

SB 483 -1, -5 STAFF MEASURE SUMMARY

Senate Committee On Judiciary and Ballot Measure 110 Implementation

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Meeting Dates: 3/16, 3/30

WHAT THE MEASURE DOES:

Creates a rebuttable presumption that prohibited retaliation or discrimination has occurred if within 60 days of an employee or prospective employee engaging in protected activities the employer bars or discharges that employee or prospective employee from employment or otherwise discriminates against that person. Protected activities include: opposing any legally forbidden practice; making any related complaint or participating in a proceeding related to that complaint; or in good faith reporting an assault involving health care services. If the employer bars or discharges that employee or prospective employee or otherwise discriminates against that person more than 60 days after the person engaged in protected activity, there is no presumption and the employee or prospective employee must prove that a violation occurred. Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Sets evidentiary standard for rebutting the presumption that prohibited retaliation occurred to a preponderance of the evidence. States that when an employer bars or discharges that employee or prospective employee from employment or otherwise discriminates against that person beyond 60 days from the employee engaging in protected activities, this act does not modify current case law relating to the analysis of proximity of time between a protected action and an adverse employment action.

-5 Clarifies that if a specified action is taken beyond the 60 window, that action does not create a presumption in favor of or against a finding that a violation has occurred, and that the measure does not modify current case law regarding proximity of time between a protected activity and an adverse employment action. Sets standard for person to rebut the presumption that retaliation has occurred at a preponderance of the evidence. States that the measure applies to decisions on complaints filed with the Bureau of Labor and Industries (BOLI) and judgements entered by a circuit court on or after the effective date of the act..

BACKGROUND:

Oregon law makes it an unlawful employment practice for an employer to retaliate against an employee or prospective employee because the employee reported or opposed a workplace health or safety violation, filed a complaint, or testified in a proceeding under the Oregon Safe Employment Act. The elements of retaliation are (1) the employee engaged in a protected activity; (2) the employee was subjected to an adverse employment action; and (3) there is a causal link between the activity and the adverse employment action. Currently, the burden is on the employee to prove the employer's action was retaliatory. An aggrieved employee or applicant may file a complaint with the Bureau of Labor and Industries (BOLI) and may file a civil action in court. In general, an action relating to an unlawful employment practice must be filed within one year of the occurrence of the practice.

SB 483 creates a rebuttable presumption that prohibited retaliation or discrimination has occurred if within 60 days of an employee (or prospective employee) engaging in protected activities the employer bars or discharges that employee (or prospective employee) from employment or otherwise discriminates against that person.