

Senate Bill 1035

Sponsored by Senator GORDLY (at the request of Kal Robertson)

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.

Creates unlawful employment practice of workplace bullying. Allows employee to bring civil action alleging workplace bullying.

A BILL FOR AN ACT

1
2 Relating to workplace bullying; creating new provisions; and amending ORS 659A.885.

3 Whereas the social and economic well-being of the state is dependent upon healthy and pro-
4 ductive employees; and

5 Whereas surveys and studies have documented that between 16 percent and 21 percent of em-
6 ployees directly experience health-endangering workplace bullying, abuse or harassment; and

7 Whereas workplace bullying, abuse or harassment is three times more prevalent than sexual
8 harassment alone; and

9 Whereas abusive work environments can have serious effects on targeted employees, including
10 feelings of shame and humiliation, stress, loss of sleep, severe anxiety, depression, post-traumatic
11 stress disorder, reduced immunity to infection, stress-related gastrointestinal disorders, hypertension
12 and pathophysiological changes that increase the risk of cardiovascular diseases; and

13 Whereas abusive work environments can have serious consequences for employers, including
14 reduced employee productivity and morale, higher turnover and absenteeism rates and significant
15 increases in medical and workers' compensation claims; and

16 Whereas employees who have been subjected to abusive work environments for reasons not re-
17 lated to race, color, religion, sex, national origin, marital status, age or disability are unlikely to
18 have legal recourse to redress such treatment; and

19 Whereas existing employment discrimination statutes are inadequate to discourage, or to pro-
20 vide adequate remedies for, workplace abuse not based on protected class status; and

21 Whereas existing workers' compensation plans and common-law tort actions provide inadequate
22 remedies for employees who have been harmed by abusive work environments; and

23 Whereas it is the intent of the Legislative Assembly to provide legal remedies for employees
24 who have been harmed psychologically, physically or economically by abusive work environments
25 and to encourage employers to prevent and respond to mistreatment of employees at work; now,
26 therefore,

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

28 **SECTION 1.** Section 2 of this 2007 Act is added to and made a part of ORS chapter 659A.

29 **SECTION 2.** (1) As used in this section, "harassment, intimidation or bullying" means
30 any persistent verbal or physical act of an employer or employee, unrelated to the employer's
31 legitimate business interests, that a reasonable person would find threatening, intimidating,

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 humiliating, hostile or offensive. "Harassment, intimidation or bullying" includes, but is not
 2 limited to, derogatory remarks, insults or epithets, physical conduct that a reasonable per-
 3 son would find threatening, intimidating or humiliating, or the gratuitous sabotage or
 4 undermining of an employee's work performance.

5 (2) It is an unlawful employment practice for an employer to subject an employee to or
 6 permit an employee to be subjected to harassment, intimidation or bullying in the workplace.

7 (3) A complaint may not be filed under ORS 659A.820 for violations of this section.

8 **SECTION 3.** ORS 659A.885 is amended to read:

9 659A.885. (1) Any individual claiming to be aggrieved by an unlawful practice specified in sub-
 10 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 11 the court may order injunctive relief and such other equitable relief as may be appropriate, includ-
 12 ing but not limited to reinstatement or the hiring of employees with or without back pay. A court
 13 may order back pay in an action under this subsection only for the two-year period immediately
 14 preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of
 15 Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year
 16 period immediately preceding the filing of the action. In any action under this subsection, the court
 17 may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as
 18 provided in subsection (3) of this section:

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

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

22 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 23 25.337, 25.424, 171.120, 399.235, 476.574, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069,
 24 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233,
 25 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 (1) or
 26 (3) and section 2 of this 2007 Act.

27 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 28 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262,
 29 659A.318 or 659A.421 (1) or (3):

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

32 (b) At the request of any party, the action shall be tried to a jury;

33 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
 34 ment pursuant to the standard established by ORS 19.415 (1); and

35 (d) Any attorney fee agreement shall be subject to approval by the court.

36 (4) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 37 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 38 of this section, compensatory damages or \$250, whichever is greater.

39 (5) Any individual against whom any distinction, discrimination or restriction on account of
 40 race, color, religion, sex, national origin, marital status or age, if the individual is 18 years of age
 41 or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any
 42 person acting on behalf of such place or by any person aiding or abetting such place or person in
 43 violation of ORS 659A.406 may bring an action against the operator or manager of such place, the
 44 employee or person acting on behalf of such place or the aider or abettor of such place or person.
 45 Notwithstanding subsection (1) of this section, in an action under this subsection:

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

3 (b) The operator or manager of the place of public accommodation, the employee or person
4 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all
5 damages awarded in the action;

6 (c) At the request of any party, the action shall be tried to a jury;

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

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

12 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the
13 judgment pursuant to the standard established by ORS 19.415 (1).

14 **SECTION 4. Section 2 of this 2007 Act and the amendments to ORS 659A.885 by section**
15 **3 of this 2007 Act apply to acts committed on or after the effective date of this 2007 Act.**

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