



Standing for dignity in the workplace

March 16, 2021

Testimony in Support of SB 483

Chair Prozanski, Vice-Chair Thatcher and Members of the Senate Judiciary Committee,

I write in strong support of SB 483. This bill will give workers a fighting chance to prove retaliation when they suffer adverse action for reporting safety and health issues in their workplaces.

The Northwest Workers' Justice Project provides legal representation to low-wage workers throughout the economy in sectors such as construction, building maintenance, landscaping, hotels and restaurants, food processing, agriculture and forestry. All of our clients are low-wage earners. The large majority of our clients are people of color, and most are immigrants.

Retaliation is rife in low-wage work. Too often, when workers speak up about working conditions, wages or other issues, they suffer adverse actions. Many workers choose not to speak up knowing this reality. One thing we can do to address this widespread problem is make legitimate retaliation cases easier to prove. SB 483 aims to shift the burden of proof from the worker to the employer for firings, demotions and other adverse actions that happen close-in-time to reports of workplace safety issues. It does not take away an employer's ability to make its own business decisions. It does not take away an employer's ability to take adverse or disciplinary actions against a worker, as long as there is a non-retaliatory reason for doing so.

The current Oregon law that protects workers from retaliation for workplace safety reporting, ORS 654.062, is based on a worker's reasonable belief that the law has been violated. SB 483 does not change this. SB 483 does not change the "at will" nature of work in Oregon. It does not add a new cause of action. It simply says that an adverse action will be *presumed* to be retaliatory if it happens within 60 days of raising a workplace safety issue. An employer can then *rebut* or refute that presumption if they have a non-retaliatory reason for taking an adverse action. A good example would be a planned downsizing or sudden downturn in the economy that happened during the 60 day period following a workplace safety complaint. The employer could show that, in fact, the reason for the firing was a legitimate, economic one and not a retaliatory one. The presumption would then be rebutted.

Proximity in time (between an adverse action and a protected activity) is already a factor that a court or state agency will consider, when retaliation is alleged. SB 483 clarifies that during the first 60 days after a complaint is made, we can assume any adverse action taken is in retaliation for the complaint. After 60 days, there is no presumption and current case law applies exactly as it does now. Employers who follow the law and do not retaliate will not be affected by this change. Employers who take adverse action for non-retaliatory reasons (and who can prove those non-retaliatory reasons) will not be affected by this change.

SB 483 brings a small measure of protection to workers who have been brave enough to speak out about workplace safety. As the pandemic has shown us, low-wage workers are at risk. This was true before the pandemic and will be true long after. Due to the power dynamics at play in most non-unionized workplaces, workers fear speaking up and have little recourse when they suffer retaliation. Now is the time to do something about this serious and widespread problem.

We urge you to vote yes on this much-needed bill. Thank you.

Kate Suisman
Coalitions Manager, Attorney
NW Workers' Justice Project
812 SW Washington #225
Portland, Oregon 97205