



3340 Commercial St SE, Ste. 210
Salem, OR 97302
(503) 364-4450
NFIB.com

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To: The House Committee On Judiciary Subcommittee On Civil Law
From: Anthony K. Smith, National Federation of Independent Business
Re: NFIB Written Testimony in Opposition to HB 2205

Chair Power, Vice-Chair Wallan, and Members of the Committee:

On behalf of the thousands of Oregon small business members of NFIB, many being the smallest of small businesses, I would like to share our concerns with House Bill 2205, which would allow individuals the right to sue private businesses in the name of the state of Oregon for any violation that could result in a civil penalty. This bill is similar to California's Private Attorney General Act (PAGA).

Under current law, agencies tasked with enforcement of Oregon statutes do so in a variety of ways. Many agencies focus on education, technical assistance, and long-term compliance, but when appropriate, civil penalties may also be assessed. While not every small business subject to an enforcement action will always be satisfied with the outcome, most of these cases are able to be resolved in a fair and timely manner.

As the California Labor and Workforce Development Agency has stated, "Among other things, cases investigated by the state tend to resolve much more quickly with a better outcome for workers in terms of back wages recovered, promptness of payments, and commitments to future compliance, than private PAGA litigation. They also save employers considerable litigation costs and potential liability for plaintiffs' attorneys' fees."

HB 2205 would completely upend the system as it exists today, turning even minor violations into potential lawsuits. The California Labor and Workforce Development Agency also reported that 40% of PAGA notices were "curable" and the overwhelming majority of curable violations were for minor violations where the employer failed to state the inclusive dates of the pay period and the employer's correct legal name and address.

HB 2205 would result in an exponential expansion of liability exposure that will negatively impact nearly every employer in the state, except for the special interests that stand to profit substantially from this change in policy. State agencies, on the other hand, are not

motivated to be unreasonably heavy-handed for financial gain – and certainly neither are agency personnel tasked with enforcement.

On a final note, when NFIB surveyed our members in Oregon on this issue last year, an overwhelming 94.86% opposed adopting PAGA legislation in our state, making this the #1 issue on the survey. Fear of a lawsuit is already top-of-mind for many small businesses. HB 2205 would further raise the stakes for Oregon small businesses and too often result in a no-win situation – settle out of court to minimize out-of-pocket costs, or even worse, try to defend the case and end up paying sizable attorney fees.

For these many reasons, NFIB respectfully asks the committee to oppose HB 2205.

Thank you for your time and consideration,



Anthony K. Smith
NFIB Oregon State Director