

**Civil Rights Work Group:**  
**STATUE OF LIMITATIONS**  
**FOR**  
**OCCUPATIONAL SAFETY AND HEALTH DISCRIMINATION CLAIMS**

**SB 237**

Prepared by Wendy J. Johnson  
Oregon Law Commission  
Deputy Director

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

Report Approved at  
Oregon Law Commission Meeting on  
February 17, 2005

**Introductory Summary**

Oregon statutes provide that it is an unlawful employment discrimination violation for employers to discriminate against an employee or prospective employee for making certain health and safety complaint(s) concerning the workplace. ORS 654.062(5). Oregon statutes, however, do not define the statute of limitations for filing a civil action in court. This bill will simply codify a one-year statute of limitations.

**History of Reform Efforts**

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 unlawful employment practices and other unlawful discrimination practices. The intent of the reorganization completed with HB 2352 (2001) was to make the statutes easier to understand and use, with only minor substantive amendments.

During the process of working on the reorganization bill, the Civil Rights Work Group identified a list of more substantive problems that the Group hoped to address later. The Work Group did present two clean-up bills in the 2003 session, HB 2275 and HB 2276. However, those two bills only fixed unintended consequences of the reorganization bill. HB 2275 (2003) restored "age" as a protected class in the public accommodation provisions and HB 2276 (2003) restored the remedies for certain injured worker rights.

The Law Commission authorized the Civil Rights Work Group to continue again for the 2005 session, charged with the task of addressing the more substantive problems identified earlier. This session the Civil Rights Work Group presents five bills with each addressing an identified gap, ambiguity, or conflict in the present civil rights laws.

Sen. Vicki Walker served as the Chair of the Civil Rights Work Group<sup>1</sup> in 2005. The Work Group needed to meet only once, having received bill drafts and materials in advance of the meeting. The Group met on January 26 and then finalized their recommendations to the Commission via email. The meeting took place at Willamette University in Salem and was open to the public. Several discussions among Work Group members took place before and after the meeting via electronic correspondence.

---

<sup>1</sup> The Work Group included the following members:

Jeffrey Chicoine	Newcomb, Sabine, Schwartz, and Landsverk LLP
Barbara Diamond	Smith, Diamond & Olney
Corbett Gordon	Fisher & Phillips LLP
Bob Joondeph	Oregon Law Center
David Nebel	OSB
Marcia Ohlemiller	BOLI
Louis Savage	DCBS

**Interested Participants:**

Patricia Altenhofen	Cascade Employers
Leslie Bottomly	Ater Wynne LLP
Barbara Brainard	Stoel Rives LLP
Clay Creps	Bullivant, Houser, Bailey PC
Patricia Haim	Amburgey & Rubin PC
Sandra Hansberger	Lewis & Clark Clinic
Victor Kisch	Tonkon Torp LLP
Stacey Mark	Ater Wynne LLP
Andrea Meyer	ACLU
Karen O’Kasey	Hoffman, Hart & Wagner LLP
Kathy Peck	Williams, Zografos & Peck PC
Edward Reeves	Stoel Rives LLP
Dennis Steinman	Kell, Alterman & Runstein LLP
Diana Stuart	Goldberg, Mechanic, Stuart & Gibson LLP
Nathan Sykes	Schwabe, Williamson & Wyatt PC
Annette Talbott	BOLI
Jerry Watson	Oregon Law Commission

Doug McKean, Deputy Legislative Counsel, provided drafting and research assistance.

## **Statement of the Problem Area**

The legislature has clearly provided a right to employees and prospective employees to file a claim with the Bureau of Labor and Industries or to file a claim in court, when an employer discriminates based on the employee making certain health and safety complaint(s) concerning the workplace. ORS 654.062(5). The same statute also provides that the employee or prospective employee must file a complaint with the Bureau within 30 days of having reasonable cause to believe that a violation has occurred. Oregon statutes, however, do not define the statute of limitations for filing a civil action in court. The general reason for this bill is based on the theory that all civil rights statutes should provide for clear rights and remedies, including the statute of limitations. Having a clear statute of limitations ensures finality.

## **Objective of the Proposed Bill**

The objective is to amend ORS 654.062 to clearly provide for a one year statute of limitations for filing an action in court. This statute already provides a statute of limitations for filing an action with the Bureau of Labor and Industries.

## **Proposal**

See SB 237 (2005) and SB 237-1 Proposed Amendments.

### **Section 1**

This section amends ORS 654.062. A new subsection (6) to this statute is created by this bill, and the substance of subsection (5) is reorganized: part of the old subsection (5) becomes part of subsection (6). This bill would make subsection (5) define the unlawful employment practice, and subsection (6) would define the statute of limitations for both the Bureau of Labor and Industries filings and civil action filings made in court.

The bill's new subsection (6)(b) is simply a renumbering and reordering of the substance in the present (5)(c).

The bill's language in the new (6)(c), is the substantive heart of the bill. This section (with the SB 237-1 amendment) would codify a one year statute of limitations. The Work Group considered a shorter statute of limitations of 180 days, but ultimately determined that one year was preferable because of the time needed to consult counsel and investigate. A one year statute of limitations is also consistent with the statute of limitations for most unlawful employment practice discrimination claims. See ORS 659A.875(1) (providing one year statute of limitations for civil actions under ORS 659A.885).

The rest of the amendments made in this bill are word and style changes that comport with present Legislative Counsel drafting protocols.

## **Section 2**

Section 2 provides that amendments to the ORS made by this bill apply only to conduct giving rise to a cause of action occurring on or after the effective date of the Act. An emergency clause is provided and thus the Act will become effective upon passage.

---

### **Amendment Note**

This bill was amended in the Senate to include the –1 amendments discussed above in the report. The –1 amendments, however, were replaced by –2 amendments that also added a new Section 3. Section 3 simply added an emergency clause to the bill so that the bill takes effect on its passage.