



A STRONG VOICE FOR OREGON'S WORKERS

TO: Chair Taylor
Vice-Chair Knopp
Members of the Senate Interim Committee on Labor and Business

FR: Jess Giannettino Villatoro, Political Director, Oregon AFL-CIO

RE: Support for SB 1527 with the -1 Amendment

February 4, 2020

The Oregon AFL-CIO represents 300,000 workers across the state and a voice for all workers in the legislative process. Thank you for the opportunity to follow-up on our legislative days hearing on SB 1527, then LC 75, regarding non-competition agreements.

Noncompetition agreements (or non-competes) are contracts that employers often deem a condition of employment that bar the employee from taking a job with a competing employer in the same industry for up to 18 months following the end of their employment. While some non-competes are limited by industry or geography, some are very broad, covering entire regions of the United States. Many non-competes also require that employees inform their employers of their prospective new positions and obtain approval for the new position.

Employers are utilizing non-competition agreements or non-competes at record levels. According to the Economic Policy Institute the number of workers in the United States impacted by non-compete agreements has risen dramatically in recent years. 18.1% of private sector workers were covered by at non-compete agreement in 2014 compared to as many as 46.5% of workers in 2019. ¹

Under contract law, a key provision of non-compete agreements is when they are enforceable. Unlike most of our employment statutes that govern what is and isn't lawful, non-competes are predominantly effectual by how enforceable they are and when they are enforceable. According to *The Labor Market Effects of Legal Restrictions on Worker Mobility a September 2019 study*² completed by professors from Duke, Ohio State and Miami Universities, analyzing non-compete agreements of various enforceability shows that the more enforceable a non-compete is leads to both a decline in a worker's earning potential and job mobility. The same study showed that enforceable NCAs increase the racial and gender wage gaps -- the earnings effects among women and black workers are twice as large as the effect among white men.

¹ <https://www.epi.org/publication/noncompete-agreements/>

² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3455381

The term **voidable** means that a worker must proactively seek the voiding of a contract if they leave their job within the 18 months – even if it doesn't meet the statutory criteria currently in place. By changing the language in Section 1 (1) and Section 1 (2) we clarify for employers and workers alike that a non-compete is void if it doesn't meet the criteria in current statute. SB 1527 does not change the current statute governing who and how a worker can be asked to enter a non-compete agreement.

Each of the workers who is going to testify today should have never been asked to sign a non-compete agreement under the current statute.

Length of Time

SB 1527 also lessens the amount of time a non-compete agreement can be enforced. The current length of time that a worker can be out of a job due to the terms of the non-compete is 18 months. We are supportive of the -1 amendment which moves us to 12 months, instead of 6 as originally proposed. With 12 months, we believe that more workers will be able to whether the time between full time jobs and are less likely to have to leave the state to seek work. Arguably, employers are applying non-competes to the most talented employees, and 18 months is a long time to expect them to be out of work and not seek employment out of state.

Salary Threshold

The last two changes that SB 1527 makes aren't so much policy changes as they are adjusting small provisions of the policy for clarity. Instead of leaving the salary threshold currently in place tied to the census wage for a family of four which is currently in statute we tied the same wage, which is \$97,311 to the CPI, indexed for inflation. That's because the census wage has proven difficult to track as years progress making it hard to determine which non-competes are enforceable or not. The last change is to clarify that the employer must agree in writing to the terms set forth in the non-compete upon the working leaving.

Non-compete agreements are a direct contradiction to the fundamental belief that anyone can work hard, learn skills and be able to have the mobility to make a better life for themselves. Unlike previous recent bills that we have had before the committee, SB 1527 makes relatively minor changes to Oregon's statute to ensure that workers have the mobility need to keep up with Oregon's changing economy.