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Support for Senate Bill 726A

House Judiciary Committee

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Chair Williamson, Vice-Chairs Gorsek and Sprenger, and members of the committee,

I submit this testimony on behalf of the Oregon Law Center in support of SB 726A, which would provide important protections for employees against sexual harassment on the job.

The Oregon Law Center is a statewide non-profit entity whose mission is to provide access to justice for low-income Oregonians through the provision of the highest quality civil legal services. Many of our clients seek our assistance to address legal issues related to domestic violence, sexual assault, sexual harassment, and stalking. These issues greatly contribute to the vulnerability of our clients, and further trap them in poverty. When assault or harassment intersects with discrimination or other forms of bias, the impacts are compounded for victims and their families.

The effects of sexual harassment or assault at work can be immeasurable. Victims can suffer significant long-term physical and mental health impacts, in addition to lost work time and the resulting financial costs.¹ Victims' family members often sustain similar impacts in watching their loved ones suffer. SB 726A will help protect employees and their families from the negative consequences of workplace harassment or assault, and will provide greater remedy for those who have been injured.

Importantly, the bill prevents employers from asking for nondisclosure or non-disparagement agreements that relate to discrimination or assault. Non-disclosure and non-disparagement agreements are often required by employers as a means of silencing victims from speaking out about the abuse they have suffered. These requirements can be used as a tool of manipulation and can shelter employers from accountability while preventing victims from seeking support and validation from their community. It is appropriate that employers be barred from imposing these requirements on victims. However, in many situations, victims may have a need for strict confidentiality, for physical or psychological safety reasons. Victims should retain the choice to request non-disclosure provisions preventing the employer from speaking about the facts of the case or disparaging the victim. The bill strikes the right balance, in ensuring that the victim retains the power to determine whether or not non-disclosure is in their best interests.

¹ <https://iwpr.org/publications/sexual-harassment-work-cost/>

Equally importantly, the bill prevents employers from prohibiting an employee from seeking re-employment with the employer as a condition of any settlement or separation agreement. This prohibition helps to prevent retaliation against employees who are brave enough to come forward with complaints about harassment, discrimination, or assault. This section of the bill helps to implement the purpose of Chapter 659A, which is to encourage the fullest utilization of the available workforce and to provide adequate remedy for persons aggrieved by unlawful discrimination.

No re-hire agreements have been extremely damaging to our clients. These types of agreements have a disproportionate impact on low-wage workers and workers who live in rural areas, where there may be limited job opportunities. Workers with limited English proficiency are also particularly impacted. As large employers continue to consolidate enterprises, no-rehire provisions have a growing impact on job opportunity.

Coming forward to report harassment and discrimination is extremely hard for many employees to do. In a study with farmworkers in Oregon, they reported feeling “discouraged from speaking up because they did not know with whom to speak or report regarding sexual harassment, and did not think they would be believed.”² Removing the ability of employers to simply banish those who report discrimination will go a long way in improving the working environment.

Extending the statute of limitations for claims of discrimination will ensure greater accountability for perpetrators and greater protection for vulnerable workers. Many victims of harassment, discrimination, and assault face great barriers in coming forward to seek relief. Especially in rural and small communities, the fear of social stigma and retaliation is very real, and coming forward may not be safe immediately after or during the discriminatory behavior. Often, the trauma suffered by employees is so great that it takes time to even be able to describe what has happened to them. Low-income workers often have little access to information about their rights and how to get help, so may not understand their options within the current statute of limitations. Extending the time period beyond one year will assist the most vulnerable of employees and will improve workplace safety.

The bill directs BOLI to create policies and procedures for employers and employees designed to prevent discrimination, harassment, and assault, and requires employees to adopt prevention policies. The standardization and adoption of prevention and response policies will help shift towards a workplace culture in which discrimination is not tolerated, and victims know their rights and how to access them. It is impossible to reduce and prevent discrimination if employees don’t know how or to whom to report it. In the study with farmworkers referred to above, “...many women reported that they had no idea how to deal with sexual harassment at work and the company did not inform them what to do.”³ In implementing these provisions of the bill, it will be important to ensure that policies are explained to and reviewed with employees

² “They talk like that, but we keep working”: ‘Sexual harassment and sexual assault experiences among Mexican Indigenous farmworker women in Oregon,’ J. Immigrant Minority Health, 2015 Dec; 17(6): 1834-1839, Murphy et al.

³ “They talk like that,” *Id.*

in the language used by the employee to communicate with the employer and that the employer provide a copy to the employee.

The Oregon Law Center appreciates the committee's work on this issue that is so vital to our communities. Sexual assault, harassment, and discrimination in the workplace create significant burdens in the lives of hard-working Oregonians. These burdens have particular impact on low-income workers struggling to escape poverty and support their families. We urge support for Senate Bill 726A.