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## AARP Oregon supports HB 2818 – Age Discrimination in the Workplace

March 13<sup>th</sup>, 2019

TO: House Committee on Business and Labor, Rep. Barker, Chair

FROM: Jon Bartholomew, Senior Legislative Representative, AARP

AARP is the nation’s largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With 510,000 members in Oregon, AARP works to strengthen communities and advocate for what matters most to families with a focus on health security, financial stability and personal fulfillment.

One of the most common phone calls that comes in to the AARP Oregon state office in Clackamas is one from a member who feels they have been discriminated against either in their job, or in their effort to find a job. While AARP offers many tools to help older workers find employment, we don’t offer legal advice or individual advocacy, so we refer people to the Bureau of Labor and Industries or suggest they reach out to attorneys. Often, these individuals tell me that they have already done that, and have been told that even though it seems to be a clear case of age discrimination, without a “smoking gun”, there’s nothing that can be done.

AARP wanted to know more about age discrimination in Oregon, so we conducted a survey of 1000 Oregon residents age 40 or older who are working or looking for work, to find out what they have seen and experienced. The survey was done in December of 2018, and polled both land lines and cell phones. Some of the key findings include:

- More than three in five Oregonians ages 40+ (62%) have seen or experienced age discrimination in the workplace. Of them, about 90% believe age discrimination is very or somewhat common.
- Older workers in Oregon are being asked for age-related information in the job application and interview processes; 62 percent of job seekers have been asked for this information on an application and a third of those who have made it to the interview process were asked for age-related information. At worst, these age-based inquiries can

be used to discriminate; at best, they deter older workers who are concerned about age discrimination from even applying.

- The majority say they would report age discrimination if they experienced it in the next year (62%), but the reality is that official reporting of age discrimination is low (8%), mainly because of concerns about retaliation or that it wouldn't do any good..
- Strong support exists for strengthening laws related to age discrimination, including stronger Oregon laws and a new Oregon law that would prohibit employers from asking about age-related information in the job application process.

These numbers are consistent with national polling on the same subject<sup>1</sup>, suggesting that Oregon is not alone in our experience with age discrimination.

AARP Oregon also wanted to hear from our members about what their personal experiences are with age discrimination. We emailed our members and received many responses, such as the following:

The signs were so vague I didn't realize them immediately. From a very early age I have normally applied for and been considered for employment almost anywhere I have been. I have a B.S. degree and a colorful lifetime of experiences including time abroad, the study of languages, etc. At the age of 50 it was 2006. ... I needed to find at least part time employment to supplement my husband's full time income. Each application I submitted resulted in a very strange form of silence. Because so many applications are submitted online I assumed data analysis was disqualifying me. Like many other mothers my work history reflected my parenting years. I'd always done something, usually part-time, while our children were young just to make sure when they left home I would still be employable. Now, I couldn't even raise a reply online. I would have welcomed an old-fashioned sign on a door stating "Hiring," so I could go in and have a conversation with an employer! It finally dawned on me that my age was kicking me out of every system before any other factor had been analyzed. Without actually ASKING my age, work history and other dates can easily place you in an age category. Eventually, I took a few different part-time positions. They were low pay and, quite frankly, embarrassing. But, by then, the recession had begun and my husband had been laid off. He took a one year course of study and my meager income was necessary. I decided to start my own business then and had that for a period of nearly 10 years until we sold our family home in Washington. ... I miss the comradery of a working environment but now, aged 62, I am truly afraid of applying for employment of any kind. –Anne C., Brownsville

Head hunters call me all the time. I am actively seeking employment. They cannot ask your age, but they can ask what year you graduated high school. When I tell them that

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<sup>1</sup> <https://www.aarp.org/research/topics/economics/info-2018/multicultural-work-jobs.html>

year was 1971, they hang up on me. Keep in mind that they called me! – Patrick B., Eagle Creek

My experience is that I no longer get calls for interviews after submitting a resume or application for positions I'm readily qualified for. I'm 58 and this began about 4 years ago. I'm a nurse so I almost always used to get call backs for every application put in. The health care industry wants people with 1-2 years' experience because they work cheaper and are probably perceived as healthier, even though they have a high rate of quitting jobs. They sacrifice experience and the welfare of patients so they can save money. – Susan P., Bend

These are simply a few examples, but there are common themes. Older Oregonians told us they want to work and are qualified for the jobs they apply for are screened out in advance due to their age. Older workers have told us they are often laid off, only to be replaced by younger workers with less experience. And many have told us that they don't want to testify publicly due to fear that it will harm their ability to find a job, as they are still looking for employment. When surveyed, older workers in Oregon who say they would not report age discrimination if it happened to them in the future, the top reasons are that it is "not worth the trouble"/"wouldn't do any good" (20%) and that they "would lose their job"/"make their situation worse" (19%).

Age discrimination in the workplace has significant consequences both for the individual and for state government. Older workers (over 55) are typically unemployed longer than their younger counterparts<sup>2</sup>. Workers who are laid off and can't find work, or are pushed into early retirement sign up for Social Security benefits early, significantly reducing their payments as compared to working to full retirement age<sup>3</sup>. Age discrimination decreases individuals' ability to save for retirement. Additionally, the financial strains can lead to worse physical<sup>4</sup> and mental health<sup>5</sup>. Older Oregonians unable to find work, or who take jobs with less pay than their previous jobs are more likely to become impoverished, and end up using government services, such as Medicaid, which is paid by taxpayers.

In 2017, the Age Discrimination in Employment Act (ADEA) turned 50. The good news about that is that it is now eligible for membership in AARP. The bad news is noted in the comments by Victoria A. Lipnic, Acting Chair of the U.S. Equal Employment Opportunity Commission (EEOC) at the beginning of their report on the 50<sup>th</sup> anniversary of the ADEA<sup>6</sup>. She states, "age discrimination remains a significant and costly problem for workers, their families, and our economy."

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<sup>2</sup> [https://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/econ\\_sec/2014/the-employment-situation-january-2014-AARP-ppi-econ-sec.pdf](https://www.aarp.org/content/dam/aarp/research/public_policy_institute/econ_sec/2014/the-employment-situation-january-2014-AARP-ppi-econ-sec.pdf)

<sup>3</sup> [http://www.apnorc.org/PDFs/Working%20Longer/AP-NORC%20Center\\_Working%20Longer%20Report-FINAL.pdf](http://www.apnorc.org/PDFs/Working%20Longer/AP-NORC%20Center_Working%20Longer%20Report-FINAL.pdf)

<sup>4</sup> [https://www.ajgponline.org/article/S1064-7481\(14\)00094-3/fulltext](https://www.ajgponline.org/article/S1064-7481(14)00094-3/fulltext)

<sup>5</sup> <https://academic.oup.com/psychsocgerontology/advance-article/doi/10.1093/geronb/gbx017/3069149>

<sup>6</sup> <https://www.eeoc.gov/eeoc/history/adea50th/report.cfm>

House Bill 2818 will address the issue of age discrimination in three ways:

- 1) It will stop employers from screening out candidates on the basis of age by prohibiting the asking of age-identifying information prior to a contingent job offer or using age-based qualifications such as “digital native” in job postings.
- 2) It clarifies that discrimination on the basis of proxies for age, like number of years of service or pension status, is to be considered “because of age.”
- 3) It creates an incentive to not discriminate by permitting an award of liquidated damages of twice actual the economic damages or \$25,000, whichever is greater. Liquidated damages are provided under the federal age discrimination law.

AARP Oregon urges you to support HB 2818 as one step forward to reduce the prevalence of age discrimination in Oregon.