

Senate Bill 618

Sponsored by COMMITTEE ON HEALTH POLICY (at the request of Nursing Mothers Counsel of Oregon)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires employer to provide unpaid rest periods for employees to breast-feed or express milk if providing rest periods does not cause undue hardship on operation of employer's business. Requires employer to make reasonable efforts to provide private area where employees can breast-feed or express milk. Prohibits discrimination against employee for invoking or using right to breast-feed or express milk during rest periods. Allows employee to file complaint with Commissioner of Bureau of Labor and Industries or file civil action.

A BILL FOR AN ACT

1
2 Relating to breast-feeding in workplace; creating new provisions; and amending ORS 659A.870,
3 659A.880 and 659A.885.

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

5 **SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS 653.010**
6 **to 653.261.**

7 **SECTION 2. The Legislative Assembly finds that:**

8 **(1) Women with infants and toddlers are the fastest growing sector of today's labor force,**
9 **with at least 50 percent of pregnant women who are employed returning to work by the time**
10 **their children are three months old.**

11 **(2) The American Academy of Pediatrics recommends that every child be breast-fed for**
12 **at least the first 12 months of life and urges that arrangements be made for expressing**
13 **breast milk if the mother and child are separated.**

14 **(3) Women who wish to continue breast-feeding after returning to work have relatively**
15 **simple needs. These needs include a clean, convenient, private location to express milk at the**
16 **work site and adequate break time in which to do so.**

17 **(4) Employers who accommodate their breast-feeding employees experience significant**
18 **economic benefits. Benefits to employers include reduced employee absences (because**
19 **breast-fed babies are healthier and their mothers use fewer sick days to care for sick babies),**
20 **reduced costs to company health care plans (for every breast-fed baby, the average health**
21 **care savings is \$400 to \$1000 a year), improved employee morale and increased employee re-**
22 **tion.**

23 **SECTION 3. (1) As used in this section:**

24 **(a) "Reasonable efforts" means efforts that do not impose an undue hardship on the op-**
25 **eration of an employer's business.**

26 **(b) "Undue hardship" means significant difficulty or expense when considered in relation**
27 **to the size, financial resources, nature and structure of the employer's business.**

28 **(2) An employer shall provide reasonable unpaid rest periods to accommodate an em-**
29 **ployee who needs to breast-feed or express milk for her child. The employee shall, if feasible,**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 take the rest periods to breast-feed or express milk at the same time as rest periods that
 2 are otherwise provided to the employee. The employer shall provide the employee up to 60
 3 minutes in rest periods per eight-hour shift to breast-feed or express milk. If the employer
 4 is required by law or contract to provide the employee with paid rest periods, the employer
 5 shall treat the rest periods used by the employee for breast-feeding or expressing milk as
 6 paid rest periods, up to the amount of time the employer is required to provide as paid rest
 7 periods. If an employee takes unpaid rest periods, the employer may allow the employee to
 8 work before or after her normal shift to make up the amount of time used during the unpaid
 9 rest periods. If the employee does not work to make up the amount of time used during the
 10 unpaid rest periods, the employer is not required to compensate the employee for that time.

11 (3) An employer is not required to provide rest periods under this section if to do so
 12 would impose an undue hardship on the operation of the employer's business.

13 (4)(a) An employer shall make reasonable efforts to provide a room or other location,
 14 other than a public restroom or toilet stall, in close proximity to the employee's work area
 15 for the employee to breast-feed or express milk in private.

16 (b) The room or other location may include the employee's work area if the work area
 17 meets the requirements of paragraph (a) of this subsection.

18 (5) An employer may allow an employee to temporarily change job duties if the employ-
 19 ee's regular job duties do not allow her to breast-feed or express milk.

20 (6) It is an unlawful employment practice for an employer to discharge, demote, suspend
 21 or in any manner discriminate or retaliate against an employee with regard to promotion,
 22 compensation or other terms, conditions or privileges of employment because the employee
 23 has invoked or used the provisions of this section.

24 (7) An employee may file a complaint alleging a violation of subsection (6) of this section
 25 with the Commissioner of the Bureau of Labor and Industries in the manner provided in ORS
 26 659A.820. In addition to issuing an appropriate cease and desist order under ORS 659A.850 (4)
 27 against an employer found to have violated subsection (6) of this section, the commissioner
 28 may award to the employee compensatory damages not to exceed \$1,000 if the commissioner
 29 finds that the employer willfully violated subsection (6) of this section.

30 (8) This section applies only to employers who employ eight or more employees in the
 31 State of Oregon for each working day during each of 20 or more calendar workweeks in the
 32 year in which the rest periods are to be taken or in the year immediately preceding the year
 33 in which the rest periods are to be taken.

34 **SECTION 4.** ORS 659A.870 is amended to read:

35 659A.870. (1) Except as provided in this section, the filing of a civil action by [*a person*] **an in-**
 36 **dividual** in circuit court pursuant to ORS 659A.885, or in federal district court under applicable
 37 federal law, waives the right of the [*person*] **individual** to file a complaint with the Commissioner
 38 of the Bureau of Labor and Industries under ORS 659A.820 with respect to the matters alleged in
 39 the civil action.

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

42 (3) If [*a person*] **an individual** files a civil action claiming a violation of ORS 659A.145 or
 43 659A.421 or of an equivalent federal law, the filing does not constitute an election of remedies or
 44 a waiver of the right of the [*person*] **individual** to file a complaint with the commissioner under ORS
 45 659A.820, but the commissioner shall dismiss the complaint upon the commencement of a trial in the

1 civil action.

2 (4) The filing of a complaint under ORS 659A.820 by *[a person]* **an individual** claiming a vio-
 3 lation of ORS 659A.145 or 659A.421 or of an equivalent federal law does not constitute an election
 4 of remedies or a waiver of the right of the *[person]* **individual** to file a civil action with respect to
 5 the same matters, but a civil action may not be filed after a hearing officer has commenced a
 6 hearing on the record under this chapter with respect to the allegations of the complaint.

7 **(5) The filing of a complaint under ORS 659A.820 by an individual claiming a violation of**
 8 **section 3 of this 2005 Act constitutes an election of remedies and a waiver of the right of the**
 9 **individual to file a civil action with respect to the same matters.**

10 ~~[(5)]~~ (6) *[A person]* **An individual** who has filed a complaint under ORS 659A.820 need not re-
 11 ceive a 90-day notice under ORS 659A.880 before commencing a civil action that is based on the
 12 same matters alleged in the complaint filed with the commissioner. **This subsection does not apply**
 13 **to an individual who has filed a complaint under ORS 659A.820 claiming a violation of section**
 14 **3 of this 2005 Act.**

15 ~~[(6)]~~ (7) This section *[shall]* **may** not be construed to limit or alter in any way the authority or
 16 power of the commissioner, or to limit or alter in any way any of the rights of an individual
 17 complainant, until and unless the complainant commences a civil action.

18 **SECTION 5.** ORS 659A.880 is amended to read:

19 659A.880. (1) If a complaint filed under ORS 659A.820 alleges unlawful practices other than
 20 those unlawful practices described in ORS 659A.403 and 659A.406 **and section 3 of this 2005 Act**,
 21 the Commissioner of the Bureau of Labor and Industries shall issue a 90-day notice to the
 22 complainant if the commissioner dismisses the complaint within one year after the filing of the
 23 complaint, and the dismissal is for *[any]* a reason other than the fact that a civil action has been
 24 filed by the complainant.

25 (2) If the complaint filed under ORS 659A.820 alleges unlawful practices other than those un-
 26 lawful practices described in ORS 659A.145, 659A.403, 659A.406 and 659A.421 **and section 3 of this**
 27 **2005 Act**, the commissioner shall issue a 90-day notice to the complainant on or before the one-year
 28 anniversary of the filing of the complaint unless a 90-day notice has previously been issued under
 29 subsection (1) of this section or the matter has been resolved by the execution of a settlement
 30 agreement.

31 (3) A 90-day notice under this section must be in writing and must notify the complainant that
 32 a civil action against the respondent under ORS 659A.885 may be filed within 90 days after the date
 33 of mailing of the 90-day notice, and that any right to bring a civil action against the respondent
 34 under ORS 659A.885 will be lost if the action is not commenced within 90 days after the date of the
 35 mailing of the 90-day notice.

36 **SECTION 6.** ORS 659A.885 is amended to read:

37 659A.885. (1) *[Any]* **An** individual claiming to be aggrieved by an unlawful practice **in violation**
 38 **of a statute** specified in subsection (2) of this section may file a civil action in circuit court. In
 39 *[any]* **an** action under this subsection, the court may order injunctive relief and such other equitable
 40 relief as may be appropriate, including but not limited to reinstatement or the hiring of employees
 41 with or without back pay. A court may order back pay in an action under this subsection only for
 42 the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the
 43 Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the
 44 action was commenced, the two-year period immediately preceding the filing of the action. In *[any]*
 45 **an** action under this subsection, the court may allow the prevailing party costs and reasonable at-

1 torney fees at trial and on appeal. Except as provided in subsection (3) of this section:

2 (a) The judge shall determine the facts in an action under this subsection; and

3 (b) Upon *[any]* **an** appeal of a judgment in an action under this subsection, the appellate court
4 shall review the judgment pursuant to the standard established by ORS 19.415 (3).

5 (2) An action may be brought under subsection (1) of this section *[for the following unlawful*
6 *practices:]* **alleging a violation of** ORS 25.337, 25.424, 399.235, 659A.030, 659A.040, 659A.043,
7 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203,
8 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309,
9 659A.318 *[and]* **or** 659A.421 (1) or (3) **or section 3 of this 2005 Act.**

10 (3) In *[any]* **an** action under subsection (1) of this section alleging a violation of ORS 25.337,
11 25.424, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to
12 659A.262, 659A.318 or 659A.421 (1) or (3) **or section 3 of this 2005 Act:**

13 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
14 compensatory damages or \$200, whichever is greater, and punitive damages;

15 (b) At the request of *[any]* **a** party, the action shall be tried to a jury;

16 (c) Upon appeal of *[any]* **a** judgment finding a violation, the appellate court shall review the
17 judgment pursuant to the standard established by ORS 19.415 (1); and

18 (d) *[Any]* **An** attorney fee agreement *[shall be]* **is** subject to approval by the court.

19 (4) In *[any]* **an** action under subsection (1) of this section alleging a violation of ORS 659A.203
20 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this
21 section, compensatory damages or \$250, whichever is greater.

22 (5) *[Any]* **An** individual against whom any distinction, discrimination or restriction on account
23 of race, **color**, religion, sex, marital status, *[color,]* national origin or age, if the individual is 18
24 years of age or older, has been made by *[any]* **a** place of public accommodation, as defined in ORS
25 659A.400, by *[any]* **a** person acting on behalf of *[such]* **the** place or by *[any]* **a** person aiding or
26 abetting *[such]* **the** place or person in violation of ORS 659A.406 may bring an action against the
27 operator or manager of *[such]* **the** place, the employee or person acting on behalf of *[such]* **the** place
28 or the aider or abettor of *[such]* **the** place or person. Notwithstanding subsection (1) of this section,
29 in an action under this subsection:

30 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
31 compensatory and punitive damages;

32 (b) The operator or manager of the place of public accommodation, the employee or person
33 acting on behalf of the place, and *[any]* **an** aider or abettor *[shall be]* **are** jointly and severally liable
34 for all damages awarded in the action;

35 (c) At the request of *[any]* **a** party, the action shall be tried to a jury;

36 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

37 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
38 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
39 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
40 and

41 (f) Upon *[any]* appeal of a judgment under this subsection, the appellate court shall review the
42 judgment pursuant to the standard established by ORS 19.415 (1).

43 **SECTION 7. Section 3 of this 2005 Act and the amendments to ORS 659A.870, 659A.880**
44 **and 659A.885 by sections 4 to 6 of this 2005 Act apply only to conduct occurring on or after**
45 **the effective date of this 2005 Act.**

