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TO: Chair Taylor  
Vice-Chair Knopp  
Members of the Senate Workforce Committee

FR: Jess Giannettino Villatoro, Political Director, Oregon AFL-CIO

RE: Support for SB 726, Oregon Workplace Fairness Act

February 11, 2019

The Oregon AFL-CIO represents 300,000 workers across the state and is a voice for all workers in the legislative process. Around half of the workers in the federation, identify as women. Our organization has been prioritizing internal work around gender justice for women workers for 2 years and we're excited to highlight SB 726 as a key priority for the 2019 legislative session.

This committee and the legislature have recently taken great strides to ensure equity in the workplace, especially for women and women of color. SB 726 is a complimentary policy intended to address outdated statutes that govern our discrimination and harassment in the workplace. I think it's easy for us to think about discrimination and sexual harassment in a vacuum and only impacting a worker's life for the moment that it happens, but in an economy when an estimated 33% of working women in Oregon are single mothers who live below the poverty line and two-thirds of working women are the bread-winners or co-bread winners of their families.<sup>1</sup> The impacts of workplace discrimination and harassment, merit a more thoughtful conversation and policy approach

According to the Equal Employment Opportunity Commission, at least one in four women have experienced sexual harassment at work, but as many as 94% of women don't file a complaint and 75% of women experienced retaliation when they did report. Out of 45,000 complaints in 2015, 45% of them were related sexual harassment. These statistics don't reflect a statutory structure that is protecting women in the workplace.

We filed SB 726 knowing that it would need to be amended, to quell some of the concern that was floating around about what is in the bill. We have met with the business community three times to clarify the intent and provide clarity, while not eroding the worker protections that were carefully thought through as we compiled this bill.

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<sup>1</sup> <https://www.oregon.gov/boli/docs/Pay%20Inequality%20Report%20FINAL%202-26-2014.pdf>

All of the protections in this bill are intended to apply to all protected classes, including gender discrimination which is the trigger for sexual harassment and sexual assault. Statistically, the more protected classes a worker belongs to the more likely they are to be harassed. This is similar to the approach this committee took with pay equity.

#### Section 2:

Clarifies that employers may not request non-disclosure agreements that relate to discrimination a worker is yet to experience.

#### 2(a):

States that an employer may not request a non-disclosure agreement that applies to facts that a worker has experienced as a result of discrimination or harassment. This section needs to be amended to apply to 659A.112 and 659A.082 and which are disability and veteran status', respectively.

#### 2(b)

Will be amended to apply to both 2(a) and 2(c) which is to say that the employer cannot be the first to request a non-disclosure agreement or no-rehire provision.

2(3) will be amended to clarify that only the victim cannot be asked by the employer to sign a no-rehire provision instead of how it is currently worded which bans them all together.

#### Section 3:

3(1) – 3(3) will be amended out of the bill in recognition of the concerns raised from businesses about what we intended to be a clarification about current protections. We intend to include these clarifications about burden of knowledge and how knowledge is imputed into the model policies and procedures that are described in Section 4.

#### 3(4)

This section is only intended to clarify long established law about individual liability for executives that engage in discrimination or retaliation. A 2012 U.S. District court decision *Peters V. Betaseed* insulated wrongdoers with executive authority from individual liability. This section simply clarifies that if you commit a prohibited act and are the executive authority of the employer, you can still be held individually liable.

#### Section 4

Doesn't need to be amended and states that BOLI should make available policy and procedures to employers on how to address discrimination and harassment.

#### Section 5

States that where an employer has made a good faith determination that an executive has committed discrimination or harassment that the employer may render an executive severance or separation

payment unenforceable. This needs to be clarified to state that the severance or separation payment must be related to the discrimination or harassment finding.

Sections  
6(3) and 7(5)

These provisions address remedies and the statute of limitations. They both need to be narrowed to apply only 659A.030, 659A.082 and 659A.112. The intent is to extend the statute of limitations to seven years.

Section 10 and 11

These sections apply to effective dates and rule making related to BOLI. I expect that we will have further conversations with the agency and determine the quickest timeline to ensure workers have the protections they desperately need while also ensuring that the agency has time to adopt rules and notify employers.

As you know, and are about to hear from my colleagues and workers, the pervasiveness of discrimination and sexual harassment in the workplace is severe and embedded into so much of our culture. We need a solution that is as big as the problem. We look forward to working with this committee to pass SB 726, the Oregon Workplace Fairness Act to address these much-needed statutory protections this session.