

May 6, 2021

To: Chair Smith Warner and Members of the House Committee on Rules  
From: Paloma Sparks, Oregon Business and Industry  
RE: OBI Testimony on SB 483

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### **Chair and Members of the Committee:**

Thank you for the opportunity to testify on this important issue for Oregon Business & Industry members. OBI is Oregon's largest and most comprehensive business association representing approximately 1,600 businesses that employ over 250,000 people. We represent multiple sectors and serve as the state's Retail and Manufacturing Councils.

Senate Bill 483 would allow employees to allege discriminatory acts without facts to support those claims. Under current law an employee can argue that an employer retaliated against them for filing complaints under the OSHA statutes. The existing burden of proof on employees is a fairly low bar. This bill would eliminate the element of proof altogether by creating a presumption of a discriminatory action anytime an employee files a complaint with OSHA.

It is unclear what problem this seeks to solve. Already, courts infer that an employer has retaliated against an employee if the employer takes adverse action within 60 days of an employee filing a complaint. Under existing law the employee must prove that the employer knew the employee filed a complaint. This bill will allow employees to allege an employer retaliated without any proof that the employer knew the employee filed a complaint. This is particularly problematic given that OSHA allows for anonymous complaints and those complaints need not be supported by evidence of any sort of violation.

Employers are prohibited from retaliating or discriminating against an employee for filing a complaint with OSHA. The employee need not have evidence that a safety violation is occurring, just the belief that a violation has occurred. The definition of a retaliatory or discriminatory act is quite broad – it includes not just termination or discipline of an employee but any alleged discrimination in “compensation, or in terms, conditions or privileges of employment.” That means an employee who feels they aren't getting the best shifts or have been assigned a new manager could allege discrimination.

While we certainly condemn retaliatory actions by employers and believe employers who engage in such actions should be held responsible, there must be some evidence provided by an employee for those claims. Simply stating the employee's belief that an employer retaliated against them should not be enough. Courts have already found there is a causal link between a claim being filed and the timing of disciplinary action. The burden on employees to prove a retaliation claim is relatively minimal under existing law.

This bill will encourage frivolous claims. An employee who is already on the discipline track can use this provision to shield themselves from justified discipline. For example, an employee who has been chronically late or has failed to complete their tasks as required, may be on track for

disciplinary action. This bill gives them a way to prevent the employer from taking reasonable action that would benefit the workplace as a whole, by using the shield of a presumption of retaliation. This bill will require that employers prove a negative by providing evidence that they did not know the employee filed a claim. While the employer may ultimately succeed in defending against such a claim, that will only occur after they have expended a great deal in time and attorney fees. This, while the employee can obtain legal representation at no out-of-pocket expense.

Employers are constantly defending against frivolous claims. Businesses have seen all sorts of complaints unsupported by evidence or law. And employees have clear methods for bringing claims of retaliation. Employees should be expected to meet the low burden of proof required in existing law before an employer is deemed to have acted in violation of the law.

We urge you to reject this concept or amend it to address the issue of anonymous complaints. Thank you for your time and consideration.