From:	Steven Schuback
To:	Boss Frederick
Cc:	Kemple Toni C
Subject:	DPSST Commission
Date:	Friday, June 3, 2022 3:14:23 PM
Attachments:	OAR 839-005-0030 Sexual Harassment.pdf WORKPLACE HARASSMENT ORS 243.317.pdf

Fred,

Can you please add the following reference documents for next week's meeting?

Thank you,

Steven

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Bureau of Labor and Industries

Chapter 839

Division 5
DISCRIMINATION

839-005-0030
Sexual Harassment in Employment

(1) Sexual harassment is unlawful discrimination on the basis of sex and includes the following types of conduct:

(a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex and:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

(2) The standard for determining whether harassment based on an individual's sex is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(3) Employer proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the respondent's president, owner, partner or corporate officer.

(4) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for sexual harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against that individual. A tangible employment action includes but is not limited to the following:

(a) Terminating employment, including constructive discharge;

(b) Failing to hire;

(c) Failing to promote; or

(d) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(5) Harassment by Supervisor, No Tangible Employment Action: When sexual harassment by a supervisor with immediate or successively higher authority over an individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(a) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(b) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(A) That the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and

(B) That the aggrieved person unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(6) Harassment by Co-Workers or Agents: An employer is liable for sexual harassment by the employer's employees or agents who do not have immediate or successively higher authority over the aggrieved person when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(7) Harassment by Non-Employees: An employer is liable for sexual harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(8) Withdrawn Consent: An employer is liable for sexual harassment of an individual by the employer's supervisory or non-supervisory employees, agents or non-employees, even if the acts complained of were of a kind previously consented to by the aggrieved person, if the employer knew or should have known that the aggrieved person had withdrawn consent to the offensive conduct.

(9) When employment opportunities or benefits are granted because of an individual's submission to an employer's sexual advances, requests for sexual favors, or other sexual harassment, the employer is liable for unlawful sex discrimination against other individuals who were qualified for but denied that opportunity or benefit.

Statutory/Other Authority: ORS 659A.805
Statutes/Other Implemented: ORS 659A.030
History:
BLI 11-2015, f. & cert. ef. 8-4-15
BLI 14-2013, f. & cert. ef. 12-30-13
BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08
BLI 46-2006, f. 12-29-06, cert. ef. 1-3-07
BLI 10-2002, f. & cert. ef. 5-17-02
BLI 19-2000, f. & cert. ef. 9-15-00

Please use this link to bookmark or link to this rule.

WORKPLACE HARASSMENT

243.317 Definitions for ORS 243.317 to 243.323. As used in ORS 243.317 to 243.323:

(1) "Public employer" has the meaning given that term in ORS 260.432.

(2) "Sexual assault" means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

(3) "Workplace harassment" means conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes conduct prohibited by ORS 659A.082 or 659A.112. [2019 c.463 §1a]

Note: 243.317 to 243.323 were added to and made a part of ORS chapter 243 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

243.319 Written policy regarding workplace harassment; requirements. (1) A public employer shall establish and adopt a written policy that seeks to prevent workplace harassment that occurs between employees or between an employer and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer, or between an employer and an employee off the employment premises.

(2) The policy must include:

(a) A statement prohibiting workplace harassment;

(b) Information explaining that a victim of workplace harassment has a right to seek redress through the employer's internal process provided under ORS 243.321, through the Bureau of Labor and Industries' complaint resolution process under ORS 659A.820 to 659A.865 or under any other available law, whether civil or criminal, including:

(A) The timeline under which relief may be sought;

(B) Any available administrative or judicial remedies; and

(C) The advance notice of claim against a public body that a claimant must provide as required under ORS 30.275;

(c) A statement that a person who reports workplace harassment has the right to be protected from retaliation;

(d) A statement of the scope of the policy, including that the policy applies to elected public officials, volunteers and interns;

(e) An explanation that a victim of workplace harassment may voluntarily disclose information regarding an incident of workplace harassment that involves the victim;

(f) Information to connect a victim of workplace harassment with legal resources and counseling and support services, including any available employee assistance services;

(g) A statement that an employer may not require or coerce an employee to enter into a nondisclosure or nondisparagement agreement, including a description of the meaning of those terms;

(h) An explanation that an employee claiming to be aggrieved by workplace harassment may voluntarily request to enter into an agreement described in ORS 243.323 (2), including a statement that explains that the employee has at least seven days to revoke the agreement; and

(i) A statement that advises employers and employees to document any incidents of workplace harassment.

(3) A public employer shall provide a copy of the policies described in this section to each employee and shall include a copy of the policies in any orientation materials that are provided to new employees at the time of hire.

(4) If an employee discloses any concerns about workplace harassment to a supervisor of the employer, or to a designated individual as described in ORS 243.321 (3), the supervisor or designated individual shall, at the time of the disclosure, provide to the employee a copy of the policy described in this section.

(5) A policy established under this section must comply with the requirements for a written policy provided under ORS 659A.375. [2019 c.463 §2]

Note: See note under 243.317.

243.321 Written policies and procedures regarding investigation of report of workplace harassment; requirements. A public employer shall develop written policies and procedures for the prompt investigation of a report of workplace harassment. The policies and procedures must:

(1) Provide instruction for maintaining records of workplace harassment.

(2) Establish a process for a victim of workplace harassment to file a complaint, provided that the process allows a victim to file the complaint within four years from the date on which the alleged harassment occurred or within the applicable time limitation on the commencement of an action under ORS 659A.875, whichever is greater.

(3) Identify the individual designated by the employer who is responsible for receiving reports of prohibited conduct, including an individual designated as an alternate to receive such reports.

(4) Subject to subsection (5) of this section, require the employer to follow up with the victim of the alleged harassment once every three months for the calendar year following the date on which the employer received a report of harassment, to determine whether the alleged harassment has stopped or if the victim has experienced retaliation.

(5) Inform the victim that the employer will follow up in the manner described in subsection (4) of this section until and unless the victim objects to such action in writing. [2019 c.463 §3]

Note: See note under 243.317.

243.323 Prohibition against entering into agreement with employee that prevents employee from discussing workplace harassment; exceptions; remedy for violation. (1) Except as provided in subsection (2) or (4) of this section, it is an unlawful employment practice under ORS chapter 659A for a public employer to enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing workplace harassment:

(a) That occurred between employees or between an employer and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer; or

(b) That occurred between an employer and an employee off the employment premises.

(2) A public employer may enter into a settlement, separation or severance agreement that includes one or more of the following provisions only when an employee claiming to be

aggrieved by workplace harassment described under subsection (1) of this section requests to enter into the agreement:

(a) A provision described in subsection (1) of this section;

(b) A provision that prevents the disclosure of factual information relating to the claim of discrimination or conduct that constitutes sexual assault; or

(c) A no-rehire provision that prohibits the employee from seeking reemployment with the employer as a term or condition of the agreement.

(3)(a) An agreement entered into under subsection (2) of this section must provide that the employee has at least seven days after executing the agreement to revoke the agreement.

(b) The agreement may not become effective until after the revocation period has expired.

(4) If an employer makes a good faith determination that an employee has engaged in workplace harassment described under subsection (1) of this section, the employer may enter into a settlement, separation or severance agreement that includes one or more of the following provisions:

(a) A provision described in subsection (1) of this section;

(b) A provision that prevents the disclosure of factual information that relates to the workplace harassment; or

(c) A no-rehire provision that prohibits the employee from seeking reemployment with the employer as a term or condition of the agreement.

(5) An employee may file a complaint under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS 659A.885 (1) to (3).

(6) This section does not apply to an employee who is tasked by law to receive confidential or privileged reports of discrimination, sexual assault or harassment. [2019 c.463 §4]

Note: See note under 243.317.

LEAVES OF ABSENCE FOR ATHLETIC COMPETITION

243.325 "Public employee" defined. For the purposes of this section and ORS 243.330 and 243.335, "public employee" means officers or employees, classified, unclassified, exempt and nonexempt, of:

(1) State agencies.

(2) Community colleges.

(3) School districts and education service districts.

(4) County governments.

(5) City governments.

(6) Districts as defined in ORS 255.012 and any other special district. [1979 c.830 §1; 1997 c.249 §73; 2001 c.104 §74]

243.330 Leaves of absence for athletic competition; requirements; maximum period; reinstatement. (1) To encourage amateur athletic competition at the world level, state agencies and political subdivisions described in ORS 243.325 (2) to (6) may grant leaves of absence on request to any public employee who participates in world, Pan American or Olympic events as a group leader, coach, official or athlete of a United States amateur team for the purpose of preparing for and engaging in the competition and preliminary competitions.

(2) The leave shall be with regular pay and benefits for periods of official training camps and competitions. Paid leave shall not exceed 90 days per calendar year.

(3) Upon expiration of the leave, the public employee shall have the right to be reinstated to the position held before the leave was granted and at the salary rates prevailing for such positions on the date of resumption of duty without loss of seniority or other employment rights. Failure of the employee to report within 30 days after termination of official competition shall be cause for dismissal.

(4) In order to be eligible for the benefits authorized by ORS 243.325 to 243.335, the public employee shall be a resident of this state for a period of not less than five years and shall have been a public employee of the particular employer for a period of not less than one year prior to being granted the leave. [1979 c.830 §2]

243.335 Reimbursement to public employer. Public employees eligible for the benefits authorized by ORS 243.325 to 243.335 are obligated to reimburse the employer in full through monetary payment, with no interest charge, or through hours worked equivalent to the number of hours spent on athletic leave, or a combination of both. Full reimbursement shall be accomplished at a time not later than 10 years following the last day the employee received benefits under ORS 243.325 to 243.335. [1979 c.830 §3; 1997 c.249 §74]

243.345 [Formerly 243.220; repealed by 2015 c.158 §30]

243.350 [Formerly 243.225; repealed by 2015 c.158 §30]

243.400 [1977 c.721 §2; 1979 c.468 §31; 1991 c.618 §1; repealed by 1997 c.179 §1 (243.401 enacted in lieu of 243.400)]