

**DIVISION 5
DISCRIMINATION**

839-005-0000

Purpose and Scope of these Rules

- (1) It is the policy of the State of Oregon that unlawful discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability and other classes protected under Oregon statutes is a matter of state concern and that such discrimination threatens individual rights and privileges and menaces the institutions and foundations of a free democratic state.
- (2) Prohibited discrimination is a basis of unlawful practices described in ORS chapter 659A and other chapters of the Oregon statutes.
- (3) The Civil Rights Division of the Bureau of Labor and Industries (division) is responsible for protecting individual rights through the enforcement of civil rights statutes prohibiting unlawful practices.
- (4) The purpose of these rules is to implement, interpret and describe the division's approach to civil rights enforcement under the bureau's jurisdiction.
- (5) These rules apply to all inquiries and complaints received by the division on or after the effective date of these rules.
- (6) An individual claiming a violation of the civil rights statutes may file a complaint with the division as provided in OAR 839-003-0025, or 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or the federal Fair Housing Act (42 U.S.C. §3601–3617).
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS chapter 659A

839-005-0003

Definitions: Enforcement of Laws Prohibiting Unlawful Practices

As used in enforcing ORS chapter 659A, including housing discrimination under 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. §3601–3617):

- (1) "Aggrieved Person" means either:
 - (a) A person who is, or was at any time, eligible to file a complaint under ORS 659A.820 or who is otherwise similarly situated; or
 - (b) A person who files a complaint under ORS 659A.825.
- (2) "Bureau" means the Bureau of Labor and Industries.
- (3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.
- (4) "Employee" does not include any individual employed by that individual's parents, spouse or child or in the domestic service of any person.
- (5) "Employer" means any person in this state who, 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. Employer also includes any public body that, 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, including all officers, agencies, departments, divisions, bureaus, boards and commissions of the legislative, judicial and administrative branches of the state, all county and city governing bodies, school districts, special districts, municipal corporations and all other political subdivisions of the state. Employer also includes any person who is in an employment relationship with an intern as defined in subsection (10) of this rule.
- (6) "Employment agency" includes any person undertaking to procure employees or opportunities to work.
- (7) "Federal housing law" means the federal Fair Housing Act (42 U.S.C. §3601–3617).
- (8) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, or speech, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.
- (9) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.
- (10) "Intern" means a person who performs work for an employer for the purpose of training if:
 - (a) The employer is not committed to hire the person performing the work at the conclusion of the training period;
 - (b) The employer and the person performing the work agree in writing that the person performing the work is not entitled to wages for the work performed; and
 - (c) The work performed:
 - (A) Supplements training given in an education environment that may enhance employability of the intern;
 - (B) Provides experience for the benefit of the person performing the work;
 - (C) Does not displace regular employees;
 - (D) Is performed under the close supervision of existing staff; and
 - (E) Provides no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer.

(d) An intern is considered to be in an employment relationship with an employer for the purposes of employee protections provided under ORS 659A.030, 659A.082, 659A.109, 659A.112, 659A.136, 659A.142, 659A.199, 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303, 659A.306, and 659A.315.

(e) "Intern" includes any person meeting the description set forth in this rule regardless of the title of the person's position or whether they are currently enrolled in an education or training program.

(11) "Labor organization" includes any organization that 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.

(12) "Person" includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint-stock companies, corporations, legal representatives, trustees, and trustees in bankruptcy or receivers. "Person" also includes a public body as defined in ORS 30.260. For the purposes of 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. §3601–3617), "person" also includes fiduciaries, mutual companies, trusts and unincorporated organizations.

(13) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, such as race, sex, sexual orientation, disability, or other, or a perception of that characteristic.

(14) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(15) "Sex" means the anatomical, physiological and genetic characteristics associated with being male or female.

(16) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's assigned sex at birth.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.001; ORS 659A.350.

839-005-0005

Unlawful Discrimination Defined

(1) To discriminate means to make a distinction between individuals or groups based on common characteristics, real or perceived. Certain kinds of discrimination are unlawful. Oregon civil rights laws generally prohibit making decisions in employment, housing, places of public accommodation and career schools because an individual is a member of a class protected by these statutes.

(2) When an individual files a complaint with the division alleging unlawful discrimination, the division must determine whether substantial evidence of such discrimination exists.

(3) That a private employer may give employment preference in the hiring or promotion of employees under OL Ch. 86, Sec. 2 2014 (persons in uniformed service and their widows and widowers) does not preclude the filing of a complaint under ORS chapter 659A.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS chapter 659A; OL Ch. 86, Sec. 2 2014

839-005-0010

Discrimination Theories: Employment

(1) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(14) of these rules;

(b) The aggrieved person is a member of a protected class;

(c) The aggrieved person was harmed by an action of the respondent; and

(d) The aggrieved person's protected class was the motivating factor for the respondent's action. In determining whether the aggrieved person's protected class was the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class, unless the respondent can show that a bona fide occupational qualification or a bona fide voluntary, court-ordered affirmative action plan (OAR 839-005-0013) allows the action.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the aggrieved person was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the aggrieved person differently than comparably situated individuals who were not members of the aggrieved person's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

- (I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.
- (II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a motivating factor in the respondent's action, the division will determine there is substantial evidence of discrimination.
- (ii) The aggrieved person at all times has the burden of proving that the aggrieved person's protected class was the reason for the respondent's unlawful action.
- (2) Adverse Impact Discrimination: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (1) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:
- (a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(14) of these rules;
- (b) The respondent has a standard or policy that is applied equally.
- (c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and
- (d) The aggrieved person is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.
- (3) An employer must reasonably accommodate an employee or applicant's religious belief, observance or practice unless the employer can demonstrate that such accommodation would cause undue hardship on the employer's business (see OAR 839-005-0140).
- (4) Harassment: Harassment based on an individual's protected class is a type of intentional unlawful discrimination. In cases of alleged unlawful sexual harassment in employment see OAR 839-005-0030.
- (a) Conduct of a verbal or physical nature relating to protected classes other than sex is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (1) of this rule, is shown and:
- (A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;
- (B) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
- (C) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.
- (b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.
- (c) Employer Proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the employer's president, owner, partner or corporate officer.
- (d) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against the individual. A tangible employment action includes, but is not limited to, any of the following:
- (A) Terminating employment, including constructive discharge;
- (B) Failing to hire;
- (C) Failing to promote; or
- (D) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.
- (e) Harassment by Supervisor, No Tangible Employment Action: When harassment by a supervisor with immediate or successively higher authority over the individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:
- (A) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.
- (B) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:
- (i) That the employer exercised reasonable care to prevent and promptly correct any harassing behavior; and
- (ii) That the complaining individual unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.
- (f) Harassment by Coworkers or Agents: An employer is liable for harassment by the employer's employees or agents who do not have immediate or successively higher authority over the complaining individual when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.
- (g) Harassment by Non-Employees: An employer is liable for harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases, the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.
- (h) Withdrawn Consent: An employer may be liable for harassment by the employer's supervisory or non-supervisory employees, agents or non-employees even if the acts complained of were of a kind previously consented to by the

complaining individual, if the employer knew or should have known that the complaining individual had withdrawn consent to the offensive conduct.

(i) When employment opportunities or benefits are granted because of an individual's submission to an employer's harassment, the employer is liable for unlawful discrimination against other individuals who were qualified for but denied that opportunity or benefit.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS chapter 659A

839-005-0011

Constructive Discharge from Employment

Constructive discharge occurs when an individual leaves employment because of unlawful discrimination. The elements of a constructive discharge are:

- (1) The employer intentionally created or intentionally maintained discriminatory working conditions related to the individual's protected class status;
- (2) The working conditions were so intolerable that a reasonable person in the individual's circumstances would have resigned because of them;
- (3) The employer desired to cause the individual to leave employment as a result of those working conditions, or knew or should have known that the individual was certain, or substantially certain, to leave employment as a result of the working conditions; and
- (4) The individual left employment as a result of the working conditions.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS chapter 659A

839-005-0013

Bona Fide Occupational Qualification (BFOQ) and Affirmative Action Plan Exceptions in Employment

(1) Discrimination is not unlawful if it is based on a bona fide occupational qualification (BFOQ), as provided in ORS 659A.030(1)(a). To prove a BFOQ, the employer must show that the BFOQ is reasonably necessary to the normal operation of the business. If so, the employer must then show:

(a) A factual basis exists for believing that all or substantially all individuals in the protected class adversely affected by the BFOQ would be unable to perform safely and efficiently the tasks required in the job; or

(b) It is impossible or highly impractical to screen applicants on an individual basis.

(2) An employer may not claim a BFOQ for such reasons as:

(a) Customer, co-worker or employer preference;

(b) Stereotypes or assumed characteristics of a protected class.

(3) When discrimination is based on a bona fide voluntary affirmative action plan, it is not unlawful if the plan:

(a) Is a temporary measure;

(b) Has the purpose of eliminating the effects of past discrimination; and

(c) Does not unnecessarily trammel the interests of other protected classes.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.030

839-005-0014

Successors in Interest: Employment Discrimination

An employer's liability for unlawful discrimination under ORS 659A.030 and OAR 839-005-0010 to 839-005-0045 extends to a successor employer. Determining whether a respondent is a successor employer involves a nine-part test. Not every element of the test need be present to find an employer to be a successor; the facts must be considered together to reach a determination:

(1) Whether respondent had notice of the charge at the time of acquiring or taking over the business;

(2) The ability of the predecessor to provide relief;

(3) Whether there has been a substantial continuity of business operations;

(4) Whether the respondent uses the same plant as the predecessor;

(5) Whether respondent uses the same or substantially the same work force as the predecessor;

(6) Whether respondent uses the same or substantially the same supervisory personnel as the predecessor;

(7) Whether under respondent the same jobs exist under substantially the same working conditions as under the predecessor;

(8) Whether respondent uses the same machinery, equipment and methods of production as the predecessor;

(9) Whether respondent produces the same product as the predecessor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS chapter 659A

Employment Discrimination Based on Sex or Sexual Orientation

839-005-0021

Discrimination Based On Sex

- (1) Employers are not required to treat all employees exactly the same, but are prohibited from using sex as the basis for employment decisions with regard to hiring, promotion or discharge; or in terms, conditions or privileges of employment such as benefits and compensation.
- (2) Discrimination because of sex includes sexual harassment, discrimination based on pregnancy, childbirth and medical conditions and occurrences related to pregnancy and childbirth.
- (3) In very rare instances, sex may be a bona fide occupational qualification (BFOQ), as defined in OAR 839-005-0013.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.029; 659A.030

839-005-0026

Employment Protections and Rights Relating to Pregnancy

- (1) Pregnant women are protected from sex discrimination in employment.
- (2) In judging the physical ability of an individual to work, pregnant women must be treated the same as males, non-pregnant females and other employees with off-the-job illnesses or injuries.
- (3) The statutes prohibit discrimination regarding employee and dependent spouse or domestic partner benefits for pregnancy when employee and dependent spouse or domestic partner benefits exist for other medical conditions.
- (4) Women needing to be absent from work because of pregnancy or childbirth may have rights under the Oregon Family Leave Act, as provided in ORS 659A.150 to 659A.186 and OAR 839-009-0200 to 839-009-0320.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.029, 659A.030, 659A.150-.186

839-005-0030

Sexual Harassment in Employment

- (1) Sexual harassment is unlawful discrimination on the basis of sex and includes the following types of conduct:
 - (a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex and:
 - (A) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
 - (B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.
 - (b) Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.
- (2) The standard for determining whether harassment based on an individual's sex is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.
- (3) Employer proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the respondent's president, owner, partner or corporate officer.
- (4) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for sexual harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against that individual. A tangible employment action includes but is not limited to the following:
 - (a) Terminating employment, including constructive discharge;
 - (b) Failing to hire;
 - (c) Failing to promote; or
 - (d) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.
- (5) Harassment by Supervisor, No Tangible Employment Action: When sexual harassment by a supervisor with immediate or successively higher authority over an individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:
 - (a) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.
 - (b) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:
 - (A) That the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and
 - (B) That the aggrieved person unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.
- (6) Harassment by Co-Workers or Agents: An employer is liable for sexual harassment by the employer's employees or agents who do not have immediate or successively higher authority over the aggrieved person when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(7) Harassment by Non-Employees: An employer is liable for sexual harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(8) Withdrawn Consent: An employer is liable for sexual harassment of an individual by the employer's supervisory or non-supervisory employees, agents or non-employees, even if the acts complained of were of a kind previously consented to by the aggrieved person, if the employer knew or should have known that the aggrieved person had withdrawn consent to the offensive conduct.

(9) When employment opportunities or benefits are granted because of an individual's submission to an employer's sexual advances, requests for sexual favors, or other sexual harassment, the employer is liable for unlawful sex discrimination against other individuals who were qualified for but denied that opportunity or benefit.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.030

839-005-0031

Exceptions to Discrimination in Employment and Housing Based on Sexual Orientation or Religion

(1) The following actions are not unlawful practices under ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. §3601–3617):

(a) Housing and the use of facilities. It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing or the use of facilities when:

(A) The action taken is based on a bona fide religious belief about sexual orientation; and

(B) The housing or the use of facilities involved is closely connected with or related to the primary purpose of the church or institution; and

(C) The housing or the use of facilities involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(b) Employment Preference. It is not an unlawful employment practice for a bona fide church or other religious institution, including but not limited to a school, hospital or church camp, to prefer an employee, or an applicant for employment, of one religious sect or persuasion over another if:

(A) The employee or applicant belongs to the same religious sect or persuasion as the church or institution; and

(B) In the opinion of the church or institution, the preference will best serve the purposes of the church or institution; and

(C) The employment involved is closely connected with or related to the primary purposes of the church or institution; and

(D) The employment involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(c) Employment Actions. It is not an unlawful employment practice for a bona fide church or other religious institution to take any employment action based on a bona fide religious belief about sexual orientation when:

(A) The employment position involved is directly related to the operation of the church or other place of worship, such as clergy, religious instructors and support staff;

(B) The employment position involved is in a nonprofit religious school, nonprofit religious camp, nonprofit religious day care center, nonprofit religious thrift store, nonprofit religious bookstore, nonprofit religious radio station or nonprofit religious shelter; or

(C) The employment position involves religious activities, as long as the employment position:

(i) Is closely connected with or related to the primary purpose of the church or institution; and

(ii) Is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(d) Dress Code. An employer is not prohibited from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.

(2) The above exceptions do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS chapter 659A

839-005-0033 [Renumbered to 839-005-0125]

839-005-0036

Commissioner's Complaint for Discrimination based on Employment Status

(1) Pursuant to ORS 659A.550 and except as permitted under ORS chapter 240 or any other provision of law, it is an unlawful practice for an employer or employment agency to knowingly or purposefully publish in print or on the Internet an advertisement for a job vacancy in Oregon that provides that:

- (a) The qualifications for a job include current employment;
 - (b) The employer or employment agency will not consider or review an application for employment submitted by a job applicant who is currently unemployed; or
 - (c) The employer or employment agency will only consider or review applications for employment submitted by job applicants who are currently employed.
 - (2) For purposes of the statute and this rule "employer" includes an employer's agent, representative or designee.
 - (3) ORS 659A.550 does not prohibit an employer or employment agency from publishing in print or on the Internet an advertisement for a job vacancy in Oregon:
 - (a) Setting forth qualifications for a job vacancy, including but not limited to:
 - (i) Holding a current and valid professional or occupational license, certificate, registration, permit or other credential; or
 - (ii) A minimum level of education or training, or professional, occupational or field experience; or
 - (b) Stating that only applicants who are current employees of the employer will be considered for the position.
 - (4) A complaint of a violation of ORS 659A.550 may be filed only by the Commissioner of the Bureau of Labor and Industries (commissioner), under ORS 659A.885.
 - (5) The Civil Rights Division of the Bureau of Labor and Industries has jurisdiction to accept and investigate commissioners' complaints of alleged violations of ORS 659A.550 and to pursue enforcement against violations. Commissioner's complaint procedures are found at OAR 839-003-0100.
 - (6) An employer or employment agency found by the commissioner to have violated ORS 659A.550 shall be assessed a civil penalty as provided under ORS 659A.855.
 - (7) The commissioner may issue a cease and desist order under the provisions of ORS 659.885(3).
 - (8) ORS 659A.550 does not create or authorize a private cause of action by an aggrieved person against an employer or employment agency that is alleged to violate or has violated ORS 659A.550.
- Stat Auth: ORS 659A.805
 Stats. Implemented: ORS 659A.550

Employer Obtainment or Use of Credit History Information

839-005-0060

Purpose and Scope of these Rules

- (1) It is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including employment. Pursuant to ORS 659A.320, obtainment or use by an employer of information in an applicant's credit history impacts the individual's privacy, and must relate only to the position for which the individual is being considered or holds. The people of Oregon have the right to employment without unlawful discrimination on the basis of credit history.
 - (2) Prohibited discrimination is a basis of unlawful practices described in ORS chapter 659A and other chapters of the Oregon statutes.
 - (3) The Civil Rights Division (division) of the Bureau of Labor and Industries enforces ORS 659A.320. These rules implement and interpret that statute.
 - (4) Any individual claiming to be aggrieved by an unlawful practice including a violation of ORS 659A.320 may file a complaint with the division under ORS 659A.820 or may bring a civil action under ORS 659A.885.
 - (5) These rules apply to all inquiries and complaints received by the division on or after the effective date of these rules.
- Stat. Auth.: 659A.805
 Stats. Implemented: ORS 659A.320

839-005-0065

Definitions Regarding Employer Obtainment or Use of Credit History Information

- (1) "Applicant" means an individual who has submitted information for the purpose of gaining employment.
 - (2) "Credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.
 - (3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.
 - (4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.
 - (5) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).
 - (6) "Substantially job-related" is defined in OAR 839-005-0080.
- Stat. Auth.: ORS 659A.805
 Stats. Implemented: ORS 659A.320

839-005-0070**Unlawful Discrimination based on Credit History of Applicant or Employee**

(1) It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Obtainment or use of credit history information may not be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2, ORS 659A.030 and OAR 839-005-0010. A finding of adverse impact discrimination does not require establishment of intentional discrimination.

(3) ORS 659A.320 permits an employer to obtain or use for employment purposes information contained in the credit history of an applicant or employee under circumstances described at 659A.320(2). ORS 659A.320(2)(d) permits an employer to obtain or use information contained in the credit history of an applicant or employee if the credit history 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.

(4) The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.320

839-005-0075**Exceptions to Application of Prohibition on Obtainment or Use of Credit History**

ORS 659A.320 does not apply to:

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

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

(3) 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

(4)(a) 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.

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

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.320

839-005-0080**Determining whether Credit History is Substantially Job-Related**

(1) The determination of whether credit history information is substantially job-related must be evaluated with respect to the position for which the individual is being considered or holds.

(2) Credit history information of an applicant or employee is substantially job-related if:

(a) An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit. Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or

(b) The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.320

839-005-0085**Enforcement and Retaliation regarding Unlawful Obtainment or Use of Credit History**

(1) An employer's duties and obligations under ORS 659A.320 extend to an employer that is a successor in interest as defined in OAR 839-005-0014.

(2) An applicant or employee claiming a violation of ORS 659A.320 or these rules may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by 659A.820.

(3) An applicant or employee claiming a violation of ORS 659A.320 may bring a civil action under 659A.885.

(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with 659A.320.

(5) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of 659A.320 or to attempt to do so.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.320

Discrimination Based on Protected Activity

839-005-0130

Discrimination against Employees Serving or Scheduled to Serve 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

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

839-005-0138

Discrimination in Employment Based on Child Support Obligations

(1) For purposes of this rule:

(a) "Child" has the meaning given that term in ORS 110.303.

(b) "Child support" means an obligation imposed or imposable by law to provide support, including but not limited to medical support and an unsatisfied obligation to provide support to a child under ORS chapter 25.

(c) "Obligor" means an individual or the estate of a decedent:

(A) Who owes or is alleged to owe a duty of support;

(B) Who is alleged but has not been adjudicated to be a parent of a child; or

(C) Who is liable under a support order.

(d) "Order to withhold" means an order or other legal process that requires a withholder to withhold support from the income of an obligor.

(e) "Withholder" means any person who disburses income and includes but is not limited to an employer, conservator, trustee or insurer of the obligor.

(2) It is an unlawful employment practice for an employer to discharge, refuse to hire or in any other manner discriminate, retaliate, or take disciplinary action against an employee 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.

(3) An obligor may bring an action under ORS 659A.885 or may file a complaint with the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 25.424, 659A.885

839-005-0140

Accommodation of Employee Religious Practices

(1) An employer violates ORS 659A.030 if the employer does not allow an employee to use vacation leave, or other leave available to the employee, for the purpose of allowing an employee to engage in the religious observance or practices of the employee.

(a) This requirement applies only to leave that is not restricted as to the manner in which the leave may be used and that the employer allows the employee to take by adjusting or altering the work schedule or assignment of the employee.

(2) An employer is required to accommodate such leave only when reasonably accommodating use of the leave by the employee will not impose an undue hardship on the operation of the business of the employer.

(a) A reasonable accommodation imposes an undue hardship on the operation of the business of the employer for the purposes of this section if the accommodation requires significant difficulty or expense. For the purpose of determining whether an accommodation requires significant difficulty or expense, the following factors shall be considered:

(A) The nature and the cost of the accommodation needed.

(B) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation.

(C) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of persons employed by the employer and the number, type and location of the employer's facilities.

(D) The type of business operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities of the employer.

(E) The safety and health requirements in a facility, including requirements for the safety of other employees and any other person whose safety may be adversely impacted by the requested accommodation.

(3) An employer violates ORS 659A.030 if the employer imposes an occupational requirement that restricts the ability of an employee to wear religious clothing, to take time off for a holy day or to take time off to participate in a religious observance or practice when:

(a) Reasonably accommodating those activities does not impose an undue hardship on the operation of the business of the employer as described in this rule; and

(b) The activities have only a temporary or tangential impact on the employee's ability to perform the essential functions of the job.

(4) "Undue hardship" for purposes of ORS 659A.033 and this rule is described in ORS 659A.033.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.033

Protections for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

839-005-0160

Unlawful Employment Practices against Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

(1) ORS 659A.290 provides that it is an unlawful 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;

(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; or to

(c) Refuse to make a reasonable safety accommodation requested by an individual who is a victim 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 as determined by ORS 659A.121.

(2) The Civil Rights Division of the Bureau of Labor and Industries enforces ORS 659A.290 and OAR 839-005-0160 to 839-005-0170, which implement ORS 659A.290.

(3) "Victim of domestic violence" means an individual who has been threatened with abuse or who is a victim of abuse as defined in ORS 107.705.

- (4) "Victim of harassment" means an individual against whom harassment has been committed as described in Oregon's criminal code at ORS 166.065.
- (5) "Victim of sexual assault" means an individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525.
- (6) "Victim of stalking" means:
- (a) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or
- (b) An individual who has obtained a temporary or permanent court's stalking protective order under ORS 30.866.
- (7) In no event will an alleged perpetrator of domestic violence, harassment, sexual assault or stalking be considered a victim for the purposes of ORS 659A.290 or rules implementing ORS 659A.290.
- Stat. Auth.: ORS 659A.805 & 659A.270
Stats. Implemented: ORS 659A.290

839-005-0170

Reasonable Safety Accommodation; Certification; Records Confidential

- (1) A "reasonable safety accommodation" for a victim of domestic violence, harassment, sexual assault or stalking as provided in ORS 659A.290 may include, but is not limited to, a transfer, reassignment, modified schedule, use of available paid leave from employment, 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.
- (2) Use of available paid and unpaid leave from employment is provided for in ORS 659A.270-.285 and OAR 839-009-0325 through OAR 839-009-0365.
- (3) "Undue hardship" for purposes of ORS 659A.290 is defined at ORS 659A.121: An accommodation imposes an undue hardship on the operation of the business of the employer if the accommodation requires significant difficulty or expense, considering the following:
- (a) The nature and the cost of the accommodation needed.
- (b) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation.
- (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 workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.
- (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 within a reasonable time after receiving the employer's request. Any of the following constitutes sufficient certification:
- (a) A copy of a police report indicating that the individual was or is a victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-005-0160 and ORS 659A.290; or
- (b) A copy of a protective order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750; or any other order that restrains an individual from contact with an individual; an order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750) or other evidence from a court or attorney that the employee appeared in or is preparing for a civil, criminal or administrative proceeding related to domestic violence, harassment, sexual assault or stalking; or
- (c) Documentation from an attorney; law enforcement officer (defined as all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651); health care professional (defined as a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services); licensed mental health professional or counselor; member of the clergy; or victim services provider (defined at ORS 659A.270(8) as a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy) 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.
- (5) 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.
- (6) Consistent with ORS 659A.306, the employer must pay the cost of any medical verification related to ORS 659A.290 or these rules that is not covered by insurance or other benefit plan.
- (7) If the State of Oregon has knowledge, or reasonably should have knowledge, that its employee is a victim of domestic violence, harassment, sexual assault or stalking and that any direct or indirect communication to the employee related to the victimization of the employee is made or attempted to be made in the workplace, the State of Oregon shall immediately inform the employee and offer to report the communication to law enforcement.
- (8) The State of Oregon shall annually inform all of its employees of the provisions of ORS 659A.290.

(9) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of ORS 659A.290 or to attempt to do so.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.290

Housing Discrimination

839-005-0195

Purpose and Scope

(1) The public policy of the State of Oregon guarantees all individuals the fullest possible participation in the social and economic life of the state, including the right to purchase, lease, rent or occupy property without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes. The Bureau of Labor and Industries, through the Civil Rights Division, protects these rights by enforcement of ORS 659A.145, 659A.421 and the federal Fair Housing Act (42 U.S.C. §3601–3617) over which the U.S. Department of Housing and Urban Development has jurisdiction.

(2) An individual claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under the federal Fair Housing Act (42 U.S.C. §3601–3617) may file a complaint with the Civil Rights Division as described in OAR 839-003-0200.

(a) An individual claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under the federal Fair Housing Act (42 U.S.C. §3601–3617) includes an individual who believes that the individual has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(3) These rules apply to all complaints and inquiries relating to these sections received on or after the effective date of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421; 42 U.S.C. §3601–3617

839-005-0200

Definitions: Housing Discrimination

(1) "Aggrieved person" includes a person who believes that the person:

(a) Has been injured by an unlawful practice or discriminatory housing practice; or

(b) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(2) "Disability" means:

(a) A physical or mental impairment that substantially limits one or more major life activities of the individual.

(b) A record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. An individual has a record of having a physical or mental impairment if the individual has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

(c) A physical or mental impairment that the individual is regarded as having.

(A) An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity of the individual.

(B) An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

(3) "Dwelling" means any building, structure, or portion of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location of any such building, structure, or portion of such a building or structure.

(4) "Family" includes but is not limited to a single individual.

(5) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and the individual with whom they are domiciled who is:

(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.

(c) "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.

(d) "Domiciled" includes but is not limited to part-time residence in a dwelling where an individual has a reasonable expectation of a continuing right to return.

(6) "Major life activity" includes, but is not limited to:

(a) Caring for oneself;

(b) Performing manual tasks;

- (c) Seeing;
- (d) Hearing;
- (e) Eating;
- (f) Drinking;
- (g) Sleeping;
- (h) Walking;
- (i) Standing;
- (j) Lifting;
- (k) Bending;
- (l) Twisting;
- (m) Speaking;
- (n) Breathing;
- (o) Cognitive functioning;
- (p) Learning;
- (q) Education;
- (r) Reading;
- (s) Concentrating;
- (t) Remembering;
- (u) Thinking;
- (v) Communicating;
- (w) Working: To be substantially limited in the major life activity of working, an individual must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions;
- (x) Socialization;
- (y) Sitting;
- (z) Reaching;
- (aa) Interacting with others;
- (bb) Sexual relations;
- (cc) Employment;
- (dd) Ambulation;
- (ee) Transportation;
- (ff) Operation of a major bodily function, including but not limited to:
 - (A) Functions of the immune system;
 - (B) Normal cell growth; and
 - (C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and
- (gg) Ability to acquire, rent or maintain property.
- (8) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.
- (9) "Person" includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers, fiduciaries, mutual companies, trusts and unincorporated organizations and public bodies as defined in ORS 30.260 that have the primary purpose of serving, representing or otherwise benefiting the protected class.
- (10) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.
- (11) "Property" and "real property" means property used or intended for commercial, business or residential purposes including, but not limited to a dwelling.
- (12) "Purchaser" includes an occupant, prospective occupant, renter, prospective renter, lessee, prospective lessee, buyer or prospective buyer.
- (13) "Receipt or alleged receipt of treatment for a mental disorder," as used in ORS 659A.142(5), means actual treatment of an individual for a mental condition or an assertion that the person received such treatment.
- (14) "Regarded as having an impairment," as used in ORS 659A.100(2)(c), means:
 - (a) An individual having a physical or mental impairment that does not substantially limit a major life activity but who has been treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson;
 - (b) An individual having a physical or mental impairment that substantially limits a major life activity only as a result of the attitude of others toward such impairment; or

(c) An individual having no physical or mental impairment but who is treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson.

(15) "Residential real estate related transaction" means any of the following:

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

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

(B) Secured by residential real estate; or

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

(16) "Substantially limits" means that an individual has an impairment, had an impairment or is perceived as having an impairment that restricts one or more major life activities of the individual as compared to most people in the general population.

(a) An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.

(b) An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual.

(c) To have a disability (or to have a record of a disability) an individual must be substantially limited in performing a major life activity as compared to most people in the general population.

(d) An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(e) The term "substantially limits" shall be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of ORS 659A.100 to 659A.145 and 659A.400 to 659A.425, and should not require extensive analysis.

(17) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(18) "Treatment" includes examination, evaluation, diagnosis and therapy by a health professional within the scope of the professional's applicable license.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103-.142; 659A.145, 659A.421

839-005-0205

Prohibited Discrimination in Real Property Transactions

(1) A person may not, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income or other protected class of any individual:

(a) Refuse to sell, lease or rent any real property to a purchaser except that a person may refuse to lease or rent real property to a prospective renter or prospective lessee:

(A) Based upon the past conduct of a prospective renter or prospective lessee provided the refusal to lease or rent based on past conduct is consistent with local, state and federal law, including but not limited to fair housing laws; or

(B) Based upon the prospective renter's or prospective lessee's inability to pay rent, taking into account the value of the prospective renter's or prospective lessee's local, state and federal housing assistance, provided the refusal to lease or rent based on inability to pay rent is consistent with local, state and federal law, including but not limited to fair housing laws.

(b) Expel a purchaser from any real property;

(c) Make any distinction, discrimination or restriction against a purchaser in 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 with real property;

(d) Attempt to discourage the sale, rental, lease or occupancy 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 whether oral, written or electronic, relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes;

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates ORS 659A.145, 659A.421, the federal Fair Housing Act (42 U.S.C. §3601–3617) or these rules;

(g) Coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by ORS 659A.145, 659A.421, the federal Fair Housing Act (42 U.S.C. §3601–3617) or these rules;

(h) Deny access to, or membership or participation in, any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any individual in the terms or conditions of the access, membership or participation;

(i) Represent to an individual that a dwelling is not available for inspection, sale, rental or lease when the dwelling in fact is available for inspection, sale, rental or lease;

(j) Otherwise make unavailable or deny a dwelling to an individual.

(2) A person whose business includes engaging in residential real estate related transactions may not discriminate against any individual in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(3) A real estate licensee may not 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, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(4) A person may not, 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 an individual or individuals of a particular race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(5) For purposes of OAR 839-005-0205(1) to (4), "source of income" includes federal rent subsidy payments under 42 U.S.C. §1437f, and any other local, state, or federal housing assistance. "Source of income" does not include income from specific occupations or income derived in an illegal manner.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421; 42 U.S.C. §3601–3617

839-005-0206

Discrimination Theories: Housing

(1) For the purposes of housing discrimination complaints under ORS 659A.145 or 659A.421 or discrimination complaints under the federal Fair Housing Act (42 U.S.C. §3601–3617) an aggrieved person need not be a member of a protected class in order to file a complaint of housing discrimination.

(2) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals reasonable cause for the commissioner to believe the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in circuit court under one of the following theories:

(a) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class.

(b) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(A) There must be substantial evidence that the individual was harmed or was about to be harmed by the action of the respondent under circumstances that make it appear that the respondent treated the individual differently than comparably situated individuals who were not members of the individual's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of discrimination exists.

(i) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(ii) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of unlawful discrimination.

(B) The aggrieved person at all times has the burden of proving that the individual's protected class was the motivating factor for the respondent's unlawful action.

(3) Adverse Impact Discrimination in Housing:

(a) For the purposes of interpreting ORS 90.390, a court or the commissioner may find that a person has violated or is going to violate 659A.145 or 659A.421 if:

(A) The person applies a facially neutral housing policy to a member of a protected class;

(B) Application of the policy adversely impacts members of the protected class to a greater extent than the policy impacts persons generally.

(b) In determining under subsection (a) of this section whether a violation has occurred or will occur and, if it is determined that a violation has occurred or will occur, what relief should be granted, a court or the commissioner will consider:

(A) The significance of the adverse impact on the protected class;

(B) The importance and necessity of any business purpose for the facially neutral housing policy; and

- (C) The availability of less discriminatory alternatives for achieving the business purpose for the facially neutral housing policy.
- (4) As used in enforcing ORS 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. §3601–3617), harassment on the basis of a protected class is an unlawful practice in housing when:
- (a) Conduct of a verbal or physical nature relating to protected classes is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (2) of this rule is shown; and
 - (A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of creating an intimidating, hostile, or offensive environment; or
 - (B) Submission to such conduct is made either explicitly or implicitly a term or condition of housing; or
 - (C) Submission to or rejection of such conduct is used as the basis for housing decisions affecting that individual.
- (b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the individual against whom the harassment is directed would so perceive it.
- (5) Tenant-on-tenant harassment: A housing provider is liable for a resident’s harassment of another resident when the housing provider knew or should have known of the conduct, unless the housing provider took immediate and appropriate corrective action.
- (6) Harassment by Employees or Agents: A housing provider is liable for harassment of a resident by the housing provider’s employees or agents when the housing provider knew or should have known of the conduct, unless the housing provider took immediate and appropriate corrective action.
- (7) Discrimination based on disability may involve intentional discrimination, including harassment, or discrimination that need not be intentional, including adverse impact, or the failure to permit reasonable modifications, the refusal to make reasonable accommodations or the failure to design and construct covered buildings under applicable rules. To be protected from discrimination based on disability, an individual must have a disability, as described in ORS 659A.104 and the relevant rules. Reasonable accommodation in real property transactions is covered by 659A.145 and OAR 839-005-0220. Reasonable modifications in housing and the design and construction of covered buildings are covered by ORS 659A.145. Claims of disability discrimination brought under federal housing law are defined under that law.
- Stat. Auth.: ORS 659A.805
 Stats. Implemented: ORS 659A.103 - 659A.142; 659A.145, 659A.421

839-005-0210

Exceptions to Application of Housing Discrimination Statutes and Rules

- (1) OAR 839-005-0205 does not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of OAR 839-005-0205 would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.
- (2) The provisions of OAR 839-005-0205 (1)(a) to (d) and (f) that prohibit actions based upon sex, sexual orientation or familial status do not apply to the renting of space within a single-family residence if the owner actually maintains and occupies the residence as the owner’s primary residence and all occupants share some common space within the residence.
- (3)(a) OAR 839-005-0205 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) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and
 - (ii) Policies and procedures that 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 does not fail to meet the requirements for housing for older persons if:
 - (A) Persons residing in the housing as of September 13, 1988, do not meet the requirements of paragraph (b)(B) or (C) of this subsection. However, new occupants of such housing will meet the age requirements of paragraph (b)(B) or (C) of this subsection; or
 - (B) The housing includes unoccupied units that are reserved for occupancy by persons who meet the age requirements of paragraph (b)(B) or (C) 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.
- Stat. Auth.: ORS 659A.805
 Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421, 42 U.S.C. §3601–3617

839-005-0215**Religious Exemption**

It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing based on a bona fide religious belief about sexual orientation as long as the housing is closely connected with or related to the primary purpose of the church or institution and is not connected with a commercial or business activity that has no necessary relationship to the church or institution (see OAR 839-005-0031).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421, 42 U.S.C. §3601–3617

839-005-0220**Discrimination in Real Property Transactions against Individuals based on Disabilities**

(1) Individuals protected from discrimination on the basis of disability in real property transactions include any individual with a disability associated with a purchaser.

(2) In addition to the prohibitions in OAR 839-005-0205, discrimination in real property transactions based on an individual's disability includes, but is not limited to:

(a) Failure to design and construct a covered multifamily dwelling as required by the Fair Housing Act (42 U.S.C. 3601 et seq.);

(b) Refusing to permit, at the expense of an individual with a disability, reasonable modifications of existing premises occupied or to be occupied by that individual if such modifications may be necessary to afford that individual full enjoyment of the premises, except that, in the case of rental, the landlord may, where it is reasonable to do so, condition permission for 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;

(A) In the case of a rental, a disabled renter is only required to restore the interior premises to the condition that existed before the modification when the landlord required restoration as a condition to granting the disabled renter's reasonable modification request.

(c) Refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling;

(A) A housing provider may not require verification of the disability-related need for a requested accommodation if that need is readily apparent or otherwise known;

(B) If a disability or a disability-related need for a requested accommodation is not readily apparent or otherwise known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation;

(C) It is a violation of this section for a housing provider to refuse to permit a disabled person to live in a covered dwelling with an animal that mitigates one or more of the person's disability-related needs, except when a specific animal poses a direct threat to the health or safety of other individuals and the threat cannot be eliminated or significantly reduced; and

(D) A housing provider may not charge a resident or applicant deposits or other fees for keeping an animal covered under this section.

(3) Direct Threat. A lessor or agent may engage in conduct otherwise prohibited by ORS 659A.145 when:

(a) Leasing or rental of the subject property by an individual with a disability would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others; and

(b) No reasonable accommodation is possible that would eliminate or acceptably minimize the risk to health and safety.

(4) A determination that a direct threat exists must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, or a recent history of overt acts posing a risk to health and safety). The assessment must consider:

(a) The nature, duration and severity of the risk of injury;

(b) The probability that injury will actually occur; and

(c) Whether there are any reasonable accommodations that will eliminate the direct threat.

(5) A lessor or agent must allow alterations of existing premises if the premises are occupied by or to be occupied by an individual with a disability, and the individual with a disability pays for the alterations, as provided in section 2 of this rule.

(6) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence of an individual's inability to acquire, rent or maintain property.

(7) In the sale, lease or rental of real estate, a person may not disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 – 659A.142; 659A.145; 659A.421

Discrimination by Career Schools

839-005-0300

Purpose and Scope

- (1) ORS 345.240 prohibits unlawful discrimination by career schools licensed under ORS 345.010 to 345.450.
 - (2) A violation of ORS 345.240 is an unlawful practice under ORS chapter 659A. The provisions of ORS chapter 659A that apply to unlawful practices, apply to alleged violations of ORS 345.240, including but not limited to ORS 659A.030(1)(f) and 659A.800 through 659A.865.
 - (3) Any individual claiming to be aggrieved by an unlawful practice including a violation of ORS 345.240 may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820.
 - (4) The Civil Rights Division of the Bureau of Labor and Industries enforces ORS 345.240. These rules implement and interpret ORS 345.240.
- Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240

839-005-0305

Definitions: Career Schools

For purposes of ORS 345.240 and these rules:

- (1) "Agent" means an individual who:
 - (a) Is employed by or for a career school, or is working on behalf of the school under a contract, for the purpose of procuring students, enrollees or subscribers of the school by solicitation in any form that is made at a place or places other than the school office or place of business of the school; or
 - (b) At the request of a career school or under a contract with a career school, provides information technology services for the school and has control over information technology systems that are used for the purpose of procuring students, enrollees or subscribers of the school by solicitation in any form that is made by technology that is accessed at a place or places other than the school office or place of business of the school.
 - (2) "Career school" includes any private proprietary professional, technical, home study, correspondence, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession. "Career school" includes those required to be licensed under ORS 345.010 to 345.450, and excludes entities described in ORS 345.015. Entities excluded by ORS 345.015 but receiving state funds, may be subject to ORS 659.850, which is under the jurisdiction of the State Board of Higher Education.
 - (3) "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, color, marital status, religion, sex or sexual orientation.
 - (4) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.
- Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240, 345.010 & 659.850

839-005-0310

Unlawful Discrimination by Career Schools or Agents

- (1) No career school or its agent may, based on the protected classes of age, disability, national origin, race, color, marital status, religion, sex or sexual orientation of an individual or any other individual with whom that individual associates:
 - (a) Refuse admission to any individual;
 - (b) Discriminate in any aspect of admission or enrollment against any individual;
 - (c) Discriminate in giving instruction to any individual;
 - (d) Discriminate in requirements for or the provision of aid, benefits, or services;
 - (e) Discriminate in application of rules of behavior, sanctions, or any other treatment; or
 - (f) Otherwise limit any individual in the enjoyment of any right, privilege, advantage, or opportunity.
 - (2) No career school may aid or perpetuate discrimination by joining or remaining a member of any organization that discriminates, based on the protected classes in subsection (1) of this rule, in providing any aid, benefit, or service to students or employees.
- Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 345.240 & 659.850

839-005-0315

Discrimination Theories for Career Schools

(1) Intentional Unlawful Discrimination: Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

- (a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(12) of these rules;
- (b) The aggrieved person is a member of a protected class;
- (c) The aggrieved person was harmed by an action of the respondent; and
- (d) The aggrieved person's protected class was the motivating factor for the respondent's action. In determining whether the aggrieved person's protected class was the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class, unless the respondent can show that a bona fide voluntary, court-ordered affirmative action plan (OAR 839-005-0013(3)) allows the action.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the aggrieved person was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the aggrieved person differently than comparably situated individuals who were not members of the aggrieved person's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The aggrieved person [*complainant*] at all times has the burden of proving that the aggrieved person's protected class was the reason for the respondent's unlawful action.

(2) Harassment based on an individual's protected class is a type of intentional unlawful discrimination.

(a) Conduct of a verbal or physical nature relating to protected classes other than sex is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (1) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offensive environment;

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of enrollment; or

(C) Submission to or rejection of such conduct is used as the basis for enrollment decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(3) Adverse Impact Discrimination: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (1) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The aggrieved person is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(4) Reasonable Accommodation of Religion: A career school must reasonably accommodate a student's or applicant's religious belief, observance or practice unless the career school can demonstrate that such accommodation would cause it undue hardship.

Stat. Auth.: ORS 651.060

Stats. Implemented: ORS 345.240, 345.120; 345.060

839-005-0320

Authority of Superintendent of Public Instruction Related to Complaints under ORS 345.240

(1) Pursuant to ORS 345.120, the Superintendent of Public Instruction of the State of Oregon has authority to suspend or revoke licenses of career schools violating ORS 345.010 to 345.450 or any applicable rule. A certified copy of a finding by the Commissioner of the Bureau of Labor and Industries in a contested case proceeding under ORS 659A.850 that the school has violated ORS 345.240 is adequate proof of the violation.

(2) Pursuant to ORS 345.060, the Superintendent of Public Instruction may accept service of all actions or proceedings brought against a career school not domiciled in Oregon.

Stat. Auth.: ORS 651.060

Stats. Implemented: ORS 345.240, 345.120, [&] 345.060

839-005-0325

Retaliation or Discrimination by Career Schools Prohibited

Pursuant to ORS 659A.030(1)(f), it is an unlawful practice for a career school or its agent to retaliate or discriminate against any individual because the individual has filed a complaint, testified or assisted in any proceeding in connection with ORS 345.240 or ORS chapter 659A.

Stat. Auth.: ORS 651.060

Stats. Implemented: ORS 345.240; 659A.030

Employer Access to Employee or Applicant Social Media Accounts

839-005-0400

Unlawful Employment Practice

(1) It is an unlawful employment practice for an employer to:

(a) Require or request an employee or an applicant for employment to disclose or to provide access through the employee's or applicant's user name and password, password or other means of authentication that provides access to a personal social media account;

(b) Compel an employee or applicant for employment to add the employer or an employment agency to the employee's or applicant's list of contacts associated with a social media website;

(c) Except as provided in subsection (4)(b) of this section, compel an employee or applicant for employment to access a personal social media account in the presence of the employer and in a manner that enables the employer to view the contents of the personal social media account that are visible only when the personal social media account is accessed by the account holder's user name and password, password or other means of authentication;

(d) Take, or threaten to take, any action to discharge, discipline or otherwise penalize an employee for the employee's refusal to disclose, or to provide access through, the employee's user name and password, password or other means of authentication that is associated with a personal social media account, to add the employer to the employee's list of contacts associated with a social media website or to access a personal social media account as described in paragraph (c) of this subsection; or

(e) Fail or refuse to hire an applicant for employment because the applicant refused to disclose, or to provide access through, the applicant's user name and password, password or other means of authentication that is associated with a personal social media account, to add the employer to the applicant's list of contacts associated with a social media website or to access a personal social media account as described in paragraph (c) of this subsection.

(2) An employer may require an employee to disclose any username and password, password or other means for accessing an account provided by, or on behalf of, the employer or to be used on behalf of the employer.

(3) An employer may not be held liable for the failure to request or require an employee or applicant to disclose the information specified in subsection (1)(a) of this section.

(4) Nothing in this section prevents an employer from:

(a) Conducting an investigation, without requiring an employee to provide a user name and password, password or other means of authentication that provides access to a personal social media account of the employee, for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on receipt by the employer of specific information about activity of the employee on a personal online account or service.

(b) Conducting an investigation permitted under this subsection that requires an employee, without providing a user name and password, password or other means of authentication that provides access to a personal social media account of the employee, to share content that has been reported to the employer that is necessary for the employer to make a factual determination about the matter.

(c) Complying with state and federal laws, rules and regulations and the rules of self-regulatory organizations.

(5) Nothing in this section prohibits an employer from accessing information available to the public about the employee or applicant that is accessible through an online account.

(6) If an employer inadvertently receives the user name and password, password or other means of authentication that provides access to a personal social media account of an employee through the use of an electronic device or

program that monitors usage of the employer's network or employer-provided devices, the employer is not liable for having the information but may not use the information to access the personal social media account of the employee. (7) As used in this section, "social media" means an electronic medium that allows users to create, share and view user-generated content, including, but not limited to, uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet website profiles or locations.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.330