

## WFA: The Workplace Fairness Act Written Testimony Template

Date: May 9, 2019

To: Chair Williamson, Vice-Chair Gorsek, Vice-Chair Sprenger, Members of the House Committee on Judiciary

From: Tanya Barham, Portland Resident

RE: Tanya Barham Support for SB 726A, The Oregon Workplace Fairness Act

Chair Williamson, Vice-Chair Gorsek, Vice-Chair Sprenger and Members of the House Rules Committee:

I support SB 726A which would better protect workers that have faced discrimination in the workplace. We know that current laws don't go far enough to protect harassment victims at work and we support SB 726A because I have faced harassment in the workplace.

Several years ago I sued my previous employer after blowing the whistle on malfeasance. In retaliation for my willingness to suggest improvements to County practices that my nearly twenty years of business experience led me to believe were unnecessarily wasteful and inefficient, I was targeted with gendered critique and expulsion. In cases similar to mine, the County HR department has a practice of pressuring departing employees into signing a non-disclosure and covenant not to sue.

I declined to sign such a document and news of my suit was published very publicly in The Oregonian; however, most people accept such agreements under duress - leaving the question in others' minds of whether my claim was valid or simply a disgruntled employee with a bone to pick. It would be years before another female County employee in circumstances very similar to mine would also publicly refuse to leave under the cover of a non-disclosure.

Undoubtedly the County and other employers understand that using confidentiality agreements advantages them by making those who refuse to sign look like isolated cases and by limiting the disclosure from others affected to corroborate one another's' experiences. We've seen similar patterns of abuse play out very publicly in the past several years: the Weinstein company, Larry Nassar, Google, the list goes on. This practice is not only prevalent in sexual harassment cases but in many cases where a more transparent examination of workplace bias could help us as a society begin to examine and meaningfully address systemic disparities and discrimination.

Despite decades of empirical research clearly demonstrating that bias against women and people of color in employment, hiring, promotion and termination is highly prevalent and deeply ingrained, the legal avenues for redressing this societal ill significantly advantages practices that perpetuate such bias. For those plaintiffs who do suspect that their situation mirrors the evidence and that discriminatory bias played a part in their harm, the road to vindication is paved with humiliation and great emotional and material cost to the individual harmed.

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From a legal standpoint the burden of proof for gender, racial or other discrimination based on a protected class rests on the plaintiff. This is a heavy burden. Employers typically control the information a plaintiff would need to establish discrimination in all but the most egregious cases. The employer is the only party with access, were they willing and able to examine and take account for it, to data showing systemic evidence that bias drives discriminatory patterns within their workplace. While the plaintiff can subpoena such information, they often lack line of sight to comparators and trends no least of which because many similar cases typically end in settlements with non-disclosure agreements about the evidence of each case.

Voluntarily reviewing and disclosing patterns of discrimination in a workforce is hardly something any employer wishing to minimize cost and liability would take. The related calculation made by plaintiffs: that their likelihood of asking the right questions and ensuring the right data to prove their case is low and the chance that their suit will ruin their professional reputation is high creates a perfect storm. Without a law that enforces transparency regarding the basis of discrimination lawsuits and complaints filed against employers, those who perpetuate systemic bias and abuse will continue to have not only the advantage of time and resources, but also of data critical to the elimination of such bias in society.

Workplace harassment affected every aspect of my life because I was relying on this job to support myself. When you have to go to work and face abuse, it takes away the dignity and respect that we all have the right to feel in the workplace but also takes away the dignity in supporting yourself. I simply wanted to go to work and not face harassment, so that I could put food on the table and live my life without fear.

I respectfully request the committee support SB 726 and commend the committee for giving this legislation due consideration in service to your constituencies and Oregonians from across the state.