APPENDIX TABLE OF CONTENTS

Page

Appendix A: United States Court of Appeals for the Ninth Circuit, Memorandum, May 19, 2023 .....1a

Appendix B: United States District Court for the District of Oregon, Order, November 5, 2021.....11a

Appendix C: United States District Court for the District of Oregon, Amended Judgment, November 5, 2021.....28a

Appendix D: United States Court of Appeals for the Ninth Circuit, Order, July 18, 2023.....29a

Appendix E: Rules Provisions Involved.....30a

Fed. R. Civ. P 15.....30a

Fed. R. Civ. P. 16 .....33a

Fed. R. Civ. P. 50 .....38a

D. Or. R. § 15.430.....41a

D. Or. R. § 15.445.....42a

D. Or. R. § 659A.001 .....43a

D. Or. R. § 659A.199 .....46a

Utah Code § 67-21-2 .....47a

Utah Code § 67-21-3 .....50a

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUZANNE IVIE, Plaintiff-Appellant, v. ASTRAZENECA PHARMACEUTICALS LP, Defendant-Appellee.	No. 21-35978 D.C. No. 3:19-cv-01657-JR MEMORANDUM* (Filed May 19, 2023)

Appeal from the United States District Court
for the District of Oregon
Jolie A. Russo, Magistrate Judge, Presiding

Argued and Submitted November 8, 2022
Portland, Oregon

Before: CLIFTON and BUMATAY, Circuit Judges, and BAKER,** International Trade Judge. Dissent by Judge BUMATAY.

Plaintiff-Appellant Suzanne Ivie appeals the district court's order granting the Federal Rule of Civil Procedure 50(b) renewed motion for judgment as a matter of law ("JMOL") filed by Defendant-Appellee

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable M. Miller Baker, Judge for the United States Court of International Trade, sitting by designation.

AstraZeneca Pharmaceuticals, LP, vacating a jury verdict for Ivie, and ruling that she had failed to present factual evidence establishing enough of a connection to Oregon for the state's whistleblower statute, ORS § 659A.199, to apply to her claims. We have appellate jurisdiction under 28 U.S.C. § 1291 and we reverse.

This case presents a straightforward matter of civil procedure. Ivie asserts that AstraZeneca forfeited or waived its "Oregon-nexus argument" by failing to raise it in the parties' joint pretrial order or at any time prior to its initial JMOL motion brought at the close of Ivie's case.[1] AstraZeneca responds that it was not obligated to raise the defense in the pretrial order because a defendant need not include "negative defenses" as to which the plaintiff has the burden of proof and because the pretrial order included the general theory that "AstraZeneca denies that Ivie is entitled to any legal or equitable relief."

1. We agree with Ivie. District of Oregon Local Civil Rule 16-5, "Proposed Pretrial Order," requires the parties to submit "a proposed order to frame the issues for trial" that includes, *inter alia*, "[a] statement of each claim and defense to that claim with the contentions of the parties. Contentions . . . will be sufficient to frame the issues presented by each claim and defense." D. Or. Loc. R. 16-5(b)(4). "The pretrial order amends the pleadings, and it, and any later order of the Court[,] will control the subsequent course of the action or

[1] We do not resolve whether AstraZeneca's failure was a forfeiture or a waiver.

proceedings as provided in Fed. R. Civ. P. 16." *Id.* 16-5(d); *see also* Fed. R. Civ. P. 16(d) (providing that pretrial order "controls the course of the action unless the court modifies it"), 16(e) ("The court may modify the [pretrial] order issued after a final pretrial conference only to avoid manifest injustice.").

We have repeatedly emphasized that "a party may not 'offer evidence or advance theories at the trial which are not included in the [pretrial] order or which contradict its terms.'" *El-Hakem v. BJY Inc.*, 415 F.3d 1068, 1077 (9th Cir. 2005)[2] (quoting *United States v. First Nat'l Bank of Circle*, 652 F.2d 882, 886 (9th Cir. 1981)). This requirement extends to "any and all theories," *id.*, which means that "[a] defendant must enumerate its defenses in a pretrial order even if the plaintiff has the burden of proof," *id.* (citing *S. Cal. Retail Clerks Union v. Bjorklund*, 728 F.2d 1262, 1264 (9th Cir. 1984)).

AstraZeneca's frank admission that it failed to include the negative "Oregon-nexus" defense in the pretrial order resolves whether its Rule 50(b) motion raised a theory outside of the scope of that order. While AstraZeneca contends, citing *ElHakem*, that its

---

[2] The dissent's reliance on *El-Hakem* is unpersuasive. *El-Hakem* specifically explains that the implicit modification was acceptable because no party was prejudiced. *Id.* The modification there raised an "identical" defense that was already at issue in the case. *Id.* *El-Hakem* expressly distinguished that situation from a case—like the one before us—where a party "fail[s] to include *any* reference to the [new issue] in the pretrial order." *Id.* (emphasis in original).

general denial was sufficient to alert Ivie that it would assert the "Oregon-nexus" defense such that she should prepare for it, a general denial does not alert anyone to anything beyond the utterly broad (and obvious) theory that the defendant believes the plaintiff should lose, and AstraZeneca simply ignores *El-Hakem*'s requirement that negative defenses must appear in the pretrial order to avoid forfeiture or waiver.[3]

2. AstraZeneca defends the district court's JMOL order on the alternative ground that the court implicitly exercised its discretion to modify the final pretrial order to "prevent manifest injustice." Fed. R. Civ. P. 16(c). Even accepting that characterization of the district court's JMOL order, Ivie responds that waiting until the grant of JMOL to modify was too late because it prejudiced her by denying her any opportunity to respond to the new defense.

We agree. Our cases teach that a district court must "first" modify a pretrial order before entertaining the presentation of theories outside the scope of that

---

[3] AstraZeneca's citation of *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002), is unavailing. In *Zivkovic* we rejected a plaintiff's argument that a defendant waived a "negative defense" by failing to include it in the answer, but we did not address the issue of including such defenses in the pretrial order. AstraZeneca's assertion that *Zikovic* applies "by extension" to a pretrial order is simply unpersuasive, as is its further citation of two district court cases referring to "general denials" as being sufficient at the pleadings stage. A case that advances to entry of a pretrial order has advanced far beyond the pleadings stage—as, indeed, the district court's local rule recognizes by stating that the pretrial order "amends the pleadings."

order. *First Nat'l Bank of Circle*, 652 F.2d at 886–87. "[P]articular evidence or theories which are not at least implicitly included in the [pretrial] order are barred unless the order is *first* modified to prevent manifest injustice." *Id.* (cleaned up and emphasis added) (citing Fed. R. Civ. P. 16). Here, even if the district court could be said to have implicitly modified the pretrial order, it did not do so "before granting" judgment as a matter of law to AstraZeneca. *Id.* at 887. Insofar as the court implicitly modified the pretrial order, it abused its discretion by doing so *after* trial and denying Ivie any opportunity to alter her trial presentation based on that retroactive modification. Denying Ivie that opportunity prejudiced her.

3. AstraZeneca further defends the judgment below on the additional alternative ground that the issue of geographic connection to Oregon was tried by consent under Federal Rule of Civil Procedure 15(b). The company argues that because its counsel mentioned that the events at issue took place outside the Portland area and asked witnesses about where relevant events occurred, Ivie was somehow on notice that AstraZeneca interjected the "Oregon-nexus" defense and that she consented to it by failing to object. This falls far short of what we require to demonstrate amendment of pleadings by implied consent at trial. A party asserting such implied consent "must demonstrate that [the adverse party] understood evidence had been introduced to prove [the new issue], *and that [the new issue] had been directly addressed*, not merely inferentially raised by incidental evidence." *LaLonde v. Davis*,

879 F.2d 665, 667 (9th Cir. 1989) (cleaned up and emphasis added). Neither party directly addressed the geographic-nexus issue at trial.

4. Falling back, AstraZeneca's last-ditch defense of the judgment below is to assert the plain error doctrine, the district court's alternative ground for its decision. "Plain error is a rare species in civil litigation, encompassing only those errors that reach the pinnacle of fault. . . ." *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1193 (9th Cir. 2002) (quoting *Smith v. Kmart Corp.*, 177 F.3d 19, 26 (1st Cir. 1999)). Among other requirements, plain error review applies only when "needed to prevent a miscarriage of justice, meaning that the error 'seriously impaired the fairness, integrity, or public reputation of judicial proceedings.'" *C.B. v. City of Sonora*, 769 F.3d 1005, 1019 (9th Cir. 2014) (quoting *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 36 (1st Cir. 2006)).

Here, even assuming the company's failure to include the geographic-nexus defense in the pretrial order was a mere forfeiture subject to plain error review rather than a waiver not subject to such review, AstraZeneca does not attempt to show that merely applying the wrong state's law "seriously impaired the fairness, integrity, or public reputation of judicial proceedings." *Id.* Choice-of-law errors are (regrettably) a routine occurrence in civil litigation, and we will be very busy indeed on plain error review if we get into the business of overturning jury verdicts based on such errors.

* * *

We reverse the district court's order granting AstraZeneca's renewed motion for judgment as a matter of law, and we remand with instructions for the court to consider in the first instance whether the company's motion for new trial should be granted on the ground that the damages award was excessive.

REVERSED AND REMANDED.

Suzanne Ivie v. AstraZeneca Pharmaceuticals LP,
No 21-35978 Bumatay, J., dissenting:

I respectfully dissent from the majority's decision. I would have left the decision on whether AstraZeneca forfeited or waived its argument based on the presumption against the extraterritoriality of Oregon law in the sound hands of the district court.

While a pretrial order controls the course of litigation between parties, the pretrial order should "be liberally construed" to allow theories at trial that are at least implicitly included in the order. *United States v. First Nat. Bank of Circle*, 652 F.2d 882, 886 (9th Cir. 1981). A defense is preserved if the pretrial order makes "*any* reference to the defense in the pretrial order." *El-Hakem v. BJY Inc.*, 415 F.3d 1068, 1077 (9th Cir. 2005). Even more to the point, in its discretion, the district court may modify a pretrial order "to prevent manifest injustice." Fed. R. Civ. P. 16(e). The district court may "implicitly exercise[]" this discretion by allowing a party to advance theories not contained in the pretrial order. *El-Hakem*, 415 F.3d at 1077.

In this case, the pretrial order did not explicitly identify the lack of nexus to Oregon as a defense to the Oregon Whistleblower claim. But the district court construed AstraZeneca's argument as encompassed in the company's Answer, which raised the "failure to state a claim upon which relief can be granted" as an affirmative defense. AstraZeneca also asserted in the pretrial order that "Ivie is [not] entitled to any legal or equitable relief" on her Oregon Whistleblower claim. Based on AstraZeneca's pleadings, the district court concluded that Ivie had "adequate notice" of the defense—presumably meaning that Ivie would not be prejudiced by AstraZeneca's raising of the defense in the Rule 50(b) motion. That doesn't seem wrong—Ivie hasn't proffered any additional evidence that she would have admitted at trial if she had more express notice of the extraterritorial defense. The district court's ruling then seems to fall within its discretion. *El-Hakem*, 415 F.3d at 1077 ("In the absence of any prejudice to [Plaintiff], we cannot say that the district court abused its discretion.").

Even if the extraterritorial defense were not adequately encompassed in the pretrial order, we should have construed the district court's ruling as implicitly modifying the pretrial order. Indeed, the district court expressly found that denying AstraZeneca its defense would be a "manifest miscarriage of justice." *See* Fed. R. Civ. P. 16(e) (permitting amendment of the pretrial order "to prevent manifest injustice"). So, by permitting AstraZeneca to argue the extraterritoriality defense in its Rule 50(b) motion, the district court

appropriately—if implicitly—exercised its discretion to amend the pretrial order under Rule 16(e). *See El-Hakem*, 415 F.3d at 1077.

The majority asserts that following *El-Hakem* here is "unpersuasive" because no party was prejudiced in that case. But the majority identifies no prejudice to Ivie. On the other hand, as the district court found, AstraZeneca would pay a high price by applying Oregon law improperly. So I'm not sure why *El-Hakem* doesn't apply here. The majority also asserts that the district court needed to "implicitly" modify the pretrial order *before* granting the Rule 50(b) motion. Usually, when something happens "implicitly," it is not expressly said. *See* Oxford English Dictionary Online (defining "implicit" as "[i]mplied though not plainly expressed"). So it is immaterial that the district court didn't first announce it was "implicitly" amending the pretrial order before turning to the Rule 50(b) motion.

On the merits, the district court got it right. As the district court observed, "Oregon courts have consistently held that statutes must be construed to prohibit their extraterritorial application unless the language of the statute shows Oregon's Legislature intends them to have a broader scope." *Ivie v. AstraZeneca Pharmaceuticals LP*, 2021 WL 5167283, at *3 (D. Or. Nov. 5, 2021) (citing *State v. Meyer*, 183 Or. App. 536, 544–45 (2002)). The Supreme Court of Oregon said the same thing long ago: "No legislation is presumed to be intended to operate outside of the jurisdiction of the state enacting it." *Swift & Co. v. Peterson*, 233 P.2d 216, 228 (Or. 1951). "In fact, a contrary

presumption prevails and statutes are generally so construed." *Id.* And I agree with the district court that Ivie has failed to rebut this presumption and has failed to present sufficient evidence of nexus to Oregon to sustain the Oregon Whistleblower verdict.

I respectfully dissent.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

SUZANNE IVIE, Plaintiff, v. ASTRAZENECA PHARMACEUTICALS, LP, Defendant.	Case No. 3:19-cv-01657-JR OPINION & ORDER (Filed Nov. 5, 2021)

RUSSO, Magistrate Judge:

As "master of her complaint" a plaintiff inevitably makes strategic choices about what claims to bring against a defendant, and where to file her case. Here, plaintiff Suzanne Ivie chose to sue defendant Astrazeneca Pharmaceuticals, LP, in federal court in the District of Oregon, and chose to allege, *inter alia*, that Astrazeneca had violated Oregon's Whistleblower Protection Law, ORS § 659A.199(1). After a six-day trial, the jury ruled for the plaintiff on her state law whistleblower claim and awarded significant damages. Astrazeneca then renewed its motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b), arguing that plaintiff failed to present the jury with the threshold, necessary factual connections with Oregon for the whistleblower protection law to apply to this case or these parties. That motion is now before the Court. For the following reasons the Court finds plaintiff failed to present facts required for the jury to

find for plaintiff on the whistleblower protection claim. The Court therefore grants defendant's motion, vacates the judgment, and enters judgment in favor of the defendant.

LEGAL STANDARD

Motions for judgment as a matter of law are governed by Federal Rule of Civil Procedure 50. Rule 50(a) governs pre-verdict motions, and Rule 50(b) applies to post-verdict motions. In the Ninth Circuit, a motion for judgment as a matter of law pursuant to Rule 50(b) is appropriate when the evidence permits only one reasonable conclusion, and that conclusion is contrary to that of the jury. *Martin v. Cal. Dep't of Veterans Affairs*, 560 F.3d 1042, 1046 (9th Cir. 2009). Thus, a party cannot properly "raise arguments in its post-trial motion for judgment as a matter of law under Rule 50(b) that it did not raise in its pre-verdict Rule 50(a) motion." *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003). All evidence must be viewed in the light most favorable to the nonmoving party, and the court must draw all reasonable inferences in that party's favor. *E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009). The Court must also "disregard all evidence favorable to the moving party that the jury is not required to believe." *FiftySix Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1069 (9th Cir. 2015). "[I]n entertaining a motion for judgment as a matter of law, the court . . . may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*,

530 U.S. 133, 150 (2000). A jury verdict "must be upheld if it is supported by substantial evidence . . . even if it is also possible to draw a contrary conclusion." *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002).

DISCUSSION

The Court does not question a jury's verdict lightly. The bar to relief under Rule 50 is high, and for good reason: the jury trial right is protected by the Seventh Amendment and a core element of both the integrity of our judicial system[1] and the vibrancy of our political society.[2] But when plaintiff elected to file this claim in Oregon, alleging violations of Oregon's employment statutes, she erected for herself the hurdle of proving that defendant's purportedly unlawful acts were subject to Oregon's legislative jurisdiction. On review, this is a purely legal question, and the Court need not and does not question any of the jury's factual findings. For the following reasons, AstraZeneca's Rule 50(b) motion is granted. The judgment is vacated, and judgment is awarded in defendant's favor.

I. Defendant Did Not Waive Its Rule 50(b) Arguments

Plaintiff first argues that AstraZeneca waived the argument that Oregon's whistleblower protection statute cannot apply because it failed to plead it among its

---

[1] The Federalist No. 83, pp. 569-70 (J. Cooke ed. 1961).

[2] De Tocqueville, Democracy in America, Vol. 1, at 260-62.

affirmative defenses. Plaintiff cites Federal Rule of Civil Procedure 8(c)(1), which provides that "[i]n responding to a pleading, a party must affirmatively state any avoidance or affirmative defense." Without pointing to any supporting precedent, plaintiff suggests that defendant's Rule 50(b) argument is an "avoidance" that must be pled in an Answer, or else it is waived. The Court disagrees.

Although plaintiff attempts to characterize AstraZeneca's Rule 50(b) motion as raising an "avoidance," the Court finds it more akin to the defense that plaintiff failed to state a claim upon which relief could be granted. AstraZeneca timely pled "failure to state a claim" as an affirmative defense in its Answer. ECF 36 ¶116. And again, in its Rule 50(a) and (b) motions, Astrazeneca argues that plaintiff failed to prove the "factual nexus between Oregon and an alleged discriminatory or retaliatory act," which is required to state a claim under Oregon's Whistleblower Protection Law. *See* ECF 134 at 3 (50(a)); ECF 152 at 11 (50(b)). Indeed, plaintiff had the burden to establish her entitlement to relief under Oregon's Whistleblower Protection Law at trial: "the ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005)"); *Nayab v. CapitalOne Bank (USA), N.A.*, 942 F.3d 480, 494 (9th Cir. 2019). Because plaintiff had more than adequate notice that AstraZeneca would raise a defense that plaintiff failed to allege a basis for liability under Oregon's Whistleblower Protection Law,

plaintiff cannot now cry foul that AstraZeneca renews this defense at the Rule 50 stage.[3]

Nor did AstraZeneca waive the conflict of laws or constitutional arguments it raises for the first time in its Rule 50(b) motion. Plaintiff argues that AstraZeneca did not raise, and therefore did not properly preserve, the arguments that the federal Constitution and Oregon's choice of law rules support dismissal in its Rule 50(a) motion. Generally speaking, plaintiff is right—the court may only consider an issue raised in a Rule 50(b) motion if that same issue was previously raised in a Rule 50(a) motion. *See Cleavenger v. Univ. of Oregon*, No. CV 13-1908-DOC, 2016 WL 814810, at *7 (D. Or. Feb. 29, 2016). But the Ninth Circuit is clear that a party can argue the "logical extension[s]" of its Rule 50(a) arguments on a renewed 50(b) motion. *See E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951, 962 (9th Cir. 2009). Here, defendant renews its argument

[3] Plaintiff also argues AstraZeneca waived its defense because it was not specifically addressed in the Court's Pretrial Order. Plaintiff is incorrect. As highlighted above, AstraZeneca identified "failure to state a claim" in its Answer and in the Pretrial Order. *See* ECF 36, 66. Even if this were not enough, the Ninth Circuit has held an argument like AstraZeneca's—that plaintiff failed to bear her burden of proof on a claim—does not need to be raised as an affirmative defense (or by extension, in a pretrial order) to be preserved. *See Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002) ("A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense."). Courts within this District have likewise found that such "negative defenses typically do not have to be pled to avoid waiver." *Adidas Am., Inc. v. Aviator Nation, Inc.*, No. 3:19-CV-02049-HZ, 2021 WL 91623 at *3 (D. Or. Jan. 10, 2021).

that Oregon's state laws do not reach its conduct proven at trial and adds additional reasons for it. These additional reasons address the same legal issue—failure to prove sufficient factual nexus between Oregon and plaintiff's claim—and rely on the same basic premise of the Rule 50(a) submission: that plaintiff failed to prove facts necessary to support Oregon's jurisdiction. Because these constitutional and choice of law arguments are natural outgrowths of AstraZeneca's Rule 50(a) motion, the Court finds they are appropriate to consider here.[4]

II. To Uphold the Jury's Verdict Would Violate Oregon's State Law Presumption Against Extraterritoriality

Plaintiff chose to file this case in the District of Oregon, alleging, among other things, that defendant violated Oregon's Whistleblower Protection law. In doing so, plaintiff opted to be bound by the substantive state law of Oregon, including Oregon's common law and statutory presumption against extraterritorial effect of its employment statutes. Because plaintiff

[4] Even if AstraZeneca had not sufficiently raised its arguments that plaintiff was required to affirmatively prove that she was entitled to relief under the Oregon Whistleblower Protection Law, this Court would still review its arguments under the plain error standard. *Go Daddy*, 581 F.3d at 961-62. Under that standard, the Court may "review[s] the jury's verdict for plain error" and can reverse where that error "would result in a manifest miscarriage of justice." *Id.* It would be plain error to award judgment under ORS § 659A.199(1) and apply the wrong state's law, so the Court's analysis is the same no matter which standard applies.

failed to overcome this presumption, and to provide the jury with a basis to find Oregon's Whistleblower Protection Law applied to these facts and these parties, the Court must vacate the judgment under Rule 50.

Oregon courts have consistently held that statutes must be construed to prohibit their extraterritorial application unless the language of the statute shows Oregon's Legislature intends them to have a broader scope. *State v. Meyer*, 183 Or. App. 536, 544-45 (2002). The Oregon Supreme Court has held that "[n]o legislation is presumed to be intended to operate outside of the jurisdiction of the state enacting it. In fact, a contrary presumption prevails, and statutes are generally so construed." *Swift & Co. v. Peterson*, 192 Or. 97, 121 (1951) (citing *Sandberg v. McDonald*, 248 U.S. 185 (1918)); *see also State ex rel Juvenile Dept. v. Casteel*, 18 Or. App. 70, 75 (1974) ("It is axiomatic that the laws of a state have no extraterritorial effect.").[5]

The Court will not depart from Oregon's default rule that its statutes ought not apply to conduct or people beyond its borders absent language about

---

[5] Recent scholarship has suggested that Oregon's presumption against extraterritoriality of its state laws is "unclear" despite the clear and undisturbed precedent of *Swift & Co.* *See* William S. Dodge, *Presumptions Against Extraterritoriality in State Law*, 53 U.C. Davis L. Rev. 1389, 1449 (2020). Plaintiff has not identified any case or statute that calls *Swift & Co.*'s rule into question, and this Court has not found any such precedent on its own initiative. The Court assumes that the presumption against extraterritoriality announced in *Swift & Co.* remains binding precedent in the State of Oregon, and therefore follows its holding in deciding this question.

extraterritorial effect. This is the rule of *Swift & Co.*, where the Court held that when a statute is "silent" as to its application to out-of-state conduct, that "demonstrate(es) that the legislature had no intention to reach" conduct out-of-state, "well knowing that it had neither jurisdiction nor power to compel" out-of-state actions. 192 Or. at 121-22; *see also* Meyer, 183 Or. App. at 547. Here, nothing in Oregon's Whistleblower Protection Law discloses any intent for the law to operate outside of Oregon:

> It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions, or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule, or regulation.

ORS § 659A.199(1). The statute has no language to suggest it should (or could) apply outside Oregon. Without language about geographic scope or any other structural indication that ORS § 659A.199(1) should apply outside Oregon's borders, the Court therefore presumes it has no effect on conduct or to individuals outside of the state.

After a six-day trial, plaintiff failed to introduce any evidence that the facts or individuals underlying its whistleblower protection claim connect to Oregon. Plaintiff's complaint alleges that she is a Utah

resident, and she did not dispute at trial that she lived in Utah throughout the time she was employed by AstraZeneca. *See* ECF No. 35, ¶ 5, Trial Tr. Day 4, 145:7-151. When plaintiff met with supervisors and coworkers, those meetings normally occurred in Utah; none occurred in Oregon. *Id.*, 199:24-200:05. To the extent plaintiff proved her work had any central point, that point was Utah. As plaintiff testified, she took most work-related calls from her home office in Utah, including those involving Human Resources about her complaints of off-label marketing, performance, and termination. *Id.*, 200:6-17.

Crucially, none of the facts relevant to plaintiff's whistleblower claim even allegedly occurred while she was working in Oregon, or even occurred in Oregon. The district meetings where plaintiff alleged a discussion of unethical sales tactics occurred in Utah. *Id.*, 199:24-200:05. AstraZeneca's Human Resources and Compliance departments interviewed plaintiff about her ethics complaints from places other than Oregon. Trial Tr., Day 2, 189:9-12. All decisions concerning plaintiff's termination were made in Delaware, Texas, or Idaho, and communicated to plaintiff in Utah. Trial Tr., Day 2, 88:17-21; Day 4, 200:6-17. Similarly, no one at AstraZeneca relevant to plaintiff's ethics hotline complaint, or her termination, worked from Oregon. Ivie's supervisor Stephanie Dinunzio, whom plaintiff alleged in her ethics complaints had encouraged off-label sales tactics, worked from Boise, Idaho. Trial Tr., Day 3, 126:21-22. Matthew Gray, DiNunzio's manager, who made the termination decision, worked in

Delaware. *Id.*, 154:21-25. Amy Welch, the Human Resources Business Partner, worked in Delaware. Trial Tr., Day 5, 123:10-11. Former Senior Employment Practices Partner Karen Belknap, who led the investigation into the HR aspects of plaintiff's ethics hotline complaint, worked out of her home in Dallas, Texas. Trial Tr., Day 2, 88:17-21. Senior Assurance Partner Mike Pomponi who led the investigation into the Compliance aspects of plaintiff's complaint, worked in Delaware. *Id.*, 88:15-21. Senior Employee Relations Partner Dawn Ceaser worked in Delaware. *Id.*, 146:8-9. The harder the Court looked at the evidence presented to the jury the more difficult it was to find any connection to Oregon at all; all the individuals surrounding plaintiff's allegation of whistleblower retaliation worked elsewhere, plaintiff worked in Utah, and all the relevant complaints and decisions relevant to the whistleblower claim occurred outside of Oregon.

Plaintiff does not contest this, but instead argues that because her territory included part of Oregon, she was an "employee" as defined by Oregon's employment statutes and should be covered by Oregon's Whistleblower Protection Law. ECF 136 at 5. This is weak tea, and not enough to make the required connection between Oregon and the facts of this case for ORS § 659A.199(1) to apply. Simply performing an unspecified amount of work in Oregon does not support the extraterritorial application of Oregon law to the entirety of her employment with AstraZeneca, or to the claim plaintiff alleges here. In each case the parties cite where a plaintiff-"employee" is protected by one of

Oregon's employment statutes, that plaintiff either lives in Oregon or performs relevant work underlying her claim in Oregon. *See* ECF 152 at 9-11, ECF 160 at 19-21. At most, plaintiff presented evidence at trial that she oversaw others' conduct in Oregon, and even then, it was only a fractional part of her work that had nothing whatsoever to do with her whistleblower protection claim. As detailed above, all the relevant acts related to her complaints and AstraZeneca's alleged retaliation occurred outside Oregon. Because Oregon's rules of statutory interpretation dictate that its laws do not apply to conduct so centered outside the state, the Court finds plaintiff failed to prove facts to support her Oregon Whistleblower Protection law claim at trial, and therefore grants defendant's motion on this basis.

III. To Uphold the Jury's Verdict Would Violate the Fourteenth Amendment

Even if Oregon state law did not prevent this Court from applying Oregon's whistleblower protection law to the evidence plaintiff presented at trial, the federal constitution likewise puts the facts of this case outside Oregon's legislative jurisdiction. When interpreting the territorial reach of Oregon's law, the Court must follow the interpretive guidance that "when one plausible construction of a statute is constitutional and another plausible construction of a statute is unconstitutional, courts will assume that the legislature intended the constitutional meaning." *State v. Kitzman*, 323 Or. 589, 602 (1996), *Jones v. United States*, 526 U.S.

227, 239 (1999). The Court must therefore construe Oregon's statute not to extend to the facts of this case because to do so would violate the Due Process Clause of the Fourteenth Amendment.

In order to apply its law, a state must have "significant contacts" to the transaction or event at issue such that application of that state's law is not "arbitrary nor fundamentally unfair." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985). Specifically, "[t]he Due Process Clause prohibits the application of state law which is only casually or slightly related to the litigation." *Phillips*, 472 U.S. at 819. Applying that principle, the Ninth Circuit in *Sullivan v. Oracle Corp.*, 662 F.3d 1265, 1271 (9th Cir. 2011), held that the California Labor Code could apply to nonresident employees of a California corporation because the defendant's headquarters were in California, the decision to misclassify employees was made in California, and the unpaid overtime pay at issue was for "work performed in California." 662 F.3d at 1271. That is, in *Sullivan*, defendant had myriad contacts that justified the state exercising its jurisdiction without offending the Due Process Clause. No similar factors are present in this case. AstraZeneca did not make any relevant decisions about plaintiff's employment in Oregon and none of the events concerning plaintiff's employment and discharge occurred in Oregon. Interpreting Oregon's law to apply to conduct beyond its borders, to an employee that did not reside in the state, and who did not perform any of the work relevant to the lawsuit in the state would violate the Due Process Clause. The Court

finds this an additional basis to grant defendant's motion for judgment as a matter of law on plaintiff's Oregon Whistleblower protection law claim.

IV. To Uphold the Jury's Verdict Would Violate Oregon's Choice of Law Rules

Finally, the Court finds that Oregon's whistleblower protection law does not apply to the facts presented at trial under Oregon's choice of law rules. In determining whether a state statute applies to a cross-border case, analyzing the scope of the statute is often just the first step. If the law of another jurisdiction is also applicable, the second step must be to determine which law should be given priority by applying the conflicts rules of the forum. Plaintiff's complaint need not bring a claim under the law of another jurisdiction for the Court to engage in this analysis; Oregon law requires it. ORS § 15.445. And, since the Court must follow Oregon's choice of law rules when interpreting ORS 659A, it does so, and finds that this provides an additional basis to grant defendant's motion for judgment as a matter of law.

Plaintiff counters that the Court should not perform a conflict analysis in this case. As support, plaintiff points to *Erwin v. Thomas*, suggesting that where there is no actual conflict between Oregon's law or the laws of another state, or where no state has a significant interest, the Court should apply the law of the forum state (i.e., Oregon). But despite plaintiff's conclusory argument that no other state has an interest

in this litigation, AstraZeneca established that there is a conflict between the whistleblower laws of Utah and Oregon. ECF 152 at 16-18. Notably, the presence of Oregon defendants in *Erwin* makes application of Oregon law to them fair and reasonable. Here, where there are no Oregon-resident parties present, and all relevant events occurred outside of Oregon, the same cannot be said. Furthermore, the wisdom of applying the forum state's law as a fallback principle in the absence of a conflict in the different bodies of state law available for possible application is irrelevant here because a substantive conflict exists, so any fallback rule drops out of contention as the pathway to a correct outcome.

Furthermore, Oregon has codified choice of law rules that override the precodification precedent plaintiff cites in an effort to avoid the conflict of law analysis.[6] First, looking to ORS § 15.430, Oregon law applies in actions "between an employer and an employee who is primarily employed in Oregon that arise out of an injury that occurs in Oregon." ORS § 15.430(6). Plaintiff did not present facts to the jury that she was "primarily employed in Oregon" nor did she show her case "arise[s] out of an injury that occur[red] in Oregon." Had Oregon intended for its employment laws to cover employees who "partially" work in Oregon or to cover

[6] In acknowledging this development, the Oregon Supreme Court recently said of Erwin that it reflects a fallback mentality that, when material differences in the laws of two states are not shown, the preference is to apply the law of the forum. *Portfolio Recovery Assocs., LLC v. Sanders*, 366 Or. 355, 372 (2020).

injuries that occurred outside of Oregon, the legislature would not have drafted this choice of law statute so narrowly. The Court therefore finds plaintiff failed to present facts to the jury that would meet the prerequisites of ORS § 15.430, and that she therefore failed to carry her burden to show the Oregon statute should apply to defendant's actions or this case. This is yet another independent, sufficient reason for the Court to grant defendant's motion.

Even if section 15.430 did not bar plaintiff's whistleblower claim, Oregon's choice of law rules further cement that Utah, rather than Oregon's laws should apply to this case. Where the laws of more than one jurisdiction arguably apply to an issue, a federal court entertaining a state law claim applies the choice-of-law rules of the state where it is located. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Under Oregon rules, the first consideration is whether there is an actual conflict between Oregon law and that of another state. *Fields v. Legacy Health Sys.*, 413 F.3d 943, 951 (9th Cir. 2005) (citing *Portland Trailer & Equip., Inc. v. A–1 Freeman Moving & Storage, Inc.*, 182 Or. App. 347 (Or. Ct. App. 2002). AstraZeneca identified a conflict with Utah law because Utah has no antiretaliation or whistleblower protection statute applicable to private-sector employers. ECF 152 at 18 (citing Utah Code §§ 67-21-2(2) and 67-21-3). Plaintiff does not dispute the obvious conflict between Utah and Oregon law. In short, because Utah law is different and less favorable to plaintiff, she took a calculated risk by bringing her claims in Oregon, based on Oregon

law. Having taken that risk, she must now accept the consequence of having presented no Oregon evidence to prove her Oregon claim.

The only way plaintiff could avoid the application of Utah (or even Delaware, Texas, or Idaho) law here is to affirmatively prove that Oregon law is the most appropriate law to apply under the general and residual approach to conflicts of laws found in ORS section 15.445. *Amos v. Brew Dr. Kombucha, LLC*, No. 3:19-cv-01663-JR, 2020 WL 9889190, at *2 (D. Or. Mar. 23, 2020) (applying Idaho law where plaintiff failed to provide any argument about Idaho law in response to challenge of plaintiff's choice of Oregon law); ORS § 15.440(4) ("If a party demonstrates that application to a disputed issue of the law of a state other than the state designated by subsection (2) or (3) of this section is substantially more appropriate under the principles of ORS § 15.445, that issue is governed by the law of the other state."). The general and residual approach also looks to the domiciles of the parties, the place of injury and the place of injurious conduct, which here would be the locations relevant to plaintiff's termination. *See*, *e.g.*, *Alterra Am. Ins. Co. v. James W. Fowler Co.*, 347 F. Supp. 3d 604, 611 (D. Or. 2018). Plaintiff has not met her burden to identify the states with relevant contact with this dispute, identify their relative policies, and evaluate the relative strength of these policies and ultimately show that Oregon's interest somehow outweighs the interests of all other possible states. ORS § 15.445. Plaintiff does none of this by summarily declaring that Oregon has a substantial

interest here. Without more, plaintiff fails to satisfy Oregon's choice of law rules' requirements for Oregon law to apply. This is yet another reason the Court finds § 659A.199(1) does not apply to the facts presented at trial, and that defendant is therefore entitled to judgment as a matter of law. The Court grants defendant's motion on this basis as well.

CONCLUSION

For these reasons, defendant's motion for judgment as a matter of law (ECF 152) is granted, and the parties' requests for oral argument are denied as unnecessary. Judgment (ECF 149) is vacated, and the Clerk is directed to enter an amended judgment in favor of defendant.

DATED this 5th day of November, 2021.

/s/ Jolie A. Russo
Jolie A. Russo
United States Magistrate Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

SUZANNE IVIE,

Plaintiff(s),

v.

ASTRAZENECA PHARMACEUTICALS LP,

Defendant(s).

Civil No. 03:19-cv-01657-JR

AMENDED JUDGMENT

(Filed Nov. 5, 2021)

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Defendant. Pending motions, if any, are DENIED AS MOOT.

Dated this 5th day of November, 2021.

by /s/ Jolie A. Russo
Jolie A. Russo
United States Magistrate Judge

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUZANNE IVIE, Plaintiff-Appellant, v. ASTRAZENECA PHARMACEUTICALS LP, Defendant-Appellee.	No. 21-35978 D.C. No. 3:19-cv-01657-JR ORDER (Filed Jul. 18, 2023)

Before: CLIFTON and BUMATAY, Circuit Judges, and BAKER,* International Trade Judge.

Judges Clifton and Baker have voted to deny Appellee's petition for panel rehearing and recommend denying the petition for rehearing en banc. Judge Bumatay has voted to grant the petition for panel rehearing and the petition for rehearing en banc.

The full court has been advised of Appellee's petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 35.

Appellee's petition for panel rehearing and rehearing en banc, Docket No. 57, is therefore DENIED.

* The Honorable M. Miller Baker, Judge for the United States Court of International Trade, sitting by designation.

APPENDIX E

Federal Rules of Civil Procedure Rule 15

Amended and Supplemental Pleadings

(a) Amendments Before Trial.

<[Text of subsection (a)(1) effective until December 1, 2023, absent contrary Congressional action.]>

(1) ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course within:

<[Text of subsection (a)(1) effective December 1, 2023, absent contrary Congressional action.]>

(1) ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) ***Other Amendments.*** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) ***Time to Respond.*** Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining

to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) ***Based on an Objection at Trial.*** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) ***For Issues Tried by Consent*** When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move – at any time, even after judgment – to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) ***When an Amendment Relates Back.*** An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction,

or occurrence set out – or attempted to be set out – in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) ***Notice to the United States.*** When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The

court may order that the opposing party plead to the supplemental pleading within a specified time.

Federal Rules of Civil Procedure Rule 16

Pretrial Conferences; Scheduling; Management

(a) Purposes of a Pretrial Conference. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating settlement.

(b) Scheduling.

(1) ***Scheduling Order.*** Except in categories of actions exempted by local rule, the district judge – or a magistrate judge when authorized by local rule – must issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(2) ***Time to Issue.*** The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(3) ***Contents of the Order.***

(A) *Required Contents.* The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) *Permitted Contents.* The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences and for trial; and

(vii) include other appropriate matters.

(4) ***Modifying a Schedule.*** A schedule may be modified only for good cause and with the judge's consent.

(c) Attendance and Matters for Consideration at a Pretrial Conference.

(1) ***Attendance.*** A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) ***Matters for Consideration.*** At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;

(G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(H) referring matters to a magistrate judge or a master;

(I) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;

(J) determining the form and content of the pretrial order;

(K) disposing of pending motions;

(L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(M) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;

(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(O) establishing a reasonable limit on the time allowed to present evidence; and

(P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Pretrial Orders. After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) Final Pretrial Conference and Orders. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) Sanctions.

(1) ***In General.*** On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate – or does not participate in good faith – in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) ***Imposing Fees and Costs.*** Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses – including attorney's fees – incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

Federal Rules of Civil Procedure Rule 50

Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) Judgment as a Matter of Law.

(1) ***In General.*** If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense

that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) ***Motion.*** A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment – or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged – the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.

(1) ***In General.*** If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) ***Effect of a Conditional Ruling.*** Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) Time for a Losing Party's New-Trial Motion. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

(e) Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it

may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

Oregon Revised Statutes § 15.430

Claims governed by Oregon law

Notwithstanding ORS 15.440, 15.445 and 15.455, Oregon law governs noncontractual claims in the following actions:

(1) Actions in which, after the events giving rise to the dispute, the parties agree to the application of Oregon law.

(2) Actions in which none of the parties raises the issue of applicability of foreign law.

(3) Actions in which the party or parties who rely on foreign law fail to assist the court in establishing the relevant provisions of foreign law after being requested by the court to do so.

(4) Actions filed against a public body of the State of Oregon, unless the application of Oregon law is waived by a person authorized by Oregon law to make the waiver on behalf of the public body.

(5) Actions against an owner, lessor or possessor of land, buildings or other real property situated in Oregon that seek to recover for, or to prevent, injury on that property and arising out of conduct that occurs in Oregon.

(6) Actions between an employer and an employee who is primarily employed in Oregon that arise out of an injury that occurs in Oregon.

(7) Actions for professional malpractice arising from services rendered entirely in Oregon by personnel licensed to perform those services under Oregon law.

(8)(a) Actions against a provider of reproductive health care or gender-affirming treatment, as those terms are defined in section 48 of this 2023 Act, if the reproductive health care or gender-affirming treatment at issue was provided in this state.

(b) Actions against a patient receiving reproductive health care or gender-affirming treatment if the reproductive health care or gender-affirming treatment at issue was received in this state.

(c) Actions against any person who provides aid, assistance, resources or support to a person in providing or receiving reproductive health care or gender-affirming treatment in this state.

Oregon Revised Statutes § 15.445

General and residual approach

Except as provided in ORS 15.430, 15.435, 15.440 and 15.455, the rights and liabilities of the parties with regard to disputed issues in a noncontractual claim are governed by the law of the state whose contacts with the parties and the dispute and whose policies on the

disputed issues make application of the state's law the most appropriate for those issues. The most appropriate law is determined by:

(1) Identifying the states that have a relevant contact with the dispute, such as the place of the injurious conduct, the place of the resulting injury, the domicile, habitual residence or pertinent place of business of each person, or the place in which the relationship between the parties was centered;

(2) Identifying the policies embodied in the laws of these states on the disputed issues; and

(3) Evaluating the relative strength and pertinence of these policies with due regard to:

> (a) The policies of encouraging responsible conduct, deterring injurious conduct and providing adequate remedies for the conduct; and
>
> (b) The needs and policies of the interstate and international systems, including the policy of minimizing adverse effects on strongly held policies of other states.

Oregon Revised Statutes § 659A.001

Definitions

As used in this chapter:

(1) "Bureau" means the Bureau of Labor and Industries.

(2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(3) "Employee" does not include any individual employed by the individual's parents, spouse or child or in the domestic service of any person.

(4)(a) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

(b) For the purposes of employee protections described in ORS 659A.350, "employer" means any person who, in this state, is in an employment relationship with an intern as described in ORS 659A.350.

(5) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(6)(a) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

(A) A parent or another person having legal custody of the individual; or

(B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(b) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(7) "Labor organization" includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(8) "National origin" includes ancestry.

(9) "Person" includes:

(a) One or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(b) A public body as defined in ORS 30.260.

(c) For purposes of ORS 659A.145 and 659A.421 and the application of any federal housing law, a fiduciary, mutual company, trust or unincorporated organization.

(10) "Protective hairstyle" means a hairstyle, hair color or manner of wearing hair that includes, but is not limited to, braids, regardless of whether the braids are created with extensions or styled with adornments, locs and twists.

(11) "Race" includes physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles.

(12) "Respondent" means any person against whom a complaint or charge of an unlawful practice is filed with the commissioner or whose name has been added to such complaint or charge pursuant to ORS 659A.835.

(13) "Unlawful employment practice" means a practice specifically denominated as an unlawful employment practice in this chapter. "Unlawful employment practice" includes a practice that is specifically denominated in another statute of this state as an unlawful employment practice and that is specifically made subject to enforcement under this chapter.

(14) "Unlawful practice" means any unlawful employment practice or any other practice specifically denominated as an unlawful practice in this chapter. "Unlawful practice" includes a practice that is specifically denominated in another statute of this state as an unlawful practice and that is specifically made subject to enforcement under this chapter, or a practice that violates a rule adopted by the commissioner for the enforcement of the provisions of this chapter.

Oregon Revised Statutes § 659A.199

Discrimination for whistleblowing

(1) It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms,

conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.

(2) The remedies provided by this chapter are in addition to any common law remedy or other remedy that may be available to an employee for the conduct constituting a violation of this section.

Utah Code § 67-21-2

Definitions

As used in this chapter:

(1) "Abuse of authority" means an arbitrary or capricious exercise of power that:

(a) adversely affects the employment rights of another; or

(b) results in personal gain to the person exercising the authority or to another person.

(2) "Communicate" means a verbal, written, broadcast, or other communicated report.

(3) "Damages" means general and special damages for injury or loss caused by each violation of this chapter.

(4) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied.

(5)(a) "Employer" means the public body or public entity that employs the employee.

(b) "Employer" includes an agent of an employer.

(6) "Good faith" means that an employee acts with:

(a) subjective good faith; and

(b) the objective good faith of a reasonable employee.

(7) "Gross mismanagement" means action or failure to act by a person, with respect to a person's responsibility, that causes significant harm or risk of harm to the mission of the public entity or public body that employs, or is managed or controlled by, the person.

(8) "Judicial employee" means an employee of the judicial branch of state government.

(9) "Legislative employee" means an employee of the legislative branch of state government.

(10) "Political subdivision employee" means an employee of a political subdivision of the state.

(11) "Public body" means any of the following:

(a) a state officer, employee, agency, department, division, bureau, board, commission, council, authority, educational institution, or any other body in the executive branch of state government;

(b) an agency, board, commission, council, institution member, or employee of the legislative branch of state government;

(c) a county, city, town, regional governing body, council, school district, special district, special service district, or municipal corporation, board, department, commission, council, agency, or any member or employee of them;

(d) any other body that is created by state or local authority, or that is primarily funded by or through state or local authority, or any member or employee of that body;

(e) a law enforcement agency or any member or employee of a law enforcement agency; and

(f) the judiciary and any member or employee of the judiciary.

(12) "Public entity" means a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of the executive branch of state government.

(13) "Public entity employee" means an employee of a public entity.

(14) "Retaliatory action" means the same as that term is defined in Section 67-19a-101.

(15) "State institution of higher education" means the same as that term is defined in Section 53B-3-102.

(16) "Unethical conduct" means conduct that violates a provision of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

Utah Code § 67-21-3

Reporting of governmental waste or violations of law – Employer action –Exceptions

(1)(a) An employer may not take retaliatory action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith:

(i) the waste or misuse of public funds, property, or manpower;

(ii) a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or any recognized entity of the United States; or

(iii) as it relates to a state government employer:

(A) gross mismanagement;

(B) abuse of authority; or

(C) unethical conduct.

(b) For purposes of Subsection (1)(a), an employee is presumed to have communicated in good faith if the employee gives written notice or otherwise formally communicates the conduct described in Subsection (1)(a) to:

(i) a person in authority over the person alleged to have engaged in the conduct described in Subsection (1)(a);

(ii) the attorney general's office;

(iii) law enforcement, if the conduct is criminal in nature;

(iv) if the employee is a public entity employee, public body employee, legislative employee, or a judicial employee:

(A) the state auditor's office;

(B) the president of the Senate;

(C) the speaker of the House of Representatives;

(D) the Office of Legislative Auditor General;

(E) the governor's office;

(F) the state court administrator; or

(G) the Division of Finance;

(v) if the employee is a public entity employee, but not an employee of a state institution of higher education, the director of the Division of Purchasing and General Services;

(vi) if the employee is a political subdivision employee:

(A) the legislative body, or a member of the legislative body, of the political subdivision;

(B) the governing body, or a member of the governing body, of the political subdivision;

(C) the top executive of the political subdivision; or

(D) any government official with authority to audit the political subdivision or the applicable part of the political subdivision; or

(vii) if the employee is an employee of a state institution of higher education:

(A) the Utah Board of Higher Education or a member of the Utah Board of Higher Education;

(B) the commissioner of higher education;

(C) the president of the state institution of higher education where the employee is employed; or

(D) the entity that conducts audits of the state institution of higher education where the employee is employed.

(c) The presumption described in Subsection (1)(b) may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false, or frivolous.

(2) An employer may not take retaliatory action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by the public body.

(3) An employer may not take retaliatory action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law of this

state, a political subdivision of this state, or the United States, or a rule or regulation adopted under the authority of the laws of this state, a political subdivision of this state, or the United States.

(4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document:

(a) the waste or misuse of public funds, property, or manpower;

(b) a violation or suspected violation of any law, rule, or regulation; or

(c) as it relates to a state government employer:

(i) gross mismanagement;

(ii) abuse of authority; or

(iii) unethical conduct.