



Commissioner Brad Avakian

Bureau of Labor and Industries

Additional Civil Rights Enforcement Authority and Statutory Citations

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Child Support Enforcement

25.424 Liability of withholder for withholding and for failing to withhold; unlawful employment practice. (1) A withholder is not subject to civil liability to an individual or agency for conduct or actions in compliance with an order to withhold if the withholder:

(a) Is served with an order to withhold under ORS 25.402 that is regular on its face; and

(b) Complies with the terms of the order if the order appears to be in compliance with ORS 25.402.

(2) The withholder is liable for all amounts that the withholder fails to withhold or pay as required by the order to withhold or withholds or pays in excess of the amount required by the order to withhold. The holder of support rights, the obligor, the Division of Child Support or a district attorney may bring an action against the withholder:

(a) To recover all amounts that the withholder failed to withhold or pay or withheld or paid in excess of the amount required;

(b) To recover an additional amount as damages not to exceed the amount referred to in paragraph (a) of this subsection; and

(c) If the failure to withhold was willful or the result of gross negligence by the withholder, to have an additional amount imposed as a fine payable to the court not to exceed \$250 for each time the withholder failed to withhold or pay or withheld or paid an amount exceeding the amount required and to pay reasonable costs of the action including attorney fees.

(3)(a) An employer commits an unlawful employment practice if the employer discharges an employee, refuses to hire an individual or in any other manner discriminates, retaliates or takes disciplinary action against an obligor because of the entry or service of an order to withhold under ORS 25.378 and 25.402 or because of the obligations or additional obligations that the order imposes upon the employer. An obligor may bring an action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. These remedies are in addition to any other remedy available in law or equity.

(b) Paragraph (a) of this subsection does not apply to actions taken by an employer pursuant to any condition of employment required by law.

(4) Nothing in ORS 25.372 to 25.427 precludes an action for contempt for disobedience of a judicial order to withhold. [Formerly 25.363; 2001 c.621 §67; 2003 c.572 §10]



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Organized Militia

399.235 Violation of ORS 399.230 as unlawful employment practice; complaint; remedies and penalties. (1) Any violation of ORS 399.230 (1) to (3) by an employer is an unlawful employment practice.

(2) Complaints alleging a violation of ORS 399.230 (1) to (3) may be filed by employees with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. The commissioner shall enforce ORS 399.230 in the manner provided in ORS chapter 659A regarding other unlawful employment practices.

(3) Violation of ORS 399.230 (1) to (3) subjects the violator to the same civil remedies and penalties as provided in ORS chapter 659A. [1989 c.317 §2; 2001 c.621 §79; 2003 c.387 §12]

Note: See note under 399.230.

Veteran's Hiring Preference

408.210 [Renumbered 408.238 in 2005]

408.220 [Repealed by 1977 c.854 §5]

408.225 Definitions for ORS 408.225 to 408.235. (1) As used in ORS 408.225 to 408.235:

(a) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.

(b) "Disabled veteran" means a person entitled to disability compensation under laws administered by the United States Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.

(c) "Public employer" means the state or any agency or political subdivision of the state and any person authorized to act on behalf of the state or any agency or political subdivision of the state with respect to control, management or supervision of any employee.

(d) "Veteran" means a person who:

(A) Served on active duty with the Armed Forces of the United States:

(i) For a period of more than 178 consecutive days and was discharged or released from active duty under honorable conditions;

(ii) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability; or



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(iii) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions; or

(B) Received a combat or campaign ribbon for service in the Armed Forces of the United States.

(2) As used in subsection (1)(d) of this section, “active duty” does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit. [1977 c.854 §1; 1981 c.493 §1; 1989 c.507 §1; 1991 c.67 §98; 1993 c.18 §97; 1995 c.777 §1; 2005 c.99 §1; 2005 c.831 §7; 2007 c.71 §103; 2007 c.525 §1]

408.230 Veterans’ preference in public employment. (1) A public employer shall grant a preference to a veteran or disabled veteran who successfully completes an initial application screening or an application examination or who successfully completes a civil service test the employer administers to establish eligibility for a vacant civil service position. The employer shall grant the preference in the following manner:

(a) For an initial application screening used to develop a list of persons for interviews, the employer shall add five preference points to a veteran’s score and 10 preference points to a disabled veteran’s score.

(b) For an application examination, given after the initial application screening, that results in a score, the employer shall add preference points to the total combined examination score without allocating the points to any single feature or part of the examination. The employer shall add five preference points to a veteran’s score and 10 preference points to a disabled veteran’s score.

(c) For an application examination that consists of an interview, an evaluation of the veteran’s performance, experience or training, a supervisor’s rating or any other method of ranking an applicant that does not result in a score, the employer shall give a preference to the veteran or disabled veteran. An employer that uses an application examination of the type described in this paragraph shall devise and apply methods by which the employer gives special consideration in the employer’s hiring decision to veterans and disabled veterans.

(2) Preferences of the type described in subsection (1) of this section are not a requirement that the public employer appoint a veteran or disabled veteran to a civil service position.

(3) A public employer shall appoint an otherwise qualified veteran or disabled veteran to a vacant civil service position if the results of a veteran’s or disabled veteran’s application examination, when combined with the veteran’s or disabled veteran’s preference, are equal to or higher than the results of an application examination for an applicant who is not a veteran or disabled veteran.

(4) If a public employer does not appoint a veteran or disabled veteran to a vacant civil service position, upon written request of the veteran or disabled veteran, the employer, in writing, shall provide the employer’s reasons for the decision not to appoint the veteran or disabled veteran to the position. The employer may base a decision not to



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appoint the veteran or disabled veteran solely on the veteran's or disabled veteran's merits or qualifications with respect to the vacant civil service position.

(5) Whether or not the person qualifies for a preference under subsection (1) of this section, a public employer shall grant to a person the employer has hired for a permanent civil service position a veteran's or disabled veteran's preference, as appropriate, if the person seeks promotion to a position with a higher maximum salary rate and the person:

(a) Was granted military leave by the public employer to serve in the armed services;

(b) Returned from military leave to the civil service position;

(c) Qualified as a veteran or disabled veteran by reason of the person's service during military leave or otherwise;

(d) Successfully completed a test or examination for the position; and

(e) Meets the minimum qualifications and any special qualifications for the position.

(6) Violation of this section is an unlawful employment practice.

(7) A veteran or disabled veteran claiming to be aggrieved by a violation of this section may file a verified written complaint with the Commissioner of the Bureau of Labor and Industries in accordance with ORS 659A.820. [Amended by 1977 c.854 §3; 1989 c.507 §2; 1999 c.792 §1; 2007 c.525 §2]

408.235 Eligibility for preference. A veteran is eligible to use the preference provided for in ORS 408.230 only for a position for which application is made within 15 years of discharge or release from service in the Armed Forces. Such time limit shall not apply in the case of a disabled veteran. [1977 c.854 §4; 1989 c.507 §3; 1995 c.777 §2; 1999 c.792 §2; 2007 c.525 §3]

408.238 "Military duty" defined for ORS 408.240 to 408.280. As used in ORS 408.240 to 408.280, "military duty" means training and service performed by an inductee, enlistee or reservist or any entrant into a temporary component of the Armed Forces of the United States, and authorized time spent reporting for and returning from such training or service, or, if a rejection occurs, from the place reported therefor; but does not include active duty training as a reservist in the Armed Forces of the United States or as a member of the National Guard of the United States where the call is for a period of 15 days or less. [Formerly 408.210]

408.240 Status and rights of public officer and employee during and after military duty. (1) Whenever any public officer or employee leaves a position, whether voluntarily or involuntarily, in order to perform military duty, such office or position may not become vacant, nor shall the officer or employee be subject to removal as a consequence thereof. Unless the officer or employee dies, resigns or is relieved or discharged from such duty under other than honorable conditions, during the term for which the officer or employee was elected, appointed or employed, such officer or employee shall be deemed absent on leave until release from such active service has permitted the officer or employee to resume the duties of the office or position. While so absent on leave, the officer or employee may not receive the pay or other emolument of



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such office or position, nor become liable, as such officer or employee, on an official bond or otherwise, for the acts or omissions of any other person.

(2) Subsection (1) of this section does not apply unless the officer or employee, upon the termination of such military duty, is qualified to perform the duties of such position, and makes application within 90 days after the officer or employee is relieved from such military duty, or from hospitalization continuing after discharge for a period of not more than one year. If the officer or employee is not qualified to perform the duties of such position by reason of such service, but is qualified to perform the duties of any other public position, the officer or employee shall be restored to such other position, the duties of which the officer or employee is qualified to perform, as will provide the officer or employee like seniority, status and pay, or the nearest approximation thereof, consistent with the circumstances in the case.

(3) Except as otherwise provided in this subsection, subsection (1) of this section does not apply if the total of such military duty exceeds five years. Subsection (1) of this section is applicable with regard to military duty that exceeds five years if the period of additional duty was imposed by law or resulted from inability of the officer or employee to obtain orders relieving the officer or employee from active duty.

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

(a) The State of Oregon shall continue coverage under an employer-sponsored health plan to a public officer or employee of the State of Oregon and any other individual provided coverage under the officer's or employee's plan on the day before the date the officer or employee goes on leave for a period not exceeding a total of 24 months while the public officer or employee is absent on leave.

(b) An employer other than the State of Oregon may provide coverage under an employer-sponsored health plan to an officer or employee and any other individual provided coverage under the officer's or employee's plan on the day before the date the officer or employee goes on leave for the period during which the officer or employee is absent on leave.

(5)(a) Notwithstanding subsection (1) of this section, the State of Oregon, a county, a municipality or other political subdivision of the state may establish and administer a donated leave program that:

(A) Allows an officer or employee who is absent on leave to receive donated leave; and

(B) Allows an officer or employee to voluntarily donate vacation time to an eligible officer or employee who is absent on leave.

(b) An officer or employee who is absent on leave and who receives donated leave under paragraph (a) of this subsection may receive an amount of donated leave that supplements any compensation received for performing military duty, but may not receive more than the amount of base salary the officer or employee was earning on the date the officer or employee began the leave of absence.

(c) This subsection does not apply to a leave of absence under ORS 408.290.

[Amended by 1979 c.468 §13; 2003 c.72 §1; 2003 c.387 §14; 2005 c.38 §3]



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408.242 Public employees in Active Guard Reserve Program. ORS 408.240 (4)(a) does not apply to a public employee who leaves a position under ORS 408.240 (1) to enter or reenter the Active Guard Reserve Program under 32 U.S.C. 502(f). [2005 c.38 §1]

Note: 408.242 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 408 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Nurses

441.172 Definitions for ORS 441.172 to 441.182. As used in ORS 441.172 to 441.182:

(1) “Affiliated hospital” means a hospital that has a business relationship with another hospital.

(2) “Hospital” means:

(a) An acute inpatient care facility, as defined in ORS 442.470; or

(b) A hospital as described in ORS 442.015.

(3) “Manager” means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174 (2).

(4) “Nursing staff” means a registered nurse, a licensed practical nurse, a nursing assistant or any other assistive nursing personnel.

(5) “Public body” has the meaning given that term in ORS 30.260.

(6) “Retaliatory action” means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff, or other adverse action taken against a nursing staff in the terms or conditions of employment of the nursing staff, as a result of filing a complaint. [2001 c.609 §9]

Note: See note under 441.160.

441.174 Retaliation prohibited. (1) A hospital may not take retaliatory action against a nursing staff because the nursing staff:

(a) Discloses or intends to disclose to a manager, a private accreditation organization or a public body an activity, policy or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;



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(b) Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe, dangerous or potentially dangerous care.

(2) Except as provided in subsection (3) of this section, the protection against retaliatory action in subsection (1) of this section does not apply to a nursing staff, unless the nursing staff, before making a disclosure to a private accreditation organization or a public body as described in subsection (1)(a) of this section:

(a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation of professional standards of practice that the nursing staff reasonably believes poses a risk to public health; and

(b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or violation.

(3) A nursing staff is not required to comply with the provisions of subsection (2) of this section if the nursing staff:

(a) Is reasonably certain that the activity, policy, practice or violation is known to one or more managers of the hospital or an affiliated hospital and an emergency situation exists;

(b) Reasonably fears physical harm as a result of the disclosure; or

(c) Makes the disclosure to a private accreditation organization or a public body for the purpose of providing evidence of an activity, policy, practice or violation of a hospital or an affiliated hospital that the nursing staff reasonably believes is a crime. [2001 c.609 §10]

Note: See note under 441.160.

441.176 Remedies for retaliation. (1) A nursing staff aggrieved by an act prohibited by ORS 441.174 may bring an action in circuit court of the county in which the hospital is located. All remedies available in a common law tort action are available to a nursing staff if the nursing staff prevails in an action brought under this subsection and are in addition to any remedies provided in subsection (2) of this section.

(2) In an action brought under subsection (1) of this section, a circuit court may do any of the following:

(a) Issue a temporary restraining order or a preliminary or permanent injunction to restrain a continued violation of ORS 441.174.

(b) Reinstate the nursing staff to the same or equivalent position that the nursing staff



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held before the retaliatory action.

(c) Reinstate full benefits and seniority rights to the nursing staff as if the nursing staff had continued in employment.

(d) Compensate the nursing staff for lost wages, benefits and other remuneration, including interest, as if the nursing staff had continued in employment.

(e) Order the hospital to pay reasonable litigation costs of the nursing staff, including reasonable expert witness fees and reasonable attorney fees.

(f) Award punitive damages as provided in ORS 31.730.

(3) Except as provided in subsection (4) of this section, in any action brought by a nursing staff under subsection (1) of this section, if the court finds that the nursing staff had no objectively reasonable basis for asserting the claim, the court may award costs, expert witness fees and reasonable attorney fees to the hospital.

(4) A nursing staff may not be assessed costs or fees under subsection (3) of this section if, upon exercising reasonable and diligent efforts after filing the action, the nursing staff moves to dismiss the action against the hospital after determining that no issue of law or fact exists that supports the action against the hospital. [2001 c.609 §11]

Note: See note under 441.160.

441.178 Unlawful employment practices; civil action for retaliation. (1) A hospital that takes any retaliatory action described in ORS 441.174 against a nursing staff commits an unlawful employment practice.

(2) A nursing staff claiming to be aggrieved by an alleged violation of ORS 441.174 may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. Except for the provisions of ORS 659A.870, 659A.875, 659A.880 and 659A.885, violation of ORS 441.174 is subject to enforcement under ORS chapter 659A.

(3) Except as provided in subsection (4) of this section, a civil action under ORS 441.176 must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(4) The nursing staff who has filed a complaint under ORS 659A.820 must commence a civil action under ORS 441.176 within 90 days after a 90-day notice is mailed to the nursing staff under this section.

(5) The commissioner shall issue a 90-day notice to the nursing staff:

(a) If the commissioner dismisses the complaint within one year after the filing of the complaint and the dismissal is for any reason other than the fact that a civil action has been filed.

(b) On or before the one-year anniversary of the filing of the complaint unless a 90-day notice has previously been issued under paragraph (a) of this subsection or the matter has been resolved by the execution of a settlement agreement.

(6) A 90-day notice under this section must be in writing and must notify the nursing staff that a civil action against the hospital under ORS 441.176 may be filed within 90 days after the date of mailing of the 90-day notice and that any right to bring a civil



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action against the hospital under ORS 441.176 will be lost if the action is not commenced within 90 days after the date of mailing of the 90-day notice.

(7) The remedies under this section and ORS 441.176 are supplemental and not mutually exclusive. [2001 c.609 §12; 2001 c.609 §12a]

Note: See note under 441.160.

441.180 Hospital posting of notice. (1) A hospital shall post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178 and 441.192 in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed \$500. Civil penalties under this section shall be imposed by the Department of Human Services in the manner provided by ORS 183.745. [2001 c.609 §13]

Note: See note under 441.160.

441.182 Rights, privileges or remedies of nursing staff. (1) Except as provided in subsection (2) of this section, nothing in ORS 441.176 and 441.178 shall be deemed to diminish any rights, privileges or remedies of a nursing staff under federal or state law or regulation or under any collective bargaining agreement or employment contract.

(2) ORS 441.176 and 441.178 provide the only remedies under state law for a nursing staff for an alleged violation of ORS 441.174 committed by a hospital. [2001 c.609 §14]

Note: See note under 441.160.

441.192 Notice of employment outside of hospital. (1) A hospital, as defined in ORS 441.172, may require a registered nurse who is receiving full employment benefits from the hospital to provide notice of any outside employment that may reasonably impede the ability of the nurse to fulfill the nurse's obligation to the hospital in providing nursing services to patients under the hospital's care.

(2) If a hospital determines that the outside employment causes a risk to patients receiving services in the hospital, the hospital may require the nurse to discontinue the outside employment.

(3) A hospital may not unreasonably restrict the outside employment of nurses and may restrict outside employment only if the hospital provides in writing to the nurse an explanation of the hospital's documentation that the outside employment creates a risk to patients in the hospital. A nurse who does not discontinue outside employment if required by the hospital may be disciplined or terminated from employment by the hospital.

(4) A nurse who does not provide notice as required by a hospital pursuant to this section may be disciplined or terminated from employment by the hospital if the failure to provide notice creates a risk to a patient in the hospital. [2001 c.609 §18]



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Volunteer Firefighters and the State Fire Marshal

476.574 Leave of absence for volunteers; employment rights. (1) Upon request of an employee who is a volunteer firefighter of a rural fire protection district or a firefighter employed by a city or a private firefighting service to perform service pursuant to ORS 476.510 to 476.610, the employee, upon written notice by the employer, may be granted a leave of absence by the employer until release from such service permits the employee to resume the duties of employment.

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

(3) Upon the termination of a leave of absence under this section, the employee shall be restored to the employee's position or an equivalent position by the employer without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employee benefit or right that had been earned at the time of the leave of absence.

(4) An employer is not required to pay wages or other monetary compensation to an employee during a leave of absence under subsection (1) of this section.

(5) As used in this section:

(a) "Employee" means any individual, other than a copartner of the employer or an independent contractor, who renders personal services in this state to an employer who pays or agrees to pay wages or other compensation to the individual for those services.

(b) "Employer" means any person who employs one or more employees in this state. The term includes the State of Oregon or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter, but does not include the federal government. [1997 c.266 §2]

Note: 476.574 and 476.576 were added to and made a part of 476.510 to 476.610 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

476.576 Violation of job restoration rights of volunteers as unlawful employment practice. (1) Any violation of ORS 476.574 by an employer is an unlawful employment practice.

(2) Complaints alleging a violation of ORS 476.574 may be filed by employees with the Commissioner of the Bureau of Labor and Industries. The commissioner shall enforce ORS 476.574 in the manner provided in ORS chapter 659A for the enforcement of other unlawful employment practices.

(3) Any person claiming to be aggrieved by a violation of ORS 476.574 may bring a civil action in the manner provided in ORS 659A.885. [1997 c.266 §3; 2001 c.621 §81]

Note: See note under 476.574.



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