

# Oregon Enhances Whistleblower Protections for Workplace Safety Complaints

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On June 15, 2021, Governor Kate Brown signed into law [Senate Bill \(SB\) 483](#), which amends the [Oregon Safe Employment Act](#) to increase whistleblower protections for workplace safety complaints. The amendments to the act took effect upon its passage.

The Oregon Safe Employment Act was enacted “to ensure as far as possible safe and healthful working conditions for every working person in Oregon” by setting forth rules and procedures for workplace safety. Under the act, “[e]very employee should notify the employer” or the state Department of Consumer and Business Services “of any violation of law, regulation or standard pertaining to safety and health in the place of employment.”

It is unlawful for employers to discriminate or retaliate against “any employee or prospective employee” who with respect to certain practices forbidden by the act:

- opposed those practices;
- “[m]ade any complaint or instituted or caused to be instituted any proceeding under or related to” those practices or “testified or [was] about to testify in any such proceeding”;
- “[e]xercised on behalf of the employee, prospective employee or others any right afforded by” certain portions of the act; or
- “[i]n good faith reported an assault that occurred on the premises of a health care employer as defined in [Oregon Revised Statutes] 654.412 or in the home of a patient receiving home health care services.”

Senate Bill 483 amends the act to add a “rebuttable presumption” of discrimination or retaliation if an employee or prospective employee experiences an adverse employment action within 60 days after engaging in protected activity. Employers “may rebut the presumption ... by a demonstration of a preponderance of the evidence.” On the face of the statute, the rebuttable presumption would appear to apply even when an employee or prospective employee engaged in protected activity anonymously, although an employer likely would be able to point to the anonymous nature of a

complaint to meet its burden in rebutting the presumption.

Senate Bill 483 does not modify existing law with respect to adverse actions occurring more than 60 days after protected activity. In those circumstances, the burden remains on the employee or prospective employee to establish a causal link between an adverse action and protected activity.

It was already relatively easy under Oregon law for an employee to create a question of fact for a jury as to an employer's retaliatory intent when an adverse action followed protected activity closely in time. This amendment to the act will shift the burden to employers to show that adverse actions were based on legitimate, nonretaliatory reasons. Employers that have not already done so may want to consider expanding their anti-retaliation policies to cover workplace safety complaints. With an eye toward meeting their new burden, employers may also want to consider evaluating the timing of disciplinary actions and maintaining [strong documentation](#) in support of any disciplinary action taken after an individual has engaged in protected activity.

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