

PROTECTED CLASSES

A “protected class” is simply a shared characteristic that employers cannot use as a basis for employment decision under law. For example, an employer may not refuse to hire an applicant because of race, gender or other protected class.

Oregon generally has more protections for employees than the federal government. When an individual is protected under one set of laws, but not the other, employers should follow the law most protective of the employee to avoid compliance risk.

When an employer has a mixed motive for an employment decision, the employer still creates liability if membership in a protected class plays any role in the employment decision.

For an employee to bring a successful civil rights employment complaint, the employee must 1) be a member of a protected class 2) experience harm or adverse action and 3) there must be a connection between the harm and membership in a protected class.

Discrimination does not have to be intentional to create risk for an employer. If the employer has a policy that appears neutral, but has the effect of disproportionately harming members of a protected class, the employer may risk potential liability under civil rights law.

Protected classes: at-a-glance

The following table provides an overview of protected classes and activities under federal and state law with an expanded description below that for several of the more commonly invoked protected classes.

Federal law	State law
Source: Title VII of Civil Rights Act of 1964, unless otherwise noted	Source: ORS 659A, unless otherwise noted
Federal laws apply when an employer has 15 or more employees (except where noted)	State laws apply when an employer has one or more employees (except where noted)
Race	Race
Color	Color
National origin	National origin
Sex (includes pregnancy-related conditions)	Sex (includes pregnancy-related conditions)
	Sexual orientation (includes gender identity)
Religion	Religion
Retaliation	Retaliation

<p style="text-align: center;">Federal law</p> <p>Source: Title VII of Civil Rights Act of 1964, unless otherwise noted</p> <p>Federal laws apply when an employer has 15 or more employees (except where noted)</p>	<p style="text-align: center;">State law</p> <p>Source: ORS 659A, unless otherwise noted</p> <p>State laws apply when an employer has one or more employees (except where noted)</p>
Association with protected class	Association with protected class
Genetic information (under Genetic Information Nondiscrimination Act)	Prohibition on genetic screening and brain-wave testing
Age (40 and older in companies with 20+ Employees under the Age Discrimination in Employment Act of 1967)	Age (18 and older)
<p>Veterans (companies with 1 or more employees)</p> <p>(Uniformed Services Employment and Reemployment Rights Act of 1994 and the Vietnam Era Veterans Readjustment Assistance Act of 1974)</p> <p>Veterans' preference in hiring and promotion (public employers)</p>	<p>Members of the uniformed services (ORS 659A.082)</p> <p>Taking leave to serve in state-organized militia (ORS 399.065)</p> <p>Taking leave prior to or during leave from deployment by spouse or same-sex domestic partner of member of the armed forces under the Oregon Military Family Leave Act (in companies with 25 or more employees)</p> <p>Veterans' preference in hiring and promotion (public employers)</p>
Physical or mental disability (Americans with Disabilities Act of 1990, as amended in 2008, for companies with 15 or more employees)	Physical or mental disability (in companies with 6+ employees)
Leave and retaliation protections under the Family and Medical Leave Act of 1993 (in companies with 50 or more employees)	Leave and retaliation protections under the Oregon Family Leave Act (in companies with 25 or more employees)
Concerted activity for mutual aid and benefit under Section 7 of the National Labor Relations Act	Inquiring about, discussing, or disclosing wage information
Prohibition on polygraph exams	Prohibition on polygraph exams

Additional classes and activities protected by state law, Chapter 659A (except where noted, laws apply when an employer has one or more employees)

Marital status	Injured workers (in companies with six or more employees)
Family relationship	
Right to testify at Employment Department hearings	Right to file a lawsuit, attend or testify in criminal or civil proceedings or report criminal activities
Access to employer-owned housing	Leave to serve in the state legislature (ORS 171.120-125)
Right to report health care or residential care violations	Right to testify before the state legislature
Leave to donate bone marrow	Prohibition on employer requiring medical release unless employer pays out-of-pocket costs
Accommodations and retaliation protections for victims of domestic violence, harassment, sexual assault or stalking, including leave provisions	Limits on medical release as a condition of continued employment
Limits on breathalyzer and blood alcohol testing	Opposition to health or safety conditions (ORS 654.062(5)(a))
Limits on use of expunged juvenile criminal record	Right to report violations of state or federal law (whistleblowing protections)
Limits on use of credit records, credit history and employment history	Participation in Olympic events
Limits on seeking and using salary history of applicants	Predictive scheduling and retaliation protections for employees in certain industries
Limits on pre-employment use of criminal conviction information	Sick time and retaliation protections
	Bereavement leave, under OFLA and Oregon sick time
Limits on employer access to social media account	Jury service
Lawful use of tobacco products during off-duty hours	Volunteer firefighting and search and rescue operations

NOTE: Oregon civil rights protections for protected classes extend beyond employment to include anti-discrimination in career schools, access to places of public accommodations, as well as certain health benefit protections.

Race, color and national origin

State and federal laws prohibit different treatment in terms or conditions of employment based on race, color, or national origin. An employer may not provide separate facilities, unequal benefits or unequal opportunities because of race, color or national origin. **ORS 659A.030(1)**.

Association with persons of another race

An employer may not discriminate against an individual because that person associates with members of a particular race, color or national origin.

For example, it is unlawful for an employer to scrutinize a white employee more carefully for tardiness because of their relationship with an African-American.

National origin

The term “national origin” refers to birthplace, ancestry, culture, and linguistic characteristics common to a specific ethnic group. Discrimination on the basis of national origin may occur if a person is denied an employment opportunity because:

- The individual or the individual’s forebears came from a particular country;
- The individual possesses a particular ancestry, heritage or background; or
- The individual’s name or the name of the individual’s spouse reflects a certain national origin.

Employers should be wary of “English only” job requirements. Requiring employees to speak fluent English may have an adverse impact on applicants from non-English-speaking countries. For this reason, employers should only impose the requirement when they can demonstrate the necessity and job-related reason to do so. Similarly, an employer may not discriminate based upon a dislike (or concern for customers’ dislike) of a particular accent or culture. Employers should not prohibit employees from speaking another language during break time or during work time, unless there’s a specific safety or operational concern.

Age

Oregon employers may not fire, refuse to hire, or otherwise discriminate against an employee in compensation or other terms, conditions or privileges of employment because of that person’s age if they are 18 or older. **ORS 659A.030(1)**.

Example: A business rejects a qualified 19-year-old applicant because the employer is concerned that the worker may not fit in with an older workforce.

State and federal law provide narrow exceptions that allow employers to factor in age when it’s reasonably necessary for the particular business, known as a bona fide occupational qualification (BFOQ). For example, regulations prohibit employers from hiring a bartender who’s under 21. **OAR 839-005-0013**.

Federal guidelines also allow an employer to discriminate on the basis of age if federal laws or regulations impose age limitations for public safety. Airline pilots who fly passengers on commercial aircraft, for example, may not be 65 years of age or older. Therefore, employers may refuse employment to someone who is outside the ages prescribed by regulations.

Religion

Employers may not discriminate against an individual in hiring, termination, or any terms and conditions of employment on the basis of sincerely-held religious belief, unless required by a bona fide occupational qualification. **ORS 659A.030(1)**.

However, Oregon law exempts bona fide churches or other religious institutions such as schools, hospitals and church camps. **ORS 659A.006(4)**. Generally, religious institutions may prefer an employee of one religious sect over another when:

- The employee or applicant belongs to the same religious sect as that of the institution;
- In the opinion of the church or institution, such preference will best serve the church's purposes; and
- The employment involved is closely connected to primary purposes of the church and is not connected with a business activity that has no necessary relationship to the religious purposes of the church or the institution.

Religious accommodation

When the employee or applicant has a sincerely-held religious belief, the employer must reasonably accommodate that belief, unless such accommodation would cause undue hardship. **OAR 839-005-0010(3)**. The U.S. Supreme Court has held that employers must attempt to accommodate an employee's belief that is religious in nature and sincerely held – even if the religion is non-traditional or one you haven't heard of before.

Under law, courts consider an employee's religious belief to be sincerely held if the individual demonstrates a strict adherence to the belief. An individual claiming to believe that they should not work on a particular day of the week for religious observance may not have a sincerely held belief if an employer could demonstrate that the person routinely accepts work on that day without protest. However, the employee may have protection for such a belief if the individual had experienced a change in their religious beliefs.

Once an employee or applicant has articulated an employment conflict with a sincerely held religious belief, the employer must try to make a reasonable accommodation. Each case is different; Employers should consider all requests and whether they would represent an undue hardship on operations.

For example, an employee's religious-based request not to work on Friday should be granted if the employer cannot show an undue hardship.

In examining accommodation, the courts have considered the following areas:

- The nature of the job, meaning whether it is special or unique;

- The number of employees able to do that job;
- The size of the establishment (larger establishments would have more possibilities for accommodating an individual);
- The effects of transferring the employee;
- The effects of accommodation on other employees and union contract agreements (whether the schedule change creates seniority provisions violations); and
- Scheduling and overtime problems.

Disability accommodation

Both state and federal law include protections against discrimination based on disability, defined as any physical or mental impairment that substantially limits one or more major life activities. **ORS 659A.104.**

The protections prohibit discrimination in hiring and placement against persons with disabilities who are qualified and can perform the essential functions of a job with or without reasonable accommodation. The employer must accommodate individuals unless to do so would create an undue hardship or result in a direct threat to the employee or others. Oregon disability law covers all employers with six or more employees. Read more [here](#).

Marital status

Oregon employers may not discriminate against an employee or prospective employee because of that individual's marital status. For example, an employer may not refuse to hire single parents under the law. **ORS 659A.030(1)(a).**

Family relationship

Oregon law prohibits an employer from discriminating against an individual solely because another member of that individual's family works for, or has worked for that employer. For example, it is unlawful for a college to refuse to hire a woman for a science teaching position because her husband already works for the college in the English department, even though neither spouse would be supervising the other. **ORS 659A.309.**

An employer is not required to hire an individual when the hiring would:

- Place either family member in a position of exercising supervisory, appointment or grievance adjustment authority over the other family member;
- Cause the employer to violate a federal or state law or rule;
- Cause the employer to violate the conditions of eligibility for financial assistance from federal or Oregon state government; or
- Cause the employer to disregard a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

"Member of an individual's family" for purposes of ORS 659A.309 means spouse, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, or stepparent or stepchild of the

individual. (Note that this is different than the definition for family members covered under the Oregon Family Leave Act.)

Sexual orientation and gender identity

The Oregon Equality Act prohibits discrimination based on sexual orientation and gender identity in employment, as well as housing and places of public accommodation. The law includes a narrow religious exemption. **ORS 659A.030.**

Retaliation

When an employee files a wage claim or civil rights complaint, an employer may not take any negative employment action against the employee for doing so, even if the civil rights or wage and hour complaint is unsuccessful. The employee only needs to have brought the complaint in good faith.

Similarly, it is unlawful for an employer, union, or employment agency to fire, expel or otherwise discriminate against anyone because of opposition to practices forbidden by civil rights law or because of a complaint or testimony given about a possible violation of the law. **ORS 659A.030(1)(f).**

Sex and gender

State law prohibits discrimination in employment on the basis of sex for any employer in Oregon. Federal law (Title VII of the Civil Rights Act of 1964) prohibits discrimination based on sex by any employer who employs 15 or more persons. Sex discrimination is prohibited in hiring, compensation, terms or conditions of employment, on-the-job treatment, and termination.

Effective January 2020, Oregon employers with six or more employees must make reasonable accommodations for pregnant employees unless doing so would impose an undue hardship. The law makes it an unlawful practice to deny employment opportunity because of pregnancy accommodations or retaliate against employees for making accommodation requests. In addition, employees can't be forced to take leave time or accept accommodations if there's no known limitation due to pregnancy. **HB 2341 (2019).**

Note: State discrimination law does not cover federal government agencies doing business in Oregon.

Equal pay

Under Oregon's equal pay law, employers must compensate jobs of a "comparable character" at the same rate, unless specific factors permitted by statute account for the difference. The law also expands equal pay requirements to all members of a protected class, not just sex and gender.

Employers determining whether jobs are of a comparable character – therefore requiring equal compensation – should look at factors such as whether they require substantially similar skill, effort, and responsibility or involve similar working conditions. Small differences between jobs will not be sufficient to group the positions into separate categories. Learn [more here](#).

Opposition to unsafe working conditions

No employer may bar or discharge from employment or otherwise discriminate against employees or prospective employees because they have opposed unsafe or unhealthy working conditions or have complained or assisted in an occupational safety and health proceeding under state law. **ORS 654.062(5)**.

Employees may file civil rights complaints or civil suits if they believe that an employer has discriminated against them because they opposed safety or health hazards. This opposition may consist of formal or informal complaints, a conversation, or anything putting the employer on notice that an employee believes there is a health or safety problem in the workplace.

Criminal convictions (Oregon “Ban the Box” law)

Most Oregon employers may not inquire or ask about an applicant’s conviction history for most jobs prior to an interview. The law includes narrow exceptions for law enforcement and those required by law to consider criminal history. **ORS 659A.360**.

In addition, the city of Portland’s “Ban-the-Box” ordinance requires Portland employers to wait until a conditional job offer has been made before inquiring about criminal histories. **Portland City Code Chapter 23.10**.

Remember that any time you rely on consumer reports such as third-party criminal background checks, credit checks or drivers’ license records, you are required to notify the applicant, employee or consumer reporter agency under the federal Fair Credit Reporting Act. For more information, visit the [Federal Trade Commission](#).

Whistleblowing

For years, Oregon public employee whistleblower statutes prohibited employers from taking action against or prohibiting employees from responding to legislative requests; disclosing information the employee believes is evidence of violation of laws; disclosing evidence of mismanagement, gross waste or abuse of authority; or reporting public endangerment resulting from an action by a public employer.

Under ORS 659A.199, all employees are protected from retaliation for good faith reporting of information that they believe is evidence of a violation of a state or federal law, rule or regulation. This statute effectively extends the protections provided to public sector employees to private employees when reporting violations of the law or health and safety dangers.

Oregon law also protects public and non-profit employees from retaliation when disclosing information that the employee reasonably believes is gross waste, fraud, abuse or other violation of law. **ORS 659A.200 to ORS 659A.224.**

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