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March 17, 2023

**Re: Testimony in Opposition of HB 3471**

Dear Chair Holvey, Vice Chairs Elmer and Sosa and members of the committee:

My name is Randi Ensley, and I am an attorney at SBH Legal. Thank you for the opportunity to provide testimony regarding this bill. We represent employers and insurers in both workers' compensation matters as well as employment matters.

This bill is not simply a no no-rehire bill similar to the provisions in the Workplace Fairness Act; it goes beyond prohibiting no rehire language to barring settlement of reinstatement and reemployment rights under ORS 659A.043 and ORS 659A.046 in employment releases as well as disputed claim settlements and claim disposition agreements for all workers' compensation claims. This makes it much broader than restrictions on employee settlements under the Workplace Fairness Act.

This bill will negatively impact injured workers interested in obtaining compensation for their injuries swiftly without having to endure the litigation process. Settlement has its place as an alternative to litigation. Workers' compensation settlements offer certainty and finality to both injured workers and employers/insurers. However, settlement will no longer offer certainty and finality to employers and insurers if injured workers cannot be asked to release their reinstatement and reemployment rights as part of worker's' compensation settlements.

If employers and insurers cannot seek a release of reinstatement and reemployment rights, the value in settlement will be greatly reduced and injured workers may be offered much less in exchange for the release of their claims. Employers and insurers are likely to opt for litigation rather than settling at all as they may see little remaining benefit to settlement if an injured worker can claim they are unable to return to work, seek compensation consistent with that position in a settlement of their claim, and turn around and demand their employer reinstate them.

When an injured worker is unable to return to their original job at injury due to permanent medical restrictions, they become entitled to work disability and retraining. Often, rather than going through a vocational retraining program which can take months and sometime years, an injured worker prefers to settle their rights to such benefits in exchange for monetary consideration. Participation in such vocational retraining programs terminate the injured worker's right to

reinstatement or reemployment under ORS 659A.043 and 659A.046. However, if the worker foregoes such participation in lieu of settlement, their reinstatement and reemployment rights remain absent a release. The injured worker could gain the value based on their inability to work and maintain the right to return to work. Employers and insurers recognize this and will decline to settle absent the injured worker's release of their right to reinstatement or reemployment and agreement to refrain from seeking rehire.

This bill will effectively chill settlement of workers' compensation claims, resulting in a dramatic increase in litigation before the Workers' Compensation Board. With fewer settlements, there will be an influx in litigation on the dockets of the Workers' Compensation Board. Injured workers will have to wait even longer than they do now to have a hearing regarding their right to benefits. Currently, hearings are scheduled out 45-60 days from a hearing request. However, a dramatic uptick in cases going to hearing due to lack of settlements could see injured workers waiting even longer to have their claims adjudicated.

Adequate protections already exist to protect the interests of injured workers entering into settlement agreements. Disputed claim settlements and claim disposition agreements must be reviewed and approved by the Workers' Compensation Board and such settlements contain a 30-day revocation period.

SBH Legal asks that this committee reject HB 3471. Thank you for your consideration.