

SB 479 A STAFF MEASURE SUMMARY**Carrier:** Sen. Gelsner**Senate Committee On Workforce**

Action Date: 04/09/19
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 4-0-1-0
Yeas: 4 - Golden, Knopp, Monnes Anderson, Taylor
Exc: 1 - Hansell
Fiscal: Fiscal impact issued
Revenue: No revenue impact
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Meeting Dates: 1/24, 3/5, 4/2, 4/9

WHAT THE MEASURE DOES:

Requires public employers to adopt written policies with specified standards to prevent and promptly investigate certain unlawful employment discrimination. Makes it an unlawful employment practice for employer to enter into nondisclosure agreement with employee or prospective employee if agreement contains provisions preventing employee from disclosing in specified circumstances certain unlawful employment discrimination. Expressly allows nondisclosure provisions, disclosures of factual information, and no-rehire provisions in settlement, separation, or severance agreement in two circumstances: (1) upon request of employee claiming to be aggrieved by unlawful employment discrimination, and (2) when employer determines employee engaged in certain unlawful employment discrimination. Extends statute of limitations for filing civil action or BOLI complaint from one year to five years for certain existing unlawful employment practices. For violation of new unlawful employment practice created by measure, statute of limitations is also five years but provisions do not become operative until October 2020. Requires BOLI to adopt rules necessary to administer and enforce no later than 90 days after effective date. Requires public employers to adopt written polices no later than January 1, 2020. Takes effect 91st day following adjournment sine die.

ISSUES DISCUSSED:

- Variation amongst public employers in investigation and reporting processes
- Importance of having same standards for employment discrimination claims for public and private employers
- Challenges of providing confidentiality to public employees when Oregon law favors open access to public records

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

Oregon law makes it an unlawful employment practice for any employer, including public employers, to discriminate in wages or in the terms, conditions, or privileges of employment based on race, color, religion, sex, sexual orientation, national origin, marital status, age, expunged juvenile criminal record, person's service in a uniformed service, or disability (ORS 659A.030, 659A.082, and 659A.112). Senate Bill 479-A requires public employers to adopt written polices by January 1, 2020, to prevent and investigate these unlawful employment practices as well as unwanted conduct of a sexual nature inflicted upon a person or compelled through the use of force or threats (defined altogether in the bill as "workplace harassment").

The prevention policy must include the following: a statement prohibiting workplace harassment; avenues to seek redress; available remedies in each avenue; the tort claim notice deadline; a statement that reporters are protected from retaliation; a statement that the policy applies to public officials, volunteers, and interns; an

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explanation that a victim may voluntarily disclose workplace harassment involving them; and information connecting the victim to support services.

The investigation policy must include instruction on maintenance of records, establishment of a process for a victim to file a complaint, and follow-up every three months with a victim who files a complaint.

Senate Bill 479-A also creates a new unlawful employment practice. An employer is prohibited from entering into a nondisclosure or nondisparagement agreement (NDA) with an employee or prospective employee containing provisions that prevent an employee from disclosing unlawful employment discrimination: (a) between employees; (b) between an employer and employee in the workplace or at off-site work-related events coordinated by the employer; or (c) between an employer and employee off-site. Senate Bill 479-A also clarifies that unwanted conduct of a sexual nature inflicted upon a person or compelled through force or intimidation constitutes unlawful employment discrimination that an employee may not be prohibited from disclosing via a NDA.

Senate Bill 479-A provides two exceptions for a public employer wishing to enter into a NDA having the effect of preventing an employee from disclosing unlawful employment discrimination. First, a public employer may enter into a NDA if an employee claiming to be aggrieved by employment discrimination requests it as part of a settlement, separation, or severance agreement, provided the employee has seven days to revoke. Second, a public employer may enter into a NDA with an employee whom the employer determines has engaged in employment discrimination. The employer may include a no-rehire provision in a settlement, separation, or severance agreement under the same circumstances.

Currently, the statute of limitations (SOL) for filing a BOLI complaint or civil action alleging discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, age, expunged juvenile criminal record, person's service in a uniformed service, or disability is one year. Senate Bill 479-A extends the SOL for those claims to five years by requiring a complaint be filed no later than five years after the occurrence of the alleged unlawful employment practice and applying to conduct occurring on or after the 91st day following adjournment sine die.

Senate Bill 479-A requires a complaint regarding a NDA be filed with BOLI or in circuit court no later than five years after the occurrence of the alleged unlawful employment practice and applies to conduct occurring on or after October 1, 2020. The remedy can include recovery of back pay for the prior two-year period as well as compensatory and punitive damages.