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Office Of State Senator Kayse Jama

Senate District 24 (D-East Portland, Damascus, Boring)

March 26, 2023

RE: SB 925 – Response to Questions

Chair Taylor, Vice-Chair Bonham, and members of the committee,

My office asked legislative counsel to respond to the questions posed in committee and other additional question about this wage range transparency legislation. Our response is below:

First, you asked whether the provisions of SB 925 are redundant in light of the existing laws governing pay equity. In short, the answer is no. Both Senate Bill 925 and the pay equity laws relate to employee compensation, however, each relates to employee compensation in different ways.

- Pay equity laws primarily focus on ensuring that employees are paid equal pay for equal work.
- SB 925 seeks to regulate transparency and disclosures concerning employee compensation.

The transparency and disclosure requirements under SB 925 might relate to pay equity insofar as the transparency practices and disclosures operate to reveal potential inequalities in employee compensation, which, in turn, could provide opportunities for an employer to address the inequalities by reviewing their pay practices. However, the transparency and disclosure requirements neither govern nor prescribe how employers must compensate employees.

You also asked about the purpose of record-keeping provisions in SB 925. The bill requires an employer or employment agency to disclose the wage range in all job postings. If an employment opportunity is not advertised in a job posting, the wage range must be disclosed prior to the employer extending an offer or engaging in any discussion regarding compensation.

The record-keeping requirement is intended to be a record that the employer complied with the disclosure requirement (e.g. here is a copy of the job posting with the wage range). It is proof of compliance after the fact, not a requirement to report employee pay to the state.

Asking employers to keep records for 2 years after an employee's employment ensures that relevant documents will be available so BOLI can figure out whether there was a violation. Both California and Colorado require employers to keep records for 3 years and 2 years, respectively.

-6 amendment clarifies that the definition of job postings does not include marquee signs and exempts the recordkeeping provisions for employers with fewer than 15 employees.

Finally, you asked about the justification for the fines structure and its potential impact on small businesses. There are two enforcement mechanisms under SB 925: Civil Penalty through BOLI and Private Right of Action (PRA).

-6 amendment removes the PRA and exempts BOLI enforcement provisions for employers with fewer than 15 employees. For your context, the Pay Equity Act has no exemption while the Paid Family Leave has an exemption for businesses few fewer than 25 employees.

For businesses with more than 15 employees, SB 925-6 updates the BOLI enforcement process to:

- BOLI shall dismiss the first complaint if the employer does not have any prior violations. Upon dismissal of the complaint, BOLI shall issue a letter of education to the employer.
- \$1,000 for a first violation.
- \$1,000 for each subsequent violation but at no time shall the total amount exceed \$10,000.

BOLI has provided us with a few examples of their current civil penalty authority:

ORS 652.020(9)	Coercing worker into working more than 55 hours a week	\$2,000
ORS 652.035(2)	Violating overtime statutes	\$1,000
ORS 652.100(3)	Coercing an employee to falsify work documents	\$1,000
ORS 652.710(4)	Failing to keep medical funds for employees in trust	\$1,000
ORS 652.900(1)	Various failures to comply with wage and hour laws	\$1,000
ORS 653.256(1)	Willful violation of certain wage and hour laws	\$1,000
ORS 653.261(4)(c)	Coercing employee into missing meal break	\$2,000
ORS 653.370	Unlawful employment of minors	\$1,000
ORS 653.480(3)(b)	Predictive scheduling violations	\$1,000

Thank you for your consideration and engagement.

Sincerely,

State Senator Kayse Jama, Senate District 24