



February 19, 2025

**TO:** Members of the House Committee on Labor and Workplace Standards

**FR:** Paloma Sparks, Oregon Business & Industry

**RE:** Opposition to HB 3187 – Expanding Age Discrimination Laws

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Chair Grayber, members of the House Committee on Labor and Workplace Standards. For the record, I am Paloma Sparks, Executive Vice President & General Counsel for Oregon Business & Industry (OBI).

OBI is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. In addition to being the statewide chamber of commerce, OBI is the state affiliate for the National Association of Manufacturers and the National Retail Federation. Our 1,600 member companies, over 75% of which are small businesses, employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

Oregon has some of the most expansive and layered laws prohibiting discrimination against anyone on the basis of age. ORS 659A, Oregon's antidiscrimination statute has a broad policy statement which states, *"It is declared to be the public policy of Oregon that the available workforce should be utilized to the fullest extent possible. To this end, the ability of an individual, and not any arbitrary standards that discrimination against an individual solely because of age should be the measure of the individual's fitness and qualification for employment."*

Current law prohibits discrimination of any kind on the basis of age for anyone over the age of 18. It is unlawful to do any of the following on the basis of an individual's age:

- Refuse to hire;
- Refuse to employ;
- Bar from employment;
- Discharge from employment;
- Discriminate in compensation;
- Discriminate in terms, conditions or privileges of employment.

Additionally, Oregon's antidiscrimination laws prohibit employers from printing, circulating or causing to be printed or circulated **any statement, advertisement or publication, or to**

**use any form of application for employment to make any inquiry in connection with prospective employment that expresses directly or indirectly any limitation, specification or discrimination as to an individual's age if the individual is 18 years of age or older.** ORS 659A.030(1)(d)

These protections are also the same for all protected classes under Oregon law. Oregon law has additional protections for individuals alleging discrimination as a result of their membership in a protected class through the Workplace Fairness Act and the Equal Pay Act. Both of these laws are far more expansive and protective than other states.

BOLI has a broad interpretation of what constitutes discrimination and substantial evidence of discrimination. Under OAR 839-005-0010 substantial evidence may be found under a variety of theories and unlike the federal courts, BOLI does not require that complainants prove that age was the “but for” reason for their termination. In 2024, 187 age discrimination complaints were filed with BOLI. The agency, with a very broad interpretation of discrimination and evidence, found that only 10 of those cases were supported by substantial evidence.

HB 3187 would make salary, length of service and retirement or pension eligibility or status proxies for age. First, we must address that unlike federal law and most states, Oregon law is not written to protect only older workers, but *all* workers of any age. There are some limited proxies under existing law – but they are physical characteristics or conditions, not descriptors of compensation or experience. The same cannot be said of the suggested phrases in HB 3187. Salary – high or low – is not something that is specific to age. Neither is experience. A young employee could easily have more experience and a higher salary and an older employee could just as easily have less experience or lower salary. Retirement status can mean any number of things – such as issues related to contribution, vesting, eligibility or fund adequacy. None of these terms are inherently tied to age.

Further, pay and experience are intrinsically tied together under Oregon's pay equity law. While HB 3187 makes vague reference to not prohibiting complying with ORS 652.220 that is small comfort. How is an employer or their HR staff going to decide how to navigate complying with one law and violating another?

OBI and our members believe Oregon law is clear – age discrimination is prohibited by federal and state laws. However, if proponents feel there must be further protections in our already expansive law, OBI is open to further discussions about job applicants' age.