

[839-005-0033

Discrimination in Retaliation for Opposing Unlawful Practices

(1) *This rule interprets ORS 659A.030(1)(f).*

(2) *An employer will be found to have unlawfully retaliated against an employee if:*

(a) *The employee has engaged in protected activity by:*

(A) *Explicitly or implicitly opposing an unlawful practice or what the employee reasonably believed to be an unlawful practice, or*

(B) *Filing a charge, testifying, or assisting in an investigation, proceeding, or lawsuit under ORS 659A, or attempting to do so;*

(b) *The employer has subjected the employee to any adverse treatment, in or out of the workplace, that is reasonably likely to deter protected activity, regardless of whether it materially affects the terms, conditions, or privileges of employment; and*

(c) *There is a causal connection between the protected activity and the adverse treatment.*

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.030(1)(f)]

839-005-0075

Exceptions

(1) OL 2010, Ch. 102 does not apply to:

(a) Employers that are federally insured banks or credit unions;

(b) Employers that are required by state or federal law to use individual credit history for employment purposes;

(c) Employees in or applicants for positions responsible for enforcing the criminal laws of this state, including:

(A) A public safety officer who is a member of a law enforcement unit;

(B) A peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, or the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, the Governor; or

(C) Employees in positions responsible for enforcing the criminal laws of this state or laws or ordinances related to airport security; or

(d) The obtainment or use by an employer of information in the credit history of an applicant or employee because the information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(A) The burden of proving the employer's disclosure to the employee rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805
Stats. Implemented: OL 2010, Ch. 102

839-005-0125

Discrimination in Retaliation for Opposing Unlawful Practices

(1) This rule interprets ORS 659A.030(1)(f).

(2) An employer will be found to have unlawfully retaliated against an employee if:

(a) The employee has engaged in protected activity by:

(A) Explicitly or implicitly opposing an unlawful practice or what the employee reasonably believed to be an unlawful practice, or

(B) Filing a charge, testifying, or assisting in an investigation, proceeding, or lawsuit under ORS 659A, or attempting to do so;

(b) The employer has subjected the employee to any adverse treatment, in or out of the workplace, that is reasonably likely to deter protected activity, regardless of whether it materially affects the terms, conditions, or privileges of employment; and

(c) There is a causal connection between the protected activity and the adverse treatment.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.030(1)(f)

839-005-0130

Discrimination Against Employees Serving as Jurors

(1) An employer commits an unlawful employment practice under ORS chapter 659A if the employer discharges, threatens to discharge, intimidates or coerces any

employee by reason of the employee's service or scheduled service as a juror on a grand jury, trial jury or jury of inquest.

(2) An employee who alleges a violation of subsection (1) of this rule may bring a civil 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.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 10.090; OL 2011 c. 118

839-005-0135

Insurance Coverage for Employees Serving as Jurors

(1) An employer who employs 10 or more persons commits an unlawful employment practice under ORS chapter 659A if:

(a) The employer ceases to provide health, disability, life or other insurance coverage for an employee during times when the employee serves or is scheduled to serve as a juror; and

(b) The employee elected to have coverage continued while the employee served or was scheduled to serve as a juror, and the employee provided notice of that election to the employer in compliance with the employer's policy for notification.

(2) Notwithstanding ORS 652.610(3), if, following an election described in subsection (1) of this section, an employer is required or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for the employee that should have been paid by the employee, the employer may deduct from the employee's pay such amounts upon the employee's return to work until the amount the employer advanced toward the payments is paid. The total amount deducted for insurance under this subsection may not exceed 10 percent of the employee's gross pay each pay period.

(3) Notwithstanding ORS 652.610(3), if the employer pays any part of the costs of providing health, disability, life or other insurance coverage for an employee under subsection (2) of this section, and the employee ceases to work for the employer before the total amount the employer advanced toward the payments is paid, the employer may deduct the remaining amounts from any amounts owed by the employer to the employee or may seek to recover those amounts by any other legal means.

(4) An employee who alleges a violation of this section may bring a civil 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.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 10.090; OL 2011 c. 118

839-005-0160

Protection from Discrimination and Safety Accommodation for Victims of Domestic Violence, Sexual Assault or Stalking

(1) As provided in ORS 659A.290, it is an unlawful employment practice for an employer, because an individual is a victim of domestic violence, **harassment**, sexual assault or stalking, to:

(a) Refuse to hire an otherwise qualified individual; or

(b) Discharge, threaten to discharge, demote, suspend or in any way discriminate or retaliate against an individual with respect to promotion, compensation or any other terms, conditions or privileges of employment.

(2) ORS 659A.290 requires employers to provide safety accommodation for victims of domestic violence, **harassment**, sexual assault or stalking.

(3) The Civil Rights Division (“division”) of the Bureau of Labor and Industries enforces ORS 659A.290.

(4) Leave from employment is available for victims of domestic violence, **harassment**, sexual assault or stalking for purposes including but not limited to: seeking legal or law enforcement remedies, seeking medical care or counseling, and for relocating or other safety measures. The division enforces ORS 659A.270 to 659A.285, which require leave for victims of domestic violence, **harassment**, sexual assault or stalking. OAR 839-009-0321 to 839-009-0365 implement and interpret ORS 659A.270 to 659A.285.

(5) OAR 839-005-0160 to 839-005-0170 implement and interpret ORS 659A.290.

(6) Definitions for OAR 839-005-0160 to 839-005-0170:

(a) “Victim of domestic violence” means:

(A) An individual who has been threatened with abuse or is a victim of abuse, as defined in ORS 107.705; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(b) “Victim of harassment means:

(A) An individual against whom harassment has been committed as described in ORS 166.065.

(B) Any other individual designated as a victim of harassment by rule adopted under ORS 659A.805.

(c) [(b)] “Victim of sexual assault” means:

(A) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(d) [(c)] “Victim of Stalking” means:

(A) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in subsection (a), including a member of the victim's immediate family[.]; **or**

(c) An individual who has obtained a court’s stalking protective order or a temporary court’s stalking protective order under ORS 30.866.

(e) [(d)] In no event will an alleged perpetrator of domestic violence, sexual assault or stalking be considered a victim for the purposes of ORS 659A.290 or these rules.

Stat. Auth.: ORS 659A.805, 659A.270

Stats. Implemented: ORS 659A.290, **OL 2011 c. 687**

839-005-0170

Reasonable Safety Accommodation for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) It is an unlawful employment practice to refuse to make a reasonable safety accommodation requested by an individual who is a victim of or under threat of domestic violence, **harassment**, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(2) “Reasonable safety accommodation” may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work

telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, **harassment**, sexual assault or stalking.

(3) Undue hardship means a significant difficulty and expense to an employer's business and includes consideration of the size of the employer's business. Other factors to consider in determining whether granting a safety accommodation will cause an undue hardship on an employer's business include, but are not limited to:

(a) The safety accommodation requested and the relative cost to an employer's business;

(b) The overall financial resources of the employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the safety accommodation were granted;

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer's facilities;

(d) The type of operations conducted by the employer, including the composition, structure and functions of the employer's workforce.

(4) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, **harassment**, sexual assault, or stalking.

(a) An individual must provide a certification permitted under OAR 839-009-0362(5) within a reasonable time after receiving the employer's request for certification.

(b) Any of the following constitutes sufficient certification:

(i) A copy of a police report indicating that the individual was or is a victim of domestic violence, **harassment**, sexual assault or stalking.

(ii) A copy of a protective order or other evidence from a court or attorney that the individual appeared in or is preparing for a civil or criminal proceeding related to domestic violence, **harassment**, sexual assault or stalking.

(iii) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, **harassment**, sexual assault or stalking.

(iv) All records and information kept by an employer regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual, unless otherwise required by law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.290, **OL 2011 c. 687**