

CIVIL RIGHTS
Reinstatement of Compensatory and Punitive
Damages for Certain Unlawful Employment
Practice Claims

REPORT
(HB 2276)

Prepared by
Wendy J. Johnson
Oregon Law Commission
Assistant Executive Director
and
Lauren Rhoades
Oregon Law Commission
Law Student Research Assistant
at
Willamette University College of Law

From
The Offices of the Executive Director
David R. Kenagy
and
Assistant Executive Director
Wendy J. Johnson

Report Approved at
Oregon Law Commission Meeting on
November 22, 2002

Civil Rights Work Group: Reinstatement of Compensatory and Punitive Damages for Certain Unlawful Employment Practice Claims Report

1. Introductory Summary

For the 2003 Legislative Session, the Oregon Law Commission's Civil Rights Work Group proposes a clean-up bill with the following objective:

To reinstate the availability of compensatory and punitive damages in a civil rights action for violation of certain injured worker rights.

2. History of the Project

In 2001, the Oregon legislature enacted legislation recommended by the Oregon Law Commission's Civil Rights Work Group to reorganize ORS Chapter 659 and amend other statutes outside Chapter 659 relating to civil rights and unlawful practices.¹ The intent of the Law Commission's legislation was to make the statutes easier to understand and use, with only minor substantive amendments. The Work Group's focus was to fix the organizational problems of the civil rights statutes.

Following the legislature's passage of the 2001 bill reorganizing Chapter 659, the Law Commission authorized the Civil Rights Work Group to continue and endorsed new law reform projects for the group to address, including projects to fix problems arising from the reorganization bill. Jeff Carter, Oregon Law Commissioner, continued to chair the Work Group. The Work Group² met twice to discuss law reform projects proposed by Work Group members. The Group met on August 8, 2001, shortly after the 2001

¹ HB 2352 (2001).

²Members:

| | |
|-------------------------|--------------------------------|
| Jeff J. Carter, Chair | Jeff J. Carter PC |
| Prof. Sandra Hansberger | Lewis and Clark College of Law |
| Bob Joohdeph | Oregon Advocacy Center |
| Marcia Ohlemiller | Bureau of Labor and Industry |
| Karen O'Kasey | Hoffman Hart & Wagner LLP |
| Nathan Schmidt Sykes | Schwabe Williamson & Wyatt PC |

Interested Participants:

| | |
|-------------------|--|
| Jennifer Bouman | Gordon & Meneghello PC |
| Jeff Chicoine | Newcomb Sabin Schwartz & Landsverk LLP |
| David Gerstenfeld | Bureau of Labor and Industries |
| Corbett Gordon | Gordon & Meneghello PC |
| Susan Grabe | Oregon State Bar |
| Wendy Johnson | Oregon Law Commission |
| David Kenagy | Oregon Law Commission |
| David Nebel | Oregon Law Center |

Doug McKean, Deputy Legislative Counsel, has assisted the Work Group with drafting services.

Legislative Session ended, and then met again on July 17, 2002, to finalize their recommendations for the 2003 Legislative Session. Both meetings took place at the Oregon State Bar offices and were open to the public. Several discussions among work group members, via electronic correspondence, took place before and after each meeting. The Work Group has deferred addressing ambiguities in various statute of limitations and remedy provisions for the 2003 Legislative Session and instead presents two bills (HB 2275 and HB 2276) that focus on necessary clean-up provisions.

3. Statement of the Problem Area

Compensatory and Punitive Damages for Certain Unlawful Employment Practice Claims (*i.e.* Injured Worker claims)

Violations of ORS 659A.043 (regarding reinstatement of injured workers to their old jobs) and ORS 659A.046 (regarding reinstatement of injured workers to available and suitable work) are “unlawful practices.” ORS 659A.885, a part of the 2001 revisions, provides that any person claiming to be aggrieved by listed “unlawful practices” may file a civil action and the court may award various listed remedies. While ORS 659A.885(3) lists many statutes, it does not list violations of ORS 659A.043 or 659A.046. Thus, currently, compensatory damages or \$200, whichever is greater, and punitive damages are not available for violations of ORS 659A.043 or ORS 659A.046. Prior to the reorganization, the applicable provision was ORS 659.121 (1999); that provision specifically provided for compensatory and punitive damages for such injured worker claims. The remedies were inadvertently left out with the reorganization and the Work Group proposes reinstating them with this bill.

4. Objective of the Proposal

The reorganization of Chapter 659 unintentionally omitted compensatory and punitive damages for certain injured worker claims. The intent of the 2001 reorganization was not to reduce an individual’s cause of action or to limit available remedies. The proposal reinstates the *status quo*.

5. Proposal

See HB 2276 (2003).

6. Conclusion

The proposed bill amends ORS 659A.885. The proposal permits compensatory and punitive damages in civil action for violation of certain injured worker rights. The bill is a clean-up bill to the 2001 civil rights reorganization bill.