



Standing for dignity in the workplace

*Testimony in Support of HB 3471- The no “no rehire” bill
March 15, 2023*

Chair Holvey, Vice Chairs Elmer and Sosa, Members of the Committee,

My name is Kate Suisman. I am an attorney at the Northwest Workers’ Justice Project (NWJP). Thank you for the opportunity to give testimony on this important bill. We represent workers in low-wage jobs when bad things happen to them at work: when they are not paid, or are discriminated against for being in a protected class or are retaliated against for speaking up. Finally, we engage in policy advocacy and try to bring the important perspectives of workers in low-wage jobs and immigrant workers to these policy discussions.

NWJP does not represent workers in the workers’ compensation process- however we often deal with its fallout. A good portion of our cases are based on retaliation for having used the workers’ compensation system, and/or having been injured at work. We are in strong support of HB 3471.

Retaliation rears its ugly head in many ways, but perhaps the most egregious is when a worker is required to quit their job in order to settle their workers’ compensation claim. As you all well know, Oregonians are protected from workers’ compensation retaliation under ORS 659a.040, and have the right to go back to their job at injury, or another position at that employer, under 659a.043 and 659a.046 respectively.

However, some employers and some workers’ compensation defense attorneys insist that a worker sign a broad employment release that gives up the worker’s right to sue the employer for any and all potential past or future claims. The release usually includes a “voluntary termination” and an agreement not to apply for future work at that employer- as well as all of its affiliates, parent companies, subsidiaries etc. Of course, the agreement is not voluntary in any way when it is *required* in order to settle your claim.

Now, some workers may want to sign an employment release that includes a “no rehire” agreement- maybe they have found a better job. Maybe they are injured to the point where they can no longer do the work they did before. But many other workers, and the huge majority of our clients, want to return to their job and pick up where they were before their injury.

I would like to briefly tell you about a former client who was the victim of a severe form of retaliation in his job as an apartment maintenance technician. My client was injured when a resident backed a car into him, injuring his back and putting him out of work for a number of months. He filed for workers’ compensation and found an attorney to help. When it came time

to resolve the claim, the workers' compensation defense attorney insisted that my client "resign" and agree to not seek further employment at this very large, national property management company, Avenue 5 Residential. My client had no interest in quitting, and in fact had just applied for a promotion after returning from his medical leave. Though he never agreed to quit, he was fired about two months after returning from leave. He was called to the office suddenly and given his last paycheck. He thought it was some kind of a joke, as he had been a valued employee for a number of years and got along well with the manager who was firing him. The manager literally asked for the shirt of my client's back, since it was a company shirt. My client had no other shirt and refused. He was walked to his car as if he were a criminal, and made to leave the property. He found my office and were able to fight alongside him to right this wrong. We filed with BOLI, who found substantial evidence of retaliation and agreed to prosecute the case. We settled on the eve of the hearing, and my client was finally able to move on, years later. He left the industry and became a long-distance trucker.

I also would like to briefly mention another client who came to me recently. Because the case has not yet been filed, I will describe the contours of the case without any detail.

My client worked at a fruit processing facility outside of Portland. After an on the job injury, he filed a workers' compensation claim. He found an attorney to help him and after some months, the attorney presented him with a settlement agreement for a modest amount of money. My client signed the agreement, and was glad to wrap up the process. Within a few weeks, he found out that the agreement he signed included an agreement to quit his job and never apply to work there again. This had not been explained to him at any point, and he never would have agreed to it if it had been- he had worked at this facility for eight years and enjoyed his work. We hope we will be able to get him back to work, which is what he hopes for. As in the case above, there is no reason this scenario should be playing out.

This is happening over and over because an entity with a lot of bargaining power, the employer, is able to dictate the terms of a settlement in ways that greatly impact the party with less bargaining power. Employers are punishing workers by requiring them to quit even though the process is supposed to include the right to go back to work, if you are physically able to and your job still exists. This is retaliatory on its face and should not be allowed. We need to separate the workers' compensation settlement process from the employment process. Workers have rights under our discrimination laws that are being ignored and trampled upon.

Employers are already planning ways to get around the intent of the bill before you today. A recent [blogpost](#) from an employment defense firm says that banning "no rehires" "...may be a deal breaker [for] some employers who do not want to enter into the risk of the employee returning to employment." Though the post does not go into detail about what the "risk" entails, it is clear that some employers are looking at injured workers as somehow damaged and not worth the risk of bringing back to work- even though this right is protected. The blog goes on to say, "However, on a practical matter, if this legislation is passed, it may not be a large barrier to effective global settlements...What we have learned from the [Workplace Fairness Act], is that most attorneys representing claimants or plaintiffs understand that these types of provisions are necessary for successful settlement of claims. Therefore, attorneys at SBH have been navigating

these requirements for a few years now and have been able to obtain agreements that ensure employer's interests are preserved in the settlement agreements.”

This is why we need the strong enforcement mechanism in section 2(3) of the bill, which is the same as the framework this body established under the Workplace Fairness Act of 2019. To prevent employers from getting around the intent of the law, the Legislature updated the enforcement portion of the Workplace Fairness Act in 2022. The change allows workers to seek a civil penalty of \$5,000 per violation, as well as the other remedies under ORS 659a.885- the remedy section of our discrimination law. These same options would be available to workers under this proposal.

We need to make very clear in statute that an employer cannot force a worker to quit after an injury, just to suit the employer's desire to protect itself from perceived “risk” posed by a formerly injured worker

Please join community members, advocates and workers in support of this important fix to a serious problem affecting injured workers. Thank you very much.