



PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

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FILING CAPTION: Amends Disability and Employment Rights rules to implement OL CH. 71 (2019)

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AMEND: 839-006-0206

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Implements changes made by HB 2589 (2019): Repeals rule that an employer may not be found to have engaged in an unlawful employment practice solely because the employer fails to provide reasonable accommodation to an employee or applicant with a disability arising out of transsexualism.

CHANGES TO RULE:

839-006-0206

Disability and Employment Rights: Reasonable Accommodation ¶¶

(1) "Reasonable Accommodation" means modifications or adjustments:¶¶

(a) To a job application process that enable a qualified applicant with a disability to be considered for the position;¶¶

(b) To the work environment, or to the manner or circumstances under which a position is customarily performed, that enable a qualified employee or applicant with a disability to perform the position's essential functions; or¶¶

(c) That enable a qualified employee or applicant with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without a disability.¶¶

(2) Reasonable accommodation of a qualified employee or applicant with a disability may include, but is not limited to:¶¶

(a) Making existing facilities used by employees readily accessible to and usable by an employee with a disability;¶¶

(b) Providing job restructuring, such as part-time or modified work schedules or reassignment to vacant positions;¶¶

(c) Acquiring or modifying equipment or devices;¶¶

(d) Appropriately adjusting or modifying examinations, training materials or policies;¶¶

(e) Providing qualified readers or interpreters; or¶¶

(f) Providing a leave of absence.¶¶

(3) Failure of an employer to make reasonable accommodation to the known physical or mental limitations of a qualified employee or applicant with a disability who requests reasonable accommodation or otherwise discloses

to the employer a disability that may require reasonable accommodation, will be found to be prohibited discrimination unless the employer can demonstrate that reasonable accommodation would impose an undue hardship on the business of the employer. Undue hardship is defined at ORS 659A.121.

(4) Once a qualified employee or applicant with a disability has requested reasonable accommodation or otherwise disclosed to the employer a disability that may require reasonable accommodation, the employer has a duty to initiate a meaningful interactive process with the employee or applicant to determine whether reasonable accommodation would allow the employee or applicant to perform the essential functions of a position held or sought.

(5) A meaningful interactive process is an informal process between a qualified employee or applicant with a disability and an employer in an effort to identify potential reasonable accommodation.

(a) An interactive process between an employee or applicant with a disability and an employer, that readily identifies mutually agreeable reasonable accommodation, is a meaningful interactive process.

(b) When reasonable accommodation is not readily identifiable, a meaningful interactive process identifies the nature of the limitations resulting from the disability, relevant to potential reasonable accommodation that could allow the employee or applicant to perform the essential functions of the job.

(6) A meaningful interactive process is a mandatory step in the reasonable accommodation of a qualified employee or applicant with a disability. Failure of an employer to engage in a meaningful interactive process with a qualified employee or applicant with a disability who has requested reasonable accommodation or has otherwise disclosed to the employer a disability that may require reasonable accommodation is a failure to reasonably accommodate in violation of ORS 659A.112(2)(e) and:

(a) The employer may be found liable for remedies described in OAR 839-003-0090(5) regardless of whether reasonable accommodation would have been possible; and

(b) The employer may also be found liable for any other remedies described in OAR 839-003-0090 if reasonable accommodation would have been possible.

(7) An employer is not required to provide a reasonable accommodation to an individual who meets only the criterion of being regarded as having a physical or mental impairment that substantially limits one or more major life activities.

~~(8) An employer may not be found to have engaged in an unlawful employment practice solely because the employer fails to provide reasonable accommodation to an employee or applicant with a disability arising out of transsexualism. However, an employer may not:~~

~~(a) Refuse to hire an applicant or promote an employee;~~

~~(b) Bar or discharge an employee or applicant from employment; or~~

~~(c) Discriminate in compensation, terms, conditions or privileges of employment because an employee or applicant is transsexual when the employee or applicant is otherwise qualified.~~

Statutory/Other Authority: ORS 659A.805

Statutes/Other Implemented: OL CH. 71, 2019, ORS 659A.103 - 659A.142