

Allowing Employees to Take Leave to Attend Criminal Proceedings

This Act requires employers who employ six or more people to allow an employee to take leave to attend criminal proceeding if the employee was a victim of certain crimes or is in the immediate family of the victim of such crimes. Employers who violate the provisions of the legislation are deemed to be engaging in an unlawful employment practice.

The Act requires a court to consider a crime victim's work schedule when scheduling a criminal proceeding. It requires the employee to give to employer notice about need for work leave to attend criminal proceeding. The draft provides that the work leave, subject to the work agreement or collective bargaining agreement between employer and employee, need not be paid leave. This legislation allows an employer to show that an employee's leave to attend a criminal proceeding creates an undue hardship to the employer and allows the employer to limit victim's amount of leave under such circumstances.

Submitted as:

Oregon

[SB610](#)

Status: Enacted into law in 2003.

Suggested State Legislation

1 (Title, enacting clause, etc.)

2

3 Section 1. [*Short Title.*] This Act may be cited as "An Act to Enable Employees to Take
4 Leave to Attend Criminal Proceedings."

5

6 Section 2. [*Definitions.*]

7 (1) "Covered employer" means an employer who employs six or more people in this
8 state for each working day during each of [20 or more calendar workweeks] in the year in which
9 an eligible employee takes leave to attend a criminal proceeding or in the year immediately
10 preceding the year in which an eligible employee takes leave to attend a criminal proceeding.

11 (2) "Crime victim" means a person who has suffered financial, social, psychological or
12 physical harm as a result of a person felony, as defined in [insert citation], and includes a
13 member of the immediate family of the person.

14 (3) "Criminal proceeding" has the meaning given that term in [insert citation] and
15 includes a juvenile proceeding under [insert citation] or any other proceeding at which a crime
16 victim has a right to be present.

17 (4) "Eligible employee" means an employee who:

18 (a) Worked an average of more than [25 hours] per week for a covered employer
19 for at least [180 days] immediately before the date the employee takes leave to attend a criminal
20 proceeding; and

21 (b) Is a crime victim.

22 (5) "Immediate family" means spouse, domestic partner, father, mother, sibling, child,
23 stepchild and grandparent.

24 (6) "Undue hardship" means a significant difficulty and expense to a business and
 25 includes consideration of the size of the covered employer's business and the covered employer's
 26 critical need for the employee.

27
 28 Section 3. [*Allowing Employees to Attend Criminal Proceedings.*]

29 (1) Except as provided in subsection (2) of this section, a covered employer shall allow
 30 an eligible employee to take leave from employment to attend a criminal proceeding.

31 (2) A covered employer may limit the amount of leave an eligible employee takes to
 32 attend a criminal proceeding if the employee's leave creates an undue hardship to the covered
 33 employer's business.

34 (3) An eligible employee may notify the prosecuting attorney if taking leave to attend a
 35 criminal proceeding would cause undue hardship to the covered employer. The prosecuting
 36 attorney shall then notify the court or hearing body. The court or hearing body must take the
 37 schedule of the employee into consideration when scheduling a criminal proceeding.

38 (4) Except as provided in subsections (5) and (6) of this section, and unless otherwise
 39 provided by the terms of an agreement between the eligible employee and the covered employer,
 40 a collective bargaining agreement or an employer policy, a covered employer is not required to
 41 grant leave with pay under this Act to an eligible employee to attend a criminal proceeding.

42 (5) An eligible employee who takes leave to attend a criminal proceeding may use any
 43 paid accrued vacation leave during the period of leave or may use any other paid leave that is
 44 offered by the covered employer in lieu of vacation leave during the period of leave.

45 (6) Subject to the terms of any agreement between the eligible employee and the covered
 46 employer or the terms of a collective bargaining agreement or an employer policy, the covered
 47 employer may determine the order in which accrued leave is to be used when more than one type
 48 of accrued leave is available to the employee.

49
 50 Section 4. [*Notice of Intent to Take Leave to Attend a Criminal Proceeding.*]

51 (1) An eligible employee shall give the covered employer:

52 (a) Reasonable notice of the employee's intention to take leave to attend a criminal
 53 proceeding; and

54 (b) Copies of any notices of scheduled criminal proceedings that the employee
 55 receives from a law enforcement agency under [insert citation].

56 (2) All records kept by a covered employer regarding an eligible employee's leave under
 57 this Act or notices received under subsection (1) of this section are subject to the laws relating to
 58 confidentiality.

59
 60 Section 5. [*Denying Leave to Attend a Criminal Proceeding to an Eligible Employee.*]

61 (1) A covered employer who denies leave to an eligible employee or who discharges,
 62 threatens to discharge, intimidates or coerces because the employee takes leave to attend a
 63 criminal proceeding commits an unlawful employment practice.

64 (2) Any person claiming to be aggrieved by an unlawful employment practice specified
 65 in subsection (1) of this section may file a civil action under [insert citation]. The provisions of
 66 [insert citation] do not apply to an unlawful employment practice specified in subsection (1) of
 67 this section.

68
 69 Section 6. [*Aggrieved Parties: Actions.*]

70 (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection
 71 (2) of this section may file a civil action in circuit court. In any action under this subsection, the

72 court may order injunctive relief and such other equitable relief as may be appropriate, including
 73 but not limited to reinstatement or the hiring of employees with or without back pay. A court
 74 may order back pay in an action under this subsection only for the [two-year] period immediately
 75 preceding the filing of a complaint under [insert citation] with the [Commissioner of the Bureau
 76 of Labor and Industries], or if a complaint was not filed before the action was commenced, the
 77 two-year period immediately preceding the filing of the action. In any action under this
 78 subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial
 79 and on appeal. Except as provided in subsection (3) of this section:

80 (a) The judge shall determine the facts in an action under this subsection; and

81 (b) Upon any appeal of a judgment in an action under this subsection, the
 82 appellate court shall review the judgment pursuant to the standard established by [insert citation].

83 (2) An action may be brought under subsection (1) of this section for the following
 84 unlawful practices: [insert citations.]

85 (3) In any action under subsection (1) of this section alleging a violation of [insert
 86 citation]:

87 (a) The court may award, in addition to the relief authorized under subsection (1)
 88 of this section, compensatory damages or [\$200], whichever is greater, and punitive damages;

89 (b) At the request of any party, the action shall be tried to a jury;

90 (c) Upon appeal of any judgment finding a violation, the appellate court shall
 91 review the judgment pursuant to the standard established by [insert citation]; and

92 (d) Any attorney fee agreement shall be subject to approval by the court.

93 (4) In any action under subsection (1) of this section alleging a violation of [insert
 94 citation], the court may award, in addition to the relief authorized under subsection (1) of this
 95 section, compensatory damages or [\$250], whichever is greater.

96 (5) Any person against whom any distinction, discrimination or restriction on account of
 97 race, religion, sex, marital status, color or national origin has been made by any place of public
 98 accommodation, as defined in [insert citation], by any person acting on behalf of such place or
 99 by any person aiding or abetting such place or person in violation of [insert citation] may bring
 100 an action against the operator or manager of such place, the employee or person acting on behalf
 101 of such place or the aider or abettor of such place or person. Notwithstanding subsection (1) of
 102 this section, in an action under this subsection:

103 (a) The court may award, in addition to the relief authorized under subsection (1)
 104 of this section, compensatory and punitive damages;

105 (b) The operator or manager of the place of public accommodation, the employee
 106 or person acting on behalf of the place, and any aider or abettor shall be jointly and severally
 107 liable for all damages awarded in the action;

108 (c) At the request of any party, the action shall be tried to a jury;

109 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

110 (e) The court may award reasonable attorney fees and expert witness fees incurred
 111 by a defendant who prevails only if the court determines that the plaintiff had no objectively
 112 reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of
 113 a trial court; and

114 (f) Upon any appeal of a judgment under this subsection, the appellate court shall
 115 review the judgment pursuant to the standard established by [insert citation].

116
 117 Section 7. [*Severability.*] [Insert severability clause.]

118
 119 Section 8. [*Repealer.*] [Insert repealer clause.]

120

121

Section 9. [*Effective Date.*] [Insert effective date.]