

Disability Discrimination in Employment

839-006-0200

Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee [*disabled*] persons **with disabilities** the fullest possible participation in the social and economic life of the state, including employment. The people of Oregon have the right to employment without discrimination due to disability.

(2) It is an unlawful employment practice for any employer to refuse to hire or promote, to bar or discharge from employment or to discriminate in compensation, terms, conditions or privileges of employment because an otherwise qualified person [*is disabled*] **has a disability**.

(3) Prohibited discrimination includes, but is not limited to:

(a) Limiting, segregating or classifying [*disabled*] applicants or employees **with disabilities** in a way that adversely affects opportunities or status;

(b) Participating in a contractual or other arrangement with the effect of discriminating against [*disabled*] applicants or employees **with disabilities**, including but not limited to, relationships with employment or referral agencies, labor unions, organizations providing fringe benefits, or training and apprenticeship programs;

(c) Utilizing standards, criteria or methods of administration that have the effect of discrimination against [*disabled*] applicants or employees **with disabilities**;

(d) Excluding or denying equal employment or benefits to an otherwise qualified person because the person is known to have an association with a [*disabled*] person **with a disability**;

(e) Failing to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified [*disabled*] applicant or employee **with a disability**, unless the employer can demonstrate that the accommodation would impose an undue hardship on the business of the employer;

(f) Using qualification standards, tests or other criteria that screen out or tend to screen out a [*disabled*] person **with a disability** or a class of [*disabled*] persons **with disabilities** unless the standard, test or other selection criterion, as used by the employer, is job related for the position in question and is consistent with business necessity;

(g) Failing to select and administer tests in a way that accurately reflects the skills and aptitude of applicants or employees with disabilities that impair sensory, manual or

speaking skills. An employer may, however, administer tests measuring sensory, manual and speaking skills of applicants and employees.

(4) It is an unlawful employment practice for an employment agency to:

(a) Fail or refuse to refer for employment, or otherwise discriminate against an individual because that individual [*is disabled*] **has a disability**; or

(b) Classify or refer an individual for employment because that individual [*is disabled*] **has a disability**.

(5) It is an unlawful employment practice for a labor organization to exclude or to expel from its membership, or to discriminate in any way against an individual because that individual [*is disabled*] **has a disability**.

(6) It is an unlawful employment practice for any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden by ORS 659A.142 and 659A.112 to 659A.139.

(7) It is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce an individual to do any of the acts forbidden by ORS 659A.142 and 659A.112 to 659A.139 or to attempt to do so.

(8) The Civil Rights Division of the Bureau of Labor and Industries has the responsibility to protect [*disabled*] **the rights of** employees ['] and applicants['] **with disabilities** [*rights*] through the enforcement of ORS 659A.142 and 659A.112 to 659A.139. OAR 839-006-0200 to 839-006-0265 interpret these statutes and apply to all complaints and inquiries relating to these statutes received on or after the effective date of these rules.

(9) A person claiming a violation of ORS 659A.142 and 659A.112 to 659A.139 may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, ORS 659A.103, ORS 659A.142 & ORS 659A.112 - ORS 659A.139

839-006-0244

Direct Threat

(1) Notwithstanding other provisions of these rules, an employer may refuse to employ a [*disabled*] person **with a disability** posing a direct threat to the health or safety of others. Direct threat means significant risk of substantial harm that cannot be eliminated or

reduced below the level of significant risk of substantial harm by reasonable accommodation.

(2) The determination that a [*disabled*] person **with a disability** poses a "direct threat" is based on an individualized assessment of the person's present ability to safely perform the essential functions of the position. The assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge or on the best available objective evidence. In making the determination, factors to be considered include:

- (a) The duration of risk;
- (b) The nature and severity of potential harm;
- (c) The likelihood that potential harm will occur; and
- (d) The imminence of potential harm.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, ORS 659A.142 & ORS 659A.112 - ORS 659A.139

839-006-0255

Effect of Law

Where a state or federal law or regulation prevents employment in a particular position of a person with a specified, medically verifiable impairment or specified severity of impairment, an employer is not required to employ a [*disabled*] person **with a disability** with such an impairment in that position. Nothing in this rule will be construed to permit denial of employment to such person in a position that is not subject to such law or regulations.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, ORS 659A.142 & ORS 659A.112 - ORS 659A.139

Discrimination against [*Disabled*] **Persons with Disabilities** by State Government

839-006-0270

Purpose and Scope

(1) ORS 659A.103 provides that it is the policy of the State of Oregon to guarantee [*disabled*] persons **with disabilities** the fullest possible participation in the social and economic life of the state, including participating in and receiving the benefits of the services, programs and activities of state government.

(2) ORS 659A.142(4) provides that it is an unlawful practice for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual [*is a disabled person*] **has a disability**.

(3) State government shall make reasonable modifications in services, programs or activities, including but not limited to policies and procedures, when the modifications are necessary for state government to comply with ORS 659A.142(4) unless state government can demonstrate that making the modifications would result in a fundamental alteration in the nature of the service, program, or activity or would result in undue financial or administrative burdens on state government. This will be determined on a case by case basis.

(4) ORS 659A.142(4) and these rules are not intended to:

(a) Create an independent entitlement to any service, program or activity of state government; or

(b) Require state government to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or would result in undue financial or administrative burdens, as determined on a case-by-case basis.

(5) In determining whether financial and administrative burdens are undue for purposes of ORS 659A.142(4) and these rules, all resources available for use in the funding and operation of the service, program, or activity will be considered.

(6) Nothing in ORS 659A.142(4) or these rules prohibits state government from providing benefits, services, or advantages to individuals with disabilities beyond those required by ORS 659A.142(4) or these rules.

(7) A person claiming a violation of ORS 659A.142(4) may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, 659A.103, 659A.142

839-006-0275

Definitions - Disability

(1) For purposes of ORS 659A.142(4) and these rules, "[*disabled person*]" **person with a disability** means an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(2) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(3) "Substantially limits" means:

(a) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(b) The impairment significantly restricts the condition, manner or duration under which a person can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(4) "Major life activity" includes, but is not limited to, self care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property. Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(5) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. "Has been misclassified as having" means the individual has been or is the subject of an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(6) "Is regarded" as having impairment means that the individual:

(a) Has a physical or mental impairment that does not substantially limit major life activities but is treated by state government as having such an impairment;

(b) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or

(c) Has none of the impairments described in subparagraphs (a) or (b) of this paragraph, but is treated by state government as having a mental or physical impairment that substantially limits a major life activity.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, 659A.103, 659A.142

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839-006-0290

Other Statutes, Regulations and Agencies Governing Access by or Discrimination
Against [*Disabled*] Persons **with Disabilities**

(1) Public transportation services, programs, and activities of public entities are subject to Title II of the federal Americans with Disabilities Act and regulated by the U.S. Department of Transportation. See 42 USC 12141 [*sec.*]§221 and 49 CFR [*sec.*] §37.

(2) Accessibility of government facilities is subject to Title II of the Americans with Disabilities Act, 42 USC [*sec.*]§12131. The U.S. Department of Justice regulates existing government facilities (28 CFR [*sec.*] §35.150) and new construction and alterations to government facilities (28 CFR [*sec.*] §35.151). The Oregon Department of Consumer and Business Services has jurisdiction over disability access to state and local government facilities in Oregon. See ORS 447.210 to 447.280 and administrative rules and standards adopted pursuant thereto.

(3) The federal Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any federal Executive agency or by the United States Postal Service. 29 USC [*sec.*] §794.

(4) Discrimination against [*disabled*] persons **with disabilities** in employment is subject to ORS 659A.100 to 139, 659A.142 and OAR 839-006-0200 to 0265.

(5) Discrimination against [*disabled*] persons **with disabilities** with respect to goods and services offered in a commercial manner by places of public accommodation is subject to ORS 659A.142 and OAR 839-006-0300 to 0335.

(6) Discrimination against [*disabled*] persons **with disabilities** in real property transactions is subject to ORS 659A.142, 659A.145 and OAR 839-006-0400 to 0425.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, 659A.103, 659A.142

Discrimination Against [*Disabled*] **Persons with Disabilities** by
Places of Public Accommodation

839-006-0300

Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee [*disabled*] persons **with disabilities** equal access to and enjoyment of places of public accommodation as defined in ORS 659A.142 and ORS 659A.400. No place of public accommodation may discriminate against a person by any distinction or restriction because that person [*is disabled*] **has a disability**.

(2) Discrimination on the basis of disability by places of public accommodation is an unlawful practice and the Civil Rights Division of the Bureau of Labor and Industries has the responsibility to protect [*disabled*] **the rights of persons with disabilities** [*rights*] through the enforcement of ORS 659A.142 and 659A.121. OAR 839-006-0300 to 839-006-0335 interpret these statutes and apply to all complaints and inquiries relating to these statutes received on or after the effective date of these rules.

(3) A person claiming a violation of ORS 659A.142 and 659A.121, pertaining to discrimination of [*disabled*] persons **with disabilities** by places of public accommodation, may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, ORS 659A.103, ORS 659A.142, ORS 659A.121 & ORS 659A.400

839-006-0330

Removal of Barriers to Goods and Services

(1) Places of public accommodation must remove physical and administrative barriers, if readily achievable (as defined in OAR 839-006-0310) in order to make offered goods and services accessible.

(2) If barrier removal is not readily achievable, places of public accommodation must take alternative steps to make offered goods and services accessible, such as providing goods and services at the door, sidewalk or curb; providing home delivery; retrieving merchandise from inaccessible shelves or racks; relocating activities to accessible locations; or relaxing administrative policies.

(3) Places of public accommodation may not impose charges on [*disabled*] persons **with disabilities** to recover costs of barrier removal.

(4) Removal of physical or administrative barriers that would result in significant difficulty or expense or in a fundamental alteration in the nature of the offered goods or services is not required and is to be determined on a case-by-case basis.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 & ORS 659A.142

839-006-0335

Direct Threat

(1) Notwithstanding other provisions of these rules, places of public accommodation may refuse to permit a [*disabled*] person **with a disability** to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation if the [*disabled*] person **with a disability** poses a direct threat to the health or safety of others. Direct threat means significant risk of substantial harm that cannot be eliminated or reduced below the level of significant risk of substantial harm by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

(2) In determining whether a [*disabled*] person **with a disability** poses a direct threat to the health or safety of others, places of public accommodation must make an individualized assessment, based on reasonable judgment that relies on the most current medical knowledge, or on the best available objective evidence, to ascertain:

- (a) The duration of risk;
- (b) The nature and severity of potential harm;
- (c) The likelihood that potential harm will occur;
- (d) The imminence of potential harm; and
- (e) Whether reasonable modifications of policies, practices or procedures will mitigate the risk.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 & ORS 659A.142