

## DIVISION 6

### INJURED WORKER AND DISABILITY DISCRIMINATION

839-006-0332

#### Lift Systems for Transient Lodging

(1) A transient lodging provider shall ensure that in transient lodging facilities of 175 or more rooms or suite of rooms that at least one room or suite of rooms has a lift system or multiple lift systems that enable an individual with a disability to access a bed, a toilet, and a shower or bathtub in the room or suite of rooms occupied by the individual with a disability.

(a) “Lift system” means a system that:

(A) Is used to transfer a person to a bed, toilet, shower or bathtub, but does not provide the individual with independent mobility;

(B) May be a manual lift, an electronic lift or a lift that uses a track system; and

(C) May require operation by an assistant.

(b) “Transient lodging” means a unit consisting of a room or suite of rooms that:

(A) Is not occupied as a principal residence;

(B) Is typically occupied for a period of fewer than 30 consecutive days; and

(C) Includes services that are part of the regularly charged cost of occupancy, including maid and linen services.

(2) Additional information regarding the requirement described in section (3) of this rule is available at ORS 659A.144.

(3) Any violation of section (1) of this rule or of the authorizing statutes is an unlawful practice.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103; ORS 659A.144; ORS 659A.411 to 659A.417

## DIVISION 5

### DISCRIMINATION

#### Discrimination Based on Protected Activity

839-005-0138

#### Discrimination Based on Child Support Obligations

(1) For purposes of this rule:

**(a) “Child” has the meaning given that term in ORS 110.303.**

**(b) “Child support” means an obligation imposed or imposable by law to provide support, including but not limited to medical support and an unsatisfied obligation to provide support to a child under ORS Chapter 25.**

**(c) “Obligor” means an individual or the estate of a decedent:**

**(A) Who owes or is alleged to owe a duty of support;**

**(B) Who is alleged but has not been adjudicated to be a parent of a child; or**

**(C) Who is liable under a support order.**

**(d) “Order to withhold” means an order or other legal process that requires a withholder to withhold support from the income of an obligor.**

**(e) “Withholder” means any person who disburses income and includes but is not limited to an employer, conservator, trustee or insurer of the obligor.**

**(2) It is an unlawful employment practice for an employer to discharge, refuse to hire or in any other manner discriminate, retaliate, or take disciplinary action against an employee because of the entry or service of an order to withhold under ORS 25.378 and 25.402 or because of the obligations or additional obligations that the order imposes upon the employer.**

**(3) An obligor may bring an action under ORS 659A.885 or may file a complaint with the Bureau of Labor and Industries in the manner provided by ORS 659A.820.**

**Stat. Auth.: ORS 659A.805**

**Stats. Implemented: ORS 25.424, 659A.885**

**839-005-0140**

### **Accommodation of Religious Practices**

**(1) An employer violates ORS 659A.030 if the employer does not allow an employee to use vacation leave, or other leave available to the employee, for the purpose of allowing an employee to engage in the religious observance or practices of the employee.**

**(a) This requirement applies only to leave that is not restricted as to the manner in which the leave may be used and that the employer allows the employee to take by adjusting or altering the work schedule or assignment of the employee.**

**(2) An employer is required to accommodate such leave only when reasonably accommodating use of the leave by the employee will not impose an undue hardship on the operation of the business of the employer.**

**(a) A reasonable accommodation imposes an undue hardship on the operation of the business of the employer for the purposes of this section if the accommodation**

**requires significant difficulty or expense. For the purpose of determining whether an accommodation requires significant difficulty or expense, the following factors shall be considered:**

**(A) The nature and the cost of the accommodation needed.**

**(B) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation.**

**(C) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of persons employed by the employer and the number, type and location of the employer's facilities.**

**(D) The type of business operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities of the employer.**

**(E) The safety and health requirements in a facility, including requirements for the safety of other employees and any other person whose safety may be adversely impacted by the requested accommodation.**

**(3) An employer violates ORS 659A.030 if the employer imposes an occupational requirement that restricts the ability of an employee to wear religious clothing, to take time off for a holy day or to take time off to participate in a religious observance or practice when:**

**(a) Reasonably accommodating those activities does not impose an undue hardship on the operation of the business of the employer as described in this rule; and**

**(b) The activities have only a temporary or tangential impact on the employee's ability to perform the essential functions of the job.**

**(4) "Undue hardship" for purposes of ORS 659A.033 and this rule is described in ORS 659A.033.**

**Stat. Auth.: ORS 659A.805**

**Stats. Implemented: ORS 659A.033**

**839-005-0160**

**Protection from Discrimination and Safety Accommodation for Victims of Domestic Violence, Sexual Assault or Stalking**

**(1) As provided in ORS 659A.290, it is an unlawful employment practice for an employer, because an individual is a victim of domestic violence, sexual assault or stalking, to:**

**(a) Refuse to hire an otherwise qualified individual; or**

**(b) Discharge, threaten to discharge, demote, suspend or in any way discriminate or retaliate against an individual with respect to promotion, compensation or any other terms, conditions or privileges of employment.**

**(2) ORS 659A.290 requires employers to provide safety accommodation for victims of domestic violence, sexual assault or stalking.**

**(3) The Civil Rights Division (“division”) of the Bureau of Labor and Industries enforces ORS 659A.290.**

**(4) Leave from employment is available for victims of domestic violence, sexual assault or stalking for purposes including but not limited to: seeking legal or law enforcement remedies, seeking medical care or counseling, and for relocating or other safety measures. The division enforces ORS 659A.270 to 659A.285, which require leave for victims of domestic violence, sexual assault or stalking. OAR 839-009-0321 to 839-009-0365 implement and interpret ORS 659A.270 to 659A.285.**

**(5) OAR 839-005-0160 to 839-005-0170 implement and interpret ORS 659A.290.**

**(6) Definitions for OAR 839-005-0160 to 839-005-0170:**

**(a) “Victim of domestic violence” means:**

**(A) An individual who has been threatened with abuse or is a victim of abuse, as defined in ORS 107.705; or**

**(B) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in subsection (a), including a member of the victim's immediate family.**

**(b) “Victim of sexual assault” means:**

**(A) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or**

**(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in subsection (a), including a member of the victim's immediate family.**

**(c) “Victim of Stalking” means:**

**(A) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or**

**(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in subsection (a), including a member of the victim's immediate family.**

**(d) In no event will an alleged perpetrator of domestic violence, sexual assault or stalking be considered a victim for the purposes of ORS 659A.290 or these rules.**

**Stat. Auth.: ORS 659A.805, 659A.270**

**Stats. Implemented: ORS 659A.290**

**839-005-0170**

**Reasonable Safety Accommodation for Victims of Domestic Violence, Sexual Assault or Stalking**

**(1) It is an unlawful employment practice to refuse to make a reasonable safety accommodation requested by an individual who is a victim of or under threat of domestic violence, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.**

**(2) “Reasonable safety accommodation” may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, sexual assault or stalking.**

**(3) Undue hardship means a significant difficulty and expense to an employer's business and includes consideration of the size of the employer's business. Other factors to consider in determining whether granting a safety accommodation will cause an undue hardship on an employer's business include, but are not limited to:**

**(a) The safety accommodation requested and the relative cost to an employer's business;**

**(b) The overall financial resources of the employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the safety accommodation were granted;**

**(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer's facilities;**

**(d) The type of operations conducted by the employer, including the composition, structure and functions of the employer's workforce.**

**(4) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, sexual assault, or stalking.**

**(a) An individual must provide a certification permitted under OAR 839-009-0362(5) within a reasonable time after receiving the employer's request for certification.**

**(b) Any of the following constitutes sufficient certification:**

**(i) A copy of a police report indicating that the individual was or is a victim of domestic violence, sexual assault or stalking.**

**(ii) A copy of a protective order or other evidence from a court or attorney that the individual appeared in or is preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking.**

**(iii) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking.**

**(iv) All records and information kept by an employer regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual, unless otherwise required by law.**

**Stat. Auth.: ORS 659A.805**

**Stats. Implemented: ORS 659A.290**