

DISCRIMINATION AND SEXUAL HARRASSMENT NON-DISCLOSURE AGREEMENTS CLEAN-UP

OREGON WORKPLACE FAIRNESS ACT (SB 726 2019) BACKGROUND

According to a 2016 study from the US Equal Employment Opportunity Commission, at least 1 in 4 women had experienced sexual harassment at work, with as many as 94% of employees who experienced harassment not filing formal complaints.

In practice in Oregon, workers experienced rampant use of non-disclosure agreements (NDAs) when and if they came forward to report workplace discrimination and sexual harassment. This unchecked use of NDAs effectively silences workers from speaking out, protects repeated harassers, and prevents employees from joining together to counter a predator.

That's why the Oregon AFL-CIO worked to pass the Oregon Workplace Fairness Act, which was the largest overhaul of Oregon's discrimination and harassment statutes since Title IX. Among other things, the overwhelmingly bipartisan bill prevents employers from being the first to request a non-disclosure agreement that relates to discrimination, harassment or sexual assault at the time of hire and during settlement and severance negotiations.

2022 CLEAN-UP BILL

Since the Oregon Workplace Fairness Act went into effect between October 2020 and January 2021, workers have experienced several subversions of the policy in practice and it's become clear that we need to clarify the law to ensure that the spirit is followed by:

- Including a penalty if employers violate the Oregon Workplace Fairness Act by asking for a non-disclosure agreement related to harassment, discrimination or sexual assault.
- Preventing employers from writing non-disclosure agreements on harassment, discrimination, or sexual assault into employee offer letters and settlement letters.
- Preventing employers from asking for a non-disclosure agreement about the existence of a settlement agreement relating to harassment, discrimination, or sexual assault - or about the dollar amount of such a settlement.
- Clarifying that former employees are also covered under the Oregon Workplace Fairness Act protections.

In the wake of #MeToo, it is clear that when individuals tell their stories, they can create change. But employers continue to use contractual tools like NDAs to prevent individuals from disclosing facts and terms of settlement agreements surrounding harassment, discrimination, and sexual assault—whether to co-workers, enforcement authorities, family and friends, or the public. This bill simply clarifies current law and continues to make sure that workers aren't silenced after they've experienced discrimination or harassment on the job.



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