) The right to enter work areas.

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

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

(4) "Invited person" means persons invited to a dwelling unit by an employee or a member of the employee's family residing with the employee. [1981 c.867 §2; 1989 c.165 §1]

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

(2)(a) A person need not disclose to the employer the name of the employee who issued the invitation prior to gaining access to the housing, but an invited person must do so in order to assert a right to access as an invited person in any judicial proceeding concerning the right to access provided in this section. If an invited person does not disclose the name of the inviter to the employer, the employer may deny access until the invited person obtains an order pursuant to ORS 659.297.

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

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

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

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

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

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

(B) The camp meets any requirements established by the Department of Insurance and Finance for an emergency medical plan. [1981 c.867 §3; 1989 c.165 §2]

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

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

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

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

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

(5) They are sufficiently explicit in the prohibition, direction or limitation of the employee's conduct to fairly inform the employees of what must be done to comply. [1981 c.867 §4; 1989 c.165 §7]

659.295 Eviction from employee housing or discrimination against employee 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 employee or any member of the employee's household for the reason that the employee or any member of the employee's household has:

(a) Reported or complained concerning possible violations of ORS 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]

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

(2) The application pursuant to this section shall be sworn and shall include allegations of the facts and circumstances under which the person alleges that the person is entitled to access under ORS 659.280 to 659.295.

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

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

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

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

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

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

(9) The Bureau of Labor and Industries may adopt rules to carry out the provisions of this section, ORS 659.121 and 659.280 to 659.290. [1989 c.165 §§4, 5, 6]

Note: 659.297 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.

659.320 Employer failing to make agreed payments to employee benefit fund. Whenever an employer has agreed in writing with any employee 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 employees, or has entered into a collective bargaining agreement providing for such payments, it shall be unlawful for such an employer willfully 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]

659.322 Prohibition on limiting coverage under employee benefit plan based on eligibility to receive Social Security. No employee benefit plan may include any provision which has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan because that individual is provided, or is eligible for, benefits or services pursuant to a plan under Title XIX of the Social Security Act. This section applies to employee benefit plans, whether sponsored by an employer or a labor union. [1991 c.875 §5]

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

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

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

(b) By the employee if the medical examination or health certificate is required pursuant to a collective bargaining agreement, state or federal statute or city or county ordinance.

(3) Complaints may be filed by employees, 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, 659.121 and 659.505 to 659.545. [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 and 659.505 to 659.545. [(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.

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

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

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

(4) This section does not:

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

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

(5) As used in this section:

(a) "Employee" means a person who performs services for hire for an employer, for an average of 20 or more hours per week, and includes all individuals employed at any site owned or operated by an employer.

"Employee" does not include an independent contractor.

(b) "Employer" means a person or entity that employs any employee in at least one site and includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district or other governmental subdivision. [1991 c.652 §§2,4]

Note: 659.358 (5) 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 employee 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 employee, by collective bargaining agreement or by employer policy.

(7) The regular employment position of an employee on leave of absence under this section shall only be considered vacant for the period of the leave of absence, and the employee 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 employee under this section, an employee 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 employee benefit or right which had been earned at the time of the leave of absence but reduced by any paid leave that the employee 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 employee, a collective bargaining agreement or an employer policy. If the employer's circumstances have so changed that the employee cannot be reinstated to the former or equivalent job, the employee shall be reinstated in any other position which is available and suitable. However, the employer is not required to discharge any employee in order to reinstate the employee to any job other than the former or equivalent job unless required by an agreement of the employer and the employee, by collective bargaining agreement or by employer policy.

(9) If the employee 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 employee was employed by the employer for fewer than 90 days immediately prior to the first day of the parental leave of absence;

(b) The employee 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 employee 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 employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy. [1987 c.319 §2]

659.365 Procedure to enforce ORS 659.360. (1) Complaints may be filed by employees 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, 659.121 and 659.505 to 659.545 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, 659.121 and 659.505 to 659.545. [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 employees are employed. [1987 c.319 §4]

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

(2) Subsection (1) of this section does not apply if an applicable collective bargaining agreement prohibits off-duty use of tobacco products.

(3) Complaints may be filed by employees, 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, 659.121 and 659.505 to 659.545. [1989 c.892 §3]

659.385 Finding; policy for ORS 659.389. (1) The Legislative Assembly finds that female employees are at risk of disabling pregnancy-related conditions not affecting male employees. It is declared to be public policy of this state that employers' policies accommodate pregnancy-related conditions, as provided in ORS 659.385 to 659.393, to remove barriers that have operated in the past to favor an identifiable group of employees over other employees who are at risk of disabling pregnancy-related conditions. The Legislative Assembly finds that these employer policies provide female employees with equal job opportunity. However, the Legislative Assembly does not intend to provide preferential treatment to these female employees.

(2) The Legislative Assembly declares that ORS 659.385 to 659.393 is not intended to interfere with the right of a female employee to make decisions in consultation with the attending physician regarding her pregnancy.

(3) The state's interest is in protecting a female employee's right to make decisions regarding her pregnancy and preventing retaliation for exercising her rights under ORS 659.385 to 659.393. [1989 c.822 §2]

659.389 Employment practices affecting pregnant employees. It is an unlawful employment practice for any employer who employs 25 or more persons to refuse to allow a female employee affected by pregnancy, childbirth or related medical conditions or occurrences:

(1) To transfer temporarily to a less strenuous or hazardous position for the duration of pregnancy if the transfer is reasonably necessary, the employee so requests and such request can be reasonably accommodated. If the employer doubts that the transfer is reasonably necessary, the employer may request a medical opinion.

(2)(a) To take a leave of absence on account of pregnancy, childbirth or related medical conditions or occurrences for a reasonable period of time if the leave is reasonably necessary, if the employee so requests and if such request can be reasonably accommodated. If the employer doubts that the

leave of absence is reasonably necessary, the employer may request a medical opinion.

(b) As used in this subsection, "reasonable period of time" means that period during which the employee is disabled from performing any available job duties offered by the employer on account of pregnancy, childbirth or related medical conditions or occurrences. The employee shall be entitled to utilize any accrued vacation leave, sick leave or other compensatory leave during the leave of absence. The leave is not required to be granted with pay unless so specified by agreement of the employer and the employee, by collective bargaining agreement or by employer policy.

(3) To return to the former or an equivalent job when the employee is released to work by her treating physician without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employee benefit or right which had been earned at the time of the leave of absence but reduced by any paid leave that the employee used during the leave of absence. Benefits are not required to accrue during the leave of absence unless accrual is required under an agreement of the employer and the employee, a collective bargaining agreement or an employer policy. If the employer's circumstances have so changed that the employee cannot be reinstated to the former or equivalent job, the employee shall be reinstated in any other position which is available and suitable. However, the employer is not required to discharge any employee in order to reinstate the employee to any job other than her former job unless required by an agreement of the employer and the employee, by collective bargaining agreement or by employer policy. If an issue arises as to the employee's physical capability to return to work, the employer may request a medical opinion.

(4) When the employer requests a medical opinion, the employee shall provide a written opinion from her treating physician which satisfies the requirements of this section before any of the work changes of this section need be allowed by the employer. If the employer rejects the medical opinion from the treating physician, the employer shall offer the employee the opportunity to promptly secure a further, independent medical opinion from another physician at the employer's cost. If the further opinion is sought, none of the work changes of this section need be allowed by the employer until the opinion is provided to the employer. The employer and employee shall mutually agree upon the selection of this independent physician. If the employer and the employee cannot agree upon the selection, the Commissioner of the Bureau of Labor and Industries shall designate the independent physician. When an opinion is sought from an independent physician, that physician's opinion shall be determinative as to any of the limitations, disability or medical restrictions of the employee. [1989 c.822 §3]

659.391 Posting of notice on ORS 659.389. A notice of the provisions of ORS 659.389 shall be provided by the Bureau of Labor and Industries with other notices which shall be posted in every establishment in which employees are employed. [1989 c.822 §4]

659.393 Enforcement of ORS 659.389. (1) ORS 659.385 to 659.393 and 659.560 to 659.570 shall be enforced by the Commissioner of the Bureau of Labor and Industries in the manner provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of other unlawful employment practices. Violation of ORS 659.389 and 659.570 subjects the violator to the civil and criminal remedies and penalties provided in ORS 659.010 to 659.121.

(2) In accordance with any applicable provisions of ORS 183.310 to 183.550, the commissioner may adopt rules to aid in the enforcement of ORS 659.385 to 659.393 and 659.560 to 659.570. [1989 c.822 §5; 1991 c.939 §6]

CIVIL RIGHTS OF DISABLED PERSONS

659.400 Definitions for ORS 659.400 to 659.460. As used in ORS 659.400 to 659.460, unless the context requires otherwise:

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

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

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

(b) "Has a record of such an impairment" means has a history of, or has been misclassified as having 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.

(3) "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. [1973 c.660 §2; 1979 c.640 §1; 1989 c.224 §129]

659.405 Policy. (1) It is declared to be the public policy of Oregon to guarantee disabled persons the fullest possible participation in the social and economic life of the state, to engage in remunerative employment, to use and enjoy places of public accommodation, resort or amusement, and to secure housing accommodations of their choice, without discrimination.

(2) The right to otherwise lawful employment without discrimination because of disability where the reasonable demands of the position do not require such a distinction, and the right to use and enjoy places of public accommodation, resort or amusement, and to purchase or rental of property without discrimination because of disability, are hereby recognized and declared to be the rights of all the people of this state. It is hereby declared to be the policy of the State of Oregon to protect these rights and ORS 659.400 to 659.460 shall be construed to effectuate such policy. [1973 c.660 §3; 1979 c.640 §2; 1989 c.224 §130]

659.410 Discrimination against workers applying for workers' compensation benefits prohibited. (1) It is an unlawful employment practice for an employer to discriminate against a worker with respect to hire or tenure or any term or condition of employment because the worker has applied for benefits or invoked or utilized the procedures provided for in ORS chapter 656 or of ORS 659.400 to 659.460 or has given testimony under the provisions of such sections.

(2) It is an unlawful employment practice for the State of Oregon as an employer to discriminate against a worker as defined in ORS 659.450, by terminating the worker's group health benefits while that worker is absent from the place of employment as a result of an injury or illness for which a workers' compensation claim has been filed against the same public employer pursuant to ORS chapter 656, except as provided for in ORS 659.455. [1973 c.660 §4; 1989 c.1044 §1]

659.412 Reemployment rights of injured state workers. (1) For the purpose of administration of ORS 659.415 and 659.420:

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

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

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

(2) Notwithstanding ORS 659.415 (2) and 659.420 (3), an injured worker referred to in subsection (1) of this section has preference for entry level and light duty assignments with agencies described in subsection (1) of this section. In accordance with the provisions of ORS 183.310 to 183.550, any agency referred to in subsection (1) of this section may adopt rules to define entry level and light duty assignments. However, the rulemaking power for all agencies referred to in paragraph (c) of subsection (1) of this section shall be exercised by the Administrator of the Personnel Division.

(3) In accordance with any applicable provision of ORS chapter 240, the Administrator of the Personnel Division may compel compliance with this section, ORS 659.415 and 659.420 by any agency referred to in paragraph (c) of subsection (1) of this section. [1989 c.850 §2]

Note: Section 3, chapter 850, Oregon Laws 1989, provides:

Sec. 3. The provisions of subsection (2) of section 2 of this Act [659.412 (2)] first apply to collective bargaining agreements entered into or renewed on or after the effective date of this Act [October 3, 1989]. [1989 c.850 §3]

659.415 Reinstatement of worker sustaining compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement; termination of right to reinstatement; when reinstatement right terminates. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such rein-

statement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is "available" even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position which is vacant and suitable. A certificate by the attending physician that the physician approves the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

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

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

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

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

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

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

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

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

(F) Three years from the date of injury.

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

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

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

(C) A worker who works out of a hiring hall operating pursuant to a collective bargaining agreement.

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

(4) Any violation of this section is an unlawful employment practice. [1973 c.660 §5; 1979 c.813 §3; 1981 c.874 §14; 1989 c.1044 §1; 1990 c.2 §45]

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 disabled 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 659.460, 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 disabled person, or to classify or refer for employment any individual because that individual is a disabled person.

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

(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 disabled 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; 1989 c.224 §131]

659.430 Discrimination against disabled persons in real property transactions prohibited; advertising discriminatory preference prohibited; when necessary modification to be allowed; assisting discriminatory practices prohibited. (1) No person, because of a handicap of a purchaser, lessee or renter, a handicap of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or a handicap of any person associated with a purchaser, lessee or renter, shall discriminate by:

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

(b) Expelling a purchaser, lessee or renter;

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

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

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

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; or

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

(3) No person shall publish, circulate, issue or display or cause to be published, circulated, issued or displayed any communication, notice, advertisement, or sign of any kind relating to the sale, rental or leasing of real property which indicates any preference, limitation, specification or discrimination against a handicapped person.

(4) No person or other entity whose business includes engaging in residential real estate related transactions, as defined in ORS 659.033 (2)(b), shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of handicap.

(5) No real estate broker or salesperson shall accept or retain a listing of real property for sale, lease or rental with an understanding that the purchaser, lessee or renter may be discriminated against solely because a person is a handicapped person.

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

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

(8) No person shall, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a handicapped person or persons.

(9) Any violation of this section is an unlawful practice. [1973 c.660 §8; 1979 c.640 §4; 1983 c.225 §6; 1989 c.686 §3]

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]

BENEFITS FOR INJURED WORKER AND COVERED DEPENDENTS

659.450 Definitions for ORS 659.450 to 659.460. As used in ORS 659.410 (2) and 659.450 to 659.460, unless the context requires otherwise:

(1) "Group health benefits" means that form of health benefits provided by the State of Oregon to cover groups of employees, with or without one or more members of their families or one or more dependents. The group health benefits which are continued under ORS 659.450 to 659.460 shall be the same as the worker and the worker's dependents had immediately prior to the injury or illness, and includes, but is not limited to, medical care, dental care, vision care or prescription drug coverage, or any combination thereof, that the worker had elected prior to the injury or illness. If the plan elected prior to the injury or illness is no longer available, the worker shall have the same plan selection rights as do active employees.

(2) "Employer" means the State of Oregon.

(3) "Worker" means any state employee who has filed a workers' compensation claim pursuant to ORS chapter 656. [1989 c.1044 §3; 1991 c.90 §1]

659.455 Employer to continue group health benefits for injured worker and covered dependents; when ended. (1) The State of Oregon shall cause group health benefits to continue in effect with respect to that worker and any covered dependents or family members by timely payment of the premium that includes the contribution due from the employer under the applicable benefit plan, subject to any premium contribution due from the worker that the worker paid before the occurrence of the injury or illness. If the premium increases or decreases, the employer and worker contributions shall be adjusted to remain consistent with similarly situated active employees. The employer shall continue the worker's health benefits in effect until whichever of the following events occurs first:

(a) The worker's attending physician has determined the worker to be medically stationary and a determination order or notice of closure has been entered;

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

(c) The worker takes full or part-time employment with another employer that is comparable in terms of the number of hours per week the worker was employed with the employer who is continuing coverage under ORS 659.450 to 659.460 or the worker retires;

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

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

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

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

(h) The worker's attending physician has released the worker to modified or regular work, the work has been offered to the worker and the worker refuses to return to work; or

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

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

(3) The employer shall notify the worker of the provisions of ORS 659.121, 659.410 and 459.450 to 459.460 within a reasonable time after the employer receives notice that the worker will be absent from work as a result of an injury or illness for which a workers' compensation claim has been filed pursuant to ORS chapter 656. The employer's notice shall include the terms and conditions of the continuation of health benefits and what events will terminate the coverage.

(4) If the worker fails to make timely payment of any premium contribution owing, the employer shall notify the worker of im-

pending cancellation of the health benefits and provide the worker with 30 days to pay the required premium prior to canceling the policy. [1989 c.1044 §4; 1991 c.90 §2]

659.460 Worker may continue benefits after employer's obligation ends. If the employer's obligation to continue paying premiums for health benefits under ORS 659.455 expires or terminates, the worker may continue coverage by paying the entire premium pursuant to ORS 743.530. [1989 c.1044 §5]

DISCLOSURES BY PUBLIC EMPLOYEES (WHISTLEBLOWING)

659.505 Definitions for ORS 659.505 to 659.545. As used in ORS 240.316, 659.035 and 659.505 to 659.545:

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

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

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

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

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

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

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

(3) "Public employer" means:

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

(b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee. [1989 c.890 §2]

659.510 Prohibited conduct by public employer. (1) Subject to ORS 659.515, except as provided in ORS 240.316, 659.035 and 659.505 to 659.545, no public employer shall:

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

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

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

(b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure of any information that the employee reasonably believes is evidence of:

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

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

(C) Subject to ORS 659.525 (2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the Federal Government, or any territory, commonwealth or governmental instrumentality of the United States.

(c) Require any employee to give notice prior to making any disclosure or engaging in discussion described in this section, except as allowed in ORS 659.515 (1).

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

(2) No public employer shall invoke or impose any disciplinary action against an employee for employee activity described in subsection (1) of this section or ORS 659.525. [1989 c.890 §3]

659.515 Effect on public employer's authority over employees. ORS 240.316, 659.035 and 659.505 to 659.545 are not intended to:

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

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

committee to appear before a legislative committee;

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

(4) Except as specified in ORS 659.525 (2), authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation;

(5) Restrict or preclude disciplinary action against an employee if the information disclosed by the employee is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety; or

(6) Restrict or impair any judicial right of action an employee or an employer has under existing law. [1989 c.890 §4]

659.520 Effect on public record disclosures. ORS 240.316, 659.035 and 659.505 to 659.545 are not intended to:

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

(2) Prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action. [1989 c.890 §5]

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

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

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

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

(5) Information disclosed under this section shall only be used by law enforcement officials to verify the existence of a felony or misdemeanor warrant for arrest of the person and to apprehend the person if a felony or misdemeanor warrant for arrest exists. [1989 c.890 §6]

659.530 Civil action on behalf of employee authorized. In addition to appeal proceedings of ORS 240.560 for a state employee and any comparable provisions for employees of political subdivisions and remedies available under ORS 659.035, an employee alleging a violation of ORS 659.510 may bring a civil action for appropriate injunctive relief or damages, or both, within 90 days after the occurrence of the alleged violation. The action may be filed in the circuit court of the county in which the alleged violation occurred, or the county in which the complainant resides. If damages are awarded, the court shall award actual damages or $250, whichever is greater. [1989 c.890 §7]

659.535 Disclosure of employee's name without consent prohibited. The identity of the employee who discloses any of the following shall not be disclosed without the written consent of the employee during any investigation of the information provided by the employee, relating to:

(1) Matters described in ORS 659.510 (1)(b).

(2) Reports required by ORS 659.525 (2). [1989 c.890 §8]

659.540 Uniform application to all public employers; optional procedure for disclosures. (1) The Bureau of Labor and Industries by rule shall assure that the requirements of ORS 240.316, 659.035 and 659.505 to 659.545 are applied uniformly to all public employers. Each public employer may adopt rules, consistent with the Bureau of Labor and Industries rules, which apply to that public employer and which also implement ORS 240.316, 659.035 and 659.505 to 659.545.

(2) A public employer may establish by rule an optional procedure whereby an employee who wishes to disclose information described in ORS 659.510 (1)(b) may disclose information first to the supervisor, or if the supervisor is involved, to the supervisor next higher, but the employer must protect the employee against retaliatory or disciplinary

action by any supervisor for such disclosure. [1989 c.890 §9]

659.545 Short title. ORS 240.316, 659.035 and 659.505 to 659.545 shall be known as the Whistleblower Law. [1989 c.890 §1]

DISCLOSURES BY PRIVATE EMPLOYEES (WHISTLEBLOWING)

659.550 Prohibition against discrimination in employment based on initiating or aiding in criminal or civil proceedings; complaints. (1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported criminal activity by any person, has in good faith caused a complainant's information or complaint to be filed against any person, has in good faith cooperated with any law enforcement agency conducting a criminal investigation, has in good faith brought a civil proceeding against an employer or has testified in good faith at a civil proceeding or criminal trial.

(2) Complaints may be filed by employees, 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, 659.121 and 659.505 to 659.545.

(3) For the purposes of this section, "complainant's information" and "complaint" have the meanings given those terms in ORS 131.005.

(4) The remedies provided by this section are in addition to any common law remedy or other remedy that may be available to an employee for the conduct constituting a violation of this section. [1991 c.342 §1]

Note: 659.550 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.

FAMILY MEDICAL LEAVE

659.560 Policy. (1) The Legislative Assembly finds that:

(a) The stability and economic security of families depends upon a balance between the demands of the workplace and the needs of the family.

(b) Employment policies that do not provide job reinstatement for employees who must provide care to family members with serious health care conditions can force employees to choose between job security and caregiving.

(c) When families cannot provide the necessary emotional and physical support to family members in distress, the societal costs can be enormous.

(2) It is, therefore, declared to be the public policy of this state to secure the right of employees to respond to the critical health needs of family members. [1991 c.939 §2]

659.565 Definitions for 659.560 to 659.570. As used in ORS 659.560 to 659.570:

(1) "Equivalent job" means an available position with the same compensation, terms, conditions and job site as the former job, differing only in job title. If an equivalent job is not available at the former job site, the employee may be placed at an equivalent job at an alternative location within 20 miles of the former job site.

(2) "Family member" means a child, spouse, parent or parent-in-law of the employee.

(3) "Serious health condition" means:

(a) An illness of a child of an employee requiring home care; or

(b) An injury, disease or condition that according to the medical judgment of the treating physician:

(A) Poses an imminent danger of death;

(B) Is terminal in prognosis with a reasonable possibility of death in the near future; or

(C) Is any mental or physical condition that requires constant care.

(4) "Treating physician" means a physician licensed to practice medicine and surgery, including a doctor of osteopathy, who is primarily responsible for the treatment of the family member. [1991 c.939 §3]

659.570 Denial of family leave unlawful employment practice; when leave must be with pay; exceptions; reinstatement of employee. (1) It shall be an unlawful employment practice for an employer to refuse to grant an employee's written request for family medical leave of absence for up to 12 weeks within a two-year period for the care of any family members who suffer serious health conditions.

(2) Family medical leave of absence is not required to be granted with pay unless so specified by agreement of the employee and employer, by collective bargaining agreement or by employer policy. However, the employee seeking the leave of absence shall be entitled to utilize accrued paid vacation leave. In addition, subject to the policies of

the employer, a collective bargaining agreement or an agreement between the employer and the employee concerning appropriate uses of leave, an employee shall be entitled to use other categories of paid leave including sick leave or other compensatory leave during the leave of absence.

(3) Where the family member suffers from a serious health condition that is not life threatening or terminal, the employer is not required to grant an employee family medical leave of absence during the period of time in which another family member is also taking family medical leave of absence or is otherwise available to care for the family member.

(4) An employee taking family medical leave of absence shall make a reasonable effort to schedule medical treatment or supervision, subject to the approval of the treating physician, so as to minimize disruption of the employer's operations.

(5)(a) In cases where the serious health condition is anticipated, the notice shall be provided to the employer 15 days before taking the family medical leave of absence and include an explanation of the need for the leave. The employer may require an employee to provide written verification from the treating physician of need for the leave.

(b) In cases where the serious health condition is not anticipated, an oral request confirmed in writing to the employer within three working days constitutes a written request.

(6) The regular employment position of an employee on family medical leave of absence under this section shall be considered vacant for the period of the leave of absence, and the employee shall not be subject to removal or discharge from such position as a consequence of the leave of absence.

(7)(a) Upon the termination of the family medical leave of absence of the employee under this section, an employee shall be restored to the former or an equivalent job without loss of seniority, service credits under a pension plan or any other employee benefit or right that had been earned at the time the leave of absence commenced, but reduced by any paid leave that the employee used during the leave of absence.

(b) Benefits are not required to continue or accrue during the family medical leave of absence unless continuation or accrual is required under an agreement of the employer and the employee, a collective bargaining agreement or an employer policy.

(c) If the employer's circumstances have so changed that the employee cannot be reinstated to the former or an equivalent job, the employee shall be reinstated to any other position that is available and suitable. If the former job does not exist at the end of the leave and the employer establishes that the employer's financial position or business circumstances have materially changed so as to cause a prudent business person to eliminate the employee's job, the employee shall be reinstated in any other job that is available and suitable. However, the employer is not required to discharge any other employee in order to reinstate the employee to any job other than the former job unless required under an agreement between the employee and employer, by a collective bargaining agreement or by employer policy.

(d) Notwithstanding paragraph (c) of this subsection, if the employer's circumstances have so changed that the employee cannot be reinstated to the former or an equivalent job, or the employer establishes that the employer's financial position or business circumstances have materially changed so as to cause a prudent business person to eliminate the employee's job, and a collective bargaining agreement exists which governs reinstatement in such circumstances, the employee shall be reinstated pursuant to the collective bargaining agreement.

(8) This section is not applicable if:

(a) The employee was employed by the employer for fewer than 180 days immediately prior to the first day of the family medical leave of absence;

(b) The employee 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 50 persons immediately prior to the first day of the family medical leave of absence; or

(d) The employee works an average of fewer than 25 hours per week for the employer.

(9) Nothing in this section is intended to reduce the rights of an employee to family medical leave of absence to which the employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy. [1991 c.939 §4]

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 imprisonment 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 immediate 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]