BUREAU OF LABOR AND INDUSTRIES

DIVISION 6
INJURED WORKERS; DISABILITY; VETERANS AND PERSONS IN UNIFORMED SERVICES

Disability and Employment Rights

839-006-0240
Temporary or Progressive Impairments
(1)The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of ORS 659A.104 and these rules.
(2) Conditions that are progressive (including, but not limited to, cancer, Hodgkin's disease, multiple sclerosis and HIV infection, whether or not such condition substantially limits the individual in any major life activity at the time of the alleged discrimination) may not form the basis for an employer to refuse to employ or promote; bar or discharge from employment; or discriminate in compensation, terms, conditions or privileges of employment.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103-659A.142

839-006-0244
Direct Threat to Health or Safety, Employment
(1) Notwithstanding other provisions of these rules, an employer may refuse to employ an individual with a disability posing a direct threat to the health or safety of others. Direct threat means significant risk of substantial harm that cannot be eliminated or reduced below the level of significant risk of substantial harm by reasonable accommodation.
(2) The determination that an individual with a disability poses a "direct threat" is based on an individualized assessment of the individual's present ability to safely perform the essential functions of the position. The assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge or on the best available objective evidence. In making the determination, factors to be considered include:
(a) The duration of risk;
(b) The nature and severity of potential harm;
(c) The likelihood that potential harm will occur; and
(d) The imminence of potential harm.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103-659A.142

Discrimination against Persons with Disabilities by State Government

839-006-0280
Definitions — Discrimination by State Government on the Basis of Disability
(1) For purposes of ORS 659A.142(5) and these rules, "state government" has the meaning given to that term in ORS 174.111 and includes the executive, judicial and legislative departments of state government. Consistent with ORS 174.108(3), it does not include the Oregon Health and Science University, the Oregon State Bar, any intergovernmental entity formed by a public body with another state or with a political subdivision of another state, or any intergovernmental entity formed by a public body with an agency of the federal government.
(2) Pursuant to ORS 174.112, "executive department" means all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the executive department of government as described in Article III, Section 1 of the Oregon Constitution, and that are not in the judicial department, legislative department, local governments or special government bodies. "Executive department" includes:
(a) An entity created by statute for the purpose of giving advice only to the executive department and that does not have members who are officers or employees of the judicial department or legislative department;
(b) An entity created by the executive department for the purpose of giving advice to the executive department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the executive department other than an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the executive department.
(3) Pursuant to ORS 174.113, "judicial department" means the Oregon Supreme Court, the Oregon Court of Appeals, the Oregon Tax Court, the Oregon circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. "Judicial department" includes:
(a) An entity created by statute for the purpose of giving advice only to the judicial department and that does not have members who are officers or employees of the executive department or legislative department;
(b) An entity created by the judicial department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and
(c) Any entity created by the judicial department other than an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the judicial department.
(4) Pursuant to ORS 174.114, "legislative department" means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. "Legislation department" includes:
(a) An entity created by statute for the purpose of giving advice only to the legislative department and that does not have members who are officers or employees of the executive department or judicial department;
(b) An entity created by the legislative department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and
(c) Any entity created by the legislative department by a document other than a statute and that is not an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the legislative department.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.104, 659A.106, 659A.109, 659A.139, 659A.142

839-006-0290
Other Statutes, Regulations and Agencies Governing Access by or Discrimination [*A*]<u>a</u>gainst Persons with Disabilities
(1) Public transportation services, programs, and activities of public entities are subject to Title II of the federal Americans with Disabilities Act and regulated by the U.S. Department of Transportation. See 42 USC 12141[¦] **<u>§</u>** 221 and 49 CFR[¦] **<u>§</u>**37. Public transportation is covered by ORS 659A.142(4).
(2) Accessibility of government facilities is subject to Title II of the Americans with Disabilities Act, 42 USC [¦]**<u>§</u>**12131. The U.S. Department of Justice regulates existing government facilities (28 CFR [¦] **<u>§</u>**35.150) and new construction and alterations to government facilities (28 CFR [¦] **<u>§</u>**35.151). The Oregon Department of Consumer and Business Services has jurisdiction over disability access to state and local government facilities in Oregon. See ORS 447.210 to 447.310 and administrative rules and standards adopted pursuant thereto.
(3) The federal Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any federal executive agency or by the United States Postal Service. 29 USC [¦] **<u>§</u>**794.
(4) Discrimination against individuals with disabilities in employment is subject to ORS 659A.103 to 659A.139 and OAR 839-006-0200 to 0265.
(5) Discrimination against individuals with disabilities by places of public accommodation**<u>, which include public bodies with some exceptions,</u>** is subject to ORS 659A.142(4)**<u>, 659A.400</u>** and OAR 839-006-0300 to 0335.
(6) Assistance animals in places of public accommodation or access to state government are subject to **<u>ORS 659A.143</u>**[*SB 610, 77th Leg., Reg. Session (Or. 2013)*] and OAR 839-006-0345.
(7) Discrimination against individuals with disabilities in real property transactions is subject to ORS 659A.142, 659A.145 and OAR 839-005-0195 to 839-005-0220.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103–.**<u>143 and ORS 659A.400</u>** [*.142, HB 2668, 77th Leg., Reg. Session (Or. 2013) and SB 610, 77th Leg., Reg. Session (Or. 2013*)]

Rights of Persons with Disabilities With Respect to Places of Public Accommodation

839-006-0305
Definitions
(1) "Disability" has the meaning given in OAR 839-006-0205.
(2) "Major life activity" has the meaning given in OAR 839-006-0205(6).
(3) "Physical or mental impairment" has the meaning given in OAR 839-006-0205 (9).
(4) "Place of public accommodation" means:
(a) Any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements, transportation or otherwise;
(b) Any place that is open to the public and owned or maintained by a public body, as defined in ORS 174.109, regardless of whether the place is commercial in nature; or
(c) Any service to the public that is provided by a public body, as defined in ORS 174.109, regardless of whether the service is commercial in nature.
(5) A place of public accommodation does not include:
(a) A Department of Corrections institution as defined in ORS 421.005;
(b) A state hospital as defined in ORS 162.135;
(c) A youth correction facility as defined in ORS 420.005;
(d) A local correction facility or lockup as defined in ORS 169.005; or
(e) An institution, bona fide club or place of accommodation that is in its nature distinctly private.
(6) "Substantially limits" has the meaning given in OAR 839-006-0205(12).
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.142, **ORS 659A.400**[*HB 2668, 77th Leg., Reg. Session (Or. 2013)*]

839-006-0335
Direct Threat to Health or Safety: Places of Public Accommodation
(1) Notwithstanding other provisions of these rules, places of public accommodation may refuse to permit an individual with a disability to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation if the individual with a disability poses a direct threat to the health or safety of others. Direct threat means significant risk of substantial harm that cannot be eliminated or reduced below the level of significant risk of substantial harm by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.
(2) In determining whether an individual with a disability poses a direct threat to the health or safety of others, places of public accommodation must make an individualized assessment, based on reasonable judgment that relies on the most current medical knowledge, or on the best available objective evidence, to ascertain:
(a) The duration of risk;
(b) The nature and severity of potential harm;
(c) The likelihood that potential harm will occur;
(d) The imminence of potential harm; and
(e) Whether reasonable modifications of policies, practices or procedures will mitigate the risk.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103**;** [*&*] 659A.142

839-006-0340
Discrimination Theories: Discrimination [*A*]against Individuals with Disabilities by State Government or Places of Public Accommodation
(1) A violation of discrimination laws against individuals with disabilities may involve either intentional or unintentional discrimination. Discrimination against individuals with disabilities need not be intentional to be unlawful. Unintentional discrimination may occur, for example, in situations involving adverse impact. To be protected from discrimination based on disability, an individual must have a disability, as defined in ORS 659A.104 and the relevant rules.
(2) Substantial evidence of intentional unlawful discrimination against an individual exists if the investigation of the Civil Rights Division ("division") 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***14**) of these rules;

(b) The individual has a disability;
(c) The individual was harmed by an action of the respondent; and
(d) The individual's disability was the motivating factor for the respondent's action. In determining whether the individual's disability was the motivating factor 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 that individual has a disability.
(B) Different or Unequal Treatment Theory: The respondent treats individuals with disabilities differently than others who do not have disabilities. When the respondent makes this differentiation because of the individual's disability 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 individual was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the individual differently than comparably situated individuals who do not have disabilities. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that an individual's disability 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 disability was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.
(ii) The individual with a disability at all times has the burden of proving that the individual's disability was the motivating factor for the respondent's unlawful action.
(3) Adverse impact by a place of public accommodation or by state government on the basis of disability: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (2) 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(12) 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 complainant 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) Harassment by a place of public accommodation or by state government on the basis of disability:
(a) Conduct of a verbal or physical nature on the basis of disability 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 receiving services, accommodations, advantages, facilities or privileges from a place of public accommodation or services, programs or activities of state government; or
(C) Submission to or rejection of such conduct is used as the basis for 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.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, [&] 659A.142

839-006-0345

Assistance Animals in Places of Public Accommodation or of Access to State Government

(1) “Assistance animal” means a dog or other animal designated by administrative rule that has been individually trained to do work or perform tasks for the benefit of an individual.

(2) “Assistance animal trainee” means an animal that is undergoing a course of development and training to do work or perform tasks for the benefit of an individual that directly relate to the disability of the individual.

(3) “Assistance animal trainer” means an individual exercising care, custody and control over an assistance animal trainee during a course of training designed to develop the trainee into an assistance animal.

(4) A place of public accommodation or of access to state government services, programs or activities may not:

(a) Ask an individual about the nature or extent of a disability that the individual has or may have;

(b) Require an individual to provide documentation proving that an animal is an assistance animal or an assistance animal trainee; or

(c) Notwithstanding any fee or admission charge imposed for pets, require that a person with a disability or an assistance animal trainer pay a fee or admission charge for an assistance animal or assistance animal trainee.

(5) A place of public accommodation or of access to state government services, programs or activities may:

(a) Ask whether an animal is required due to a disability; and

(b) Ask about the nature of the work or task that an animal is trained to do or perform or is being trained to do or perform, unless it is readily apparent that the animal performs or is being trained to perform work or a task for the benefit of a person with a disability.

(6) If a place of public accommodation or of access to state government services, programs or activities customarily charges a person for damages that the person causes to the place, the place may charge a person with a disability or an assistance animal trainer for damages that an assistance animal or assistance animal trainee causes to the place.

(7) A person with a disability or an assistance animal trainer must maintain control of an assistance animal or assistance animal trainee.

(a) Except as provided in this subsection, control shall be exerted by means of a harness, leash or other tether.

(b) If the use of a harness, leash or other tether would interfere with the ability of the animal to do the work or perform the tasks for which the animal is trained or is being trained, control may be exerted by the effective use of voice commands, signals or other means.

(c) If an animal is not under control as required in this subsection, a place of public accommodation or of access to state government services, programs or activities may consider the animal to be out of control for purposes of subsection (8) of this section.

(8)(a) Except as provided in this subsection, a place of public accommodation or of access to state government services, programs or activities may not deny a person with a disability or an assistance animal trainer the right to be accompanied by an assistance animal or assistance animal trainee in any area of the place that is open to the public or to business invitees.

(b) A place of public accommodation or of access to state government services, programs or activities may require a person with a disability or an assistance animal trainer to remove an assistance animal or assistance animal trainee if:

(A) The animal is not housebroken; or

(B) The animal is out of control and effective action is not taken to control the animal.

(c) A place of public accommodation or of access to state government services, programs or activities may impose legitimate requirements necessary for the safe operations of the place of public accommodation or the services, programs or activities. The place of public accommodation or of access to state government services, programs or activities shall ensure that the safety requirements are based on actual risks, not on speculation, stereotypes or generalizations about persons with disabilities.

(9) A place of public accommodation or of access to state government services, programs or activities shall make reasonable modifications as necessary to allow an opportunity for a person with a disability who is benefited by the use of an assistance animal to obtain goods, services and the use of the advantages, facilities and privileges of the place or the advantages, facilities and privileges of the state government services, programs or activities. For purposes of this subsection, except as provided in subsections (5) and (7) of this section, in addition to any other applicable accommodation requirement, allowing the presence of the assistance animal is a reasonable modification.

(10) If a place of public accommodation or of access to state government services, programs or activities requires a person with a disability to remove an assistance animal under subsection (8) of this section, the place or state government shall give the person with a disability a reasonable opportunity to obtain goods, services and the use of

the advantages, facilities and privileges of the place or the advantages, facilities and privileges of the state government services, programs or activities without the assistance animal's presence.
(11) A place of public accommodation or of access to state government services, programs or activities is not required to provide care or supervision for an assistance animal or assistance animal trainee.
(12) The protection granted under this section to a person with a disability or an assistance animal trainer does not invalidate or limit the remedies, rights and procedures of any other federal, state or local laws that provide equal or greater protection of the rights of a person with a disability, an assistance animal trainer or individuals associated with a person with a disability.
Stat. Auth.: ORS 659A.805
Stats. Implemented: **ORS 659A.143, 659A.400** [SB 610, 77th Leg., Reg. Session (Or. 2013)]

Veterans' Preference in Public Employment

839-006-0435
Veterans' Preference in Public Employment
(1) It is the policy of the State of Oregon that a public employer grant a preference in hiring and promotion to veterans and disabled veterans under the provisions of ORS 408.230.
(2) The requirement to grant a preference in hiring and promotion to veterans and disabled veterans under the provisions of ORS 408.230 applies only to a public employer's civil service positions.
(3) That a private employer may give employment preference in the hiring or promotion of employees under OL Ch. 86, Sec. 2 2014 does not preclude the filing of a complaint under ORS chapter 659A.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.230, 408.235, **OL Ch. 86, Sec.2 2014**

839-006-0440
Definitions: Veterans' Preference
(1) "Active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.
(2) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof. (Title 38 USC Part I Chapter 1 Section 101). Reserve components mean:
(a) The Army Reserve;
(b) The Navy Reserve;
(c) The Marine Corps Reserve;
(d) The Air force Reserve;
(e) The Coast Guard Reserve;
(f) The Army National Guard of the United States; and
(g) The Air National Guard of the United States.
(3) "Civil service position" means any position for which a hiring or promotion decision is made or required to be made based on the results of a merit based, competitive process that includes, but is not limited to, consideration of an applicant's or employee's relative ability, knowledge, experience and other skills.
(a) A "civil service" position need not be labeled a "civil service position."
(4) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.
(5) "Disabled veteran" means a person who has a disability rating from the United States Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.
(6) "Eligibility list" means a list of ranked eligible candidates for a civil service position who have become eligible for the position through a test or series of tests and who will be considered for the civil service position in ranked order. Rankings of eligible candidates identified as tiers, bands or other names function as eligibility lists for purposes of these rules.
(7) "Military leave" means any period of time for which a person is absent from a permanent civil service position for the performance of active duty in the Armed Forces of the United States.

(8) “Promotion” means any position with a higher maximum salary rate.
(9) “Public employer” includes a public body as defined in ORS 174.109, and any person authorized to act on behalf of the public body, with respect to control, management or supervision of any employee. “Public employer” includes but is not limited to:
(a) Employers in local governments;
(b) Employers in a public corporation created under a statute of this state and specifically designated as a public corporation; and
(c) Employers in any public body that is created by statute, ordinance or resolution that is not part of state government or local government.
(10) “Special qualifications” means qualifications added to minimum qualifications necessary at the time of appointment based on specific duties of the position to be filled. Special qualifications may include, but are not limited to bilingual skills, or licenses, permits and certifications required by law and screenings otherwise permitted by law, such as reference, criminal background and credit checks and physical fitness and drug tests.
(*10*) **(11)** “Transferable skill” means a skill that a veteran has obtained through military education or experience that substantially relates, directly or indirectly, to the civil service position for which the veteran is applying.
(*11*) **(12)** “Veteran” means a person who:
(a) Served on active duty with the Armed Forces of the United States:
(B) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and was discharged or released under honorable conditions;
(C) For a period of more than 178 consecutive days beginning after January 31, 1955, and was discharged or released from active duty under honorable conditions;
(D) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability;
(E) For 178 days or less and was discharged or released from active duty under honorable conditions and has a disability rating from the United States Department of Veterans Affairs; or
(F) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions;
(b) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed Forces of the United States and was discharged or released from active duty under honorable conditions; or
(c) Is receiving a non service-connected pension from the United States Department of Veterans Affairs.
(d) For questions regarding military discharge, consult the Oregon Department of Veterans’ Affairs website at http://www.oregon.gov/ODVA/docs/PDFs/Criminal_Justice_Portal/Military_discharge.pdf?ga=t
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.225, 408.230, 408.235[, *OL 2011, Ch 484, OL 2011, Ch 29*]

839-006-0450
Applying the Employment Preference
(1) A public employer shall grant a preference to a veteran or disabled veteran who applies for a vacant civil service position or who seeks promotion to a civil service position with a higher maximum salary rate and who:
(a) Successfully completes an initial application screening or an application examination for the position; or
(b) Successfully completes a civil service test the employer administers to establish eligibility for the position; and
(c) Meets the minimum qualifications and any special qualifications for the position.
(2) At each stage of the application process a public employer will grant a preference to a veteran or disabled veteran who successfully completes an initial application screening or an application examination or a civil service test the public employer administers to establish eligibility for a vacant civil service position.
(3) For an initial application screening used to develop a list of persons for interviews, the public employer will add five preference points to a veteran’s score and ten preference points to a disabled veteran’s score.
(4) For an application examination, given after the initial application screening, that results in a score, the public employer will add five preference points to a veteran’s and ten preference points to a disabled veteran’s total combined examination score without allocating the points to any single feature or part of the examination.
(5) If a public employer uses an application examination that consists of an evaluation method of ranking an applicant that does not result in a score, the public employer will devise and apply methods by which the public employer gives special consideration in the public employer’s hiring decision to veterans and disabled veterans.

(6) When an interview is a component of the selection process for a civil service position or for an eligibility list for a civil service position, a public employer shall interview each veteran:
(a) Whom the public employer determines meets the minimum qualifications and special qualifications for the civil service position or eligibility list; and
(b) Who submits application materials that the public employer determines show sufficient evidence that the veteran has the transferable skills required and requested by the public employer for the civil service position or eligibility list.
(7) A public employer is not required to comply with subsection (6) of this rule if the employer's practice is to generate an eligibility list without conducting interviews of possible candidates.
(8) A public employer may consult with the Oregon Military Department and the Department of Veterans' Affairs to determine whether certain military education or experience produces a transferable skill. To evaluate a veteran's transferable skills from a transcript of military training, a public employer may consult the American Council on Education's website, "A Guide to the Evaluation of Educational Experiences in the Armed Services," at http://www.acenet.edu/news-room/Pages/Military-Guide-Online.aspx
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.230, 408.235**,** [*&*] 408.237

839-006-0455
Employment Preference for Promotions
A public employer will grant a preference to a person seeking promotion in the manner described at OAR 839-006-0450.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.225, 408.230, 408.235[, *OL 2011, Ch 484*]

839-006-0470
Enforcement: Veterans' Preference
The Civil Rights Division of the Bureau of Labor and Industries enforces the provisions of ORS 408.230. A person claiming a violation of ORS 408.230 may file a verified written complaint with the Civil Rights Division in accordance with ORS 659A.820.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.230, 408.235, 659A.820[*, OL 2011, Ch 484*]

Discrimination Based on Uniformed Service[*s*]

839-006-0480
Discrimination Based on Uniformed Service
(1) For purposes of this rule:
(a) "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full time duty in the National Guard, funeral honors duty or an examination to determine fitness for service in a uniformed service; and
(b) "Uniformed service" means the Armed Forces of the United States, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the United States Public Health Service and any other category of persons designated by the President of the United States in a time of war or national emergency.
(2) It is an unlawful employment practice for an employer to discriminate against a person because of the person's service in a uniformed service by:
(a) Denying a public officer or public employee the status or rights provided by ORS 408.240 to 408.240 and 408.290, if the employer is a public body.
(b) Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights provided by this section.
(c) Denying any of the following because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service:
(A) Initial employment;
(B) Reemployment following a leave from employment taken by reason of service in a uniformed service;
(C) Retention in employment;

(D) Promotion; or
(E) Any other term, condition or privilege of employment, including but not limited to compensation.
(3) An employer does not commit an unlawful employment practice under this rule if the employer acted based on a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.
(4) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute.
(5) To the extent possible, this rule shall be construed in a manner that is consistent with similar provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 USC 43.
(6) Protections for spouses and domestic partners of uniformed service members may be found under the Oregon [*Family*] Military **Family** Leave Act, ORS 659A.090 to 659A.099 and OAR 839-009-0370 - 839-009-0460.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.082[, *OL 2011, Ch 18*]