

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

(Title, enacting clause, etc.)

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

Section 2. [*Definitions.*]

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

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

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

(4) "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 to attend a criminal proceeding; and

(b) Is a crime victim.

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

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

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

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

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

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

(4) Except as provided in subsections (5) and (6) 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 under this Act to an eligible employee to attend a criminal proceeding.

(5) An eligible employee who takes leave to attend a criminal proceeding may use any paid accrued vacation leave during the period of 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.

(6) 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 accrued leave is to be used when more than one type of accrued leave is available to the employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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