

SB 483 A -A6 STAFF MEASURE SUMMARY

House Committee On Rules

Prepared By: Jan Nordlund

Meeting Dates: 5/6, 5/25

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

Fiscal: Statement has been issued

Revenue: No impact

Senate vote: 18-12 (Nays: Anderson, Boquist, Findley, Girod, Hansell, Heard, Kennemer, Knopp, Linthicum, Robinson, Thatcher, Thomsen)

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-A6 Establishes rebuttable presumption that an unlawful employment practice occurred if the employee or prospective employee proves with a preponderance of evidence that the employer had actual knowledge that the employee or prospective employee engaged in a protected activity, and the employer barred or discharged from employment the employee or prospective employee within 60 days of the protected activity. Allows the employer to rebut this presumption with a preponderance of evidence.

BACKGROUND:

Oregon law makes it an unlawful employment practice for an employer to retaliate against an employee or prospective employee because that person 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.

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

activities regarding workplace safety.

PRELIMINARY