

PROTECTIONS BECAUSE OF DOMESTIC VIOLENCE, HARASSMENT, SEXUAL ASSAULT OR STALKING

ORS

(Leave)

659A.270 Definitions for ORS 659A.270 to 659A.285. As used in ORS 659A.270 to 659A.285:

(1) “Covered employer” means an employer who employs six or more individuals in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault or stalking.

(2) “Eligible employee” means an employee who:

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 days immediately before the date the employee takes leave; and

(b) Is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking.

(3) “Protective order” means 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 any other order that restrains an individual from contact with an eligible employee or the employee’s minor child or dependent.

(4) “Victim of domestic violence” means:

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

(b) Any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805.

(5) “Victim of harassment” means:

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

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

(6) “Victim of sexual assault” means:

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

(b) Any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805.

(7) “Victim of stalking” means:

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

(b) An individual designated as a victim of stalking by rule adopted under ORS 659A.805; or

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

(8) “Victim services provider” means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking. [2007 c.180 §2; 2011 c.687 §1]

659A.272 Employer required to provide leave. Except as provided in ORS 659A.275, a covered employer shall allow an eligible employee to take reasonable leave from employment for any of the following purposes:

(1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee’s minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking.

(2) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking of the eligible employee or the employee’s minor child or dependent.

(3) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking.

(4) To obtain services from a victim services provider for the eligible employee or the employee’s minor child or dependent.

(5) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee’s minor child or dependent. [2007 c.180 §3; 2011 c.687 §2]

659A.275 Undue hardship. (1) As used in this section, “undue hardship” means a significant difficulty and expense to a covered employer’s business and includes consideration of the size of the employer’s business and the employer’s critical need for the eligible employee.

(2) A covered employer may limit the amount of leave an eligible employee takes under ORS 659A.272 if the employee's leave creates an undue hardship on the employer's business. [2007 c.180 §4]

659A.277 Denying leave to employee prohibited; civil action. It is an unlawful employment practice for a covered employer to deny leave to an eligible employee or to discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee takes leave as provided in ORS 659A.272. [2007 c.180 §5]

659A.280 Notice to employer; records confidential. (1) An eligible employee shall give the covered employer reasonable advance notice of the employee's intention to take leave for the purposes identified in ORS 659A.272, unless giving the advance notice is not feasible.

(2) The covered employer may require the eligible employee to provide certification that:

(a) The employee or the employee's minor child or dependent is a victim of domestic violence, harassment, sexual assault or stalking; and

(b) The leave taken is for one of the purposes identified in ORS 659A.272.

(3) The eligible employee shall provide the certification within a reasonable time after receiving the covered employer's request for the certification.

(4) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the employee's minor child or dependent was a victim of domestic violence, harassment, sexual assault or stalking.

(b) A copy of a protective order or other evidence from a court, administrative agency or attorney that the eligible employee appeared in or was preparing for a civil, criminal or administrative proceeding related to domestic violence, harassment, sexual assault or stalking.

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the employee's minor child or dependent was 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 a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285, including the fact that the employee has requested or obtained leave under ORS 659A.272, are confidential and may not be released without the express permission of the employee, unless otherwise required by law. [2007 c.180 §6; 2011 c.687 §3]

659A.285 Use of paid leave. (1) Except as provided in subsections (2) and (3) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy, a covered employer is not required to grant leave with pay to an eligible employee under ORS 659A.272.

(2) An eligible employee who takes leave pursuant to ORS 659A.272 may use any paid accrued vacation leave or may use any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or an employer policy, the covered employer may determine the order in which paid accrued leave is to be used when more than one type of paid accrued leave is available to the employee. [2007 c.180 §7]

(Prohibited Conduct)

659A.290 Prohibited conduct by employer; records confidential. (1) As used in this section:

(a) “Reasonable safety accommodation” may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, harassment, sexual assault or stalking.

(b) “Victim of domestic violence” has the meaning given that term in ORS 659A.270.

(c) “Victim of harassment” has the meaning given that term in ORS 659A.270.

(d) “Victim of sexual assault” has the meaning given that term in ORS 659A.270.

(e) “Victim of stalking” has the meaning given that term in ORS 659A.270.

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

(a) Refuse to hire an otherwise qualified individual because the individual is a victim of domestic violence, harassment, sexual assault or stalking.

(b) Discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an individual with regard to promotion, compensation or other terms, conditions or privileges of employment because the individual is a victim of domestic violence, harassment, sexual assault or stalking.

(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 under ORS 659A.121.

(3)(a) 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.

(b) An individual must provide a certification required under paragraph (a) of this subsection within a reasonable time after receiving the employer's request for certification.

(c) 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.

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

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

(d) 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. [2009 c.478 §2; 2011 c.687 §4]

OAR

839-005-0160

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

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

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

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

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

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

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

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

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

(a) “Victim of domestic violence” means:

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

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

(b) “Victim of harassment” means an individual against whom harassment has been committed as described in Oregon’s criminal code at ORS 166.065.

(c) “Victim of sexual assault” means:

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

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

(d) “Victim of Stalking” means:

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

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

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

(e) 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 these rules.

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

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

Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12

839-005-0170

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

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

(2) "Reasonable safety accommodation" may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, harassment, sexual assault or stalking.

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

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

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

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

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

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

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

(b) Any of the following constitutes sufficient certification:

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

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

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

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

Stat. Auth.: ORS 659A.805

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

Hist.: BLI 9-2010, f. & cert. ef. 2-24-10; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef.