

FISCAL IMPACT OF PROPOSED LEGISLATION

80th Oregon Legislative Assembly – 2019 Regular Session
Legislative Fiscal Office

Measure: SB 726 - A

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Meg Bushman Reinhold
Reviewed by: Paul Siebert, John Borden, Michelle Deister
Date: April 10, 2019

Measure Description:

Makes it unlawful employment practice for an employer to enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing specified conduct.

Government Unit(s) Affected:

Department of Justice (DOJ), Department of Administrative Services (DAS), Bureau of Labor and Industries (BOLI)

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Analysis:

This bill makes it unlawful employment practice for an employer to enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct:

- That constitutes discrimination prohibited by ORS 659A.030, including sexual assault; or
- That constitutes discrimination prohibited by ORS 659A.082 or 659A.112; and
- That occurred between employees or between an employer and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer; or
- That occurred between an employer and an employee off the employment premises.

The bill permits an employer to enter into a settlement, separation or severance agreement with an aggrieved employee that includes one or more of the following provisions but only at the request of the aggrieved employee:

- A provision preventing disclosure or discussion of conduct that constitutes discrimination;
- A provision that prevents the disclosure of factual information relating to a claim of discrimination or conduct that constitutes sexual assault; or
- A no-rehire provision that prohibits the employee from seeking reemployment with the employer as a term or condition of the agreement.
- An employee may file a complaint under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS 659A.885 (1) to (3).

An agreement entered into between an employer and aggrieved employee must provide the employee at least seven days to revoke the agreement. The agreement may not become effective until after the revocation period has expired.

Department of Administrative Services

This bill requires every employer to adopt a written policy containing procedures and practices for the reduction and prevention of discrimination based on race, color, religion, sex, sexual orientation, national origin, marital

status, age, military service and disability, including sexual assault and designate a specific individual to receive reports.

It is unclear if “the employer” for the state would be the Department of Administrative Services (DAS) or the individual state agency. DAS believes the measure would require a single point of contact to receive reports of the prohibited conduct within state government. It is assumed that would likely need to be within DAS, requiring more staff and potentially IT resources for tracking complaints. DAS estimates it would require two additional staff if it is required to provide designated employees to receive complaints for the entire executive branch of state government pursuant to this bill.

Bureau of Labor and Industries

This bill creates a new type of claim that may be filed with the Civil Rights Division (CRD). CRD has not previously had authority to investigate the terms and conditions of private settlement agreements, or the means by which those agreements were executed. This bill also expands the statute of limitations for filing certain complaints with the CRD, from one year to five years.

The fiscal impact of this bill on Bureau of Labor and Industries (BOLI) is indeterminate. The changes proposed in this measure will likely result in an increase in the number of complaints filed with BOLI, which in turn would result in the need for additional staff. In addition, the agency would need to: adopt rules; update training materials, publications, and seminar content; and develop model procedures and policies to provide guidance to employers. Given the potential complexity of technical assistance BOLI is directed to provide, and the uncertainty surrounding the volume of additional complaints and subsequent investigations, it’s expected that BOLI may need to return to the Emergency Board or a subsequent legislative session to request additional staffing resources.

There is no fiscal impact anticipated for the Department of Justice.