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# A STRONG VOICE FOR OREGON'S WORKERS

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TO: Chair Barker  
Vice-Chair Bynum  
Vice-Chair Barreto  
Members of the House Committee on Business and Labor

FR: Graham Trainor, President, Oregon AFL-CIO

RE: Support for SB 1527A

February 19, 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 testify today on the Oregon AFL-CIO's priority bill for the 2020 legislative session.

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. <sup>1</sup>

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*<sup>2</sup> 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.

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

<sup>2</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3455381](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3455381)

Senate Bill 1527-A makes small changes to Oregon statute in order to make non-competition agreements easier to navigate for those who do not meet the criteria to be subject to one. Senate Bill 1527-A does this by:

- Clarifying that a nonconforming non-compete agreement between an employer and employee is void and unenforceable, rather than voidable for workers that under current protections should not have been asked to sign a non-compete.
- Replacing references to the median family income for a four-person family as determined by the U.S. Census Bureau for the most recent year available with the current income, \$97,311, and specifies that the income is adjusted annually for inflation. This is not divergent from current statute, but does provide clarity for employers, workers and the courts as to what the salary threshold is.
- The measure reduces the maximum term of noncompetition agreements from 18 months from the date of the employee's termination to 12 months.
- Finally, the measure limits the definition of noncompetition agreements to written agreements, rather than written, oral, express, or implied. These changes apply only to noncompetition agreements entered into on or after the effective date of the measure.

Senate Bill 1527-A does not change who and how an employee can enter a non-compete agreement, but it does provide changes necessary to worker mobility and employer clarity for Oregon's economy.