May 13, 2025

TO: Senate Committee on Labor and Business

FR: Paloma Sparks, Oregon Business & Industry

RE: Opposition to HB 2957A – Eliminating 90-day Letters, Discouraging Settlements

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Chair Taylor, Vice-Chair Bonham, members of the Senate Committee on Labor and Business. 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, more than 80% 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.

HB 2957 would upend a long-standing practice of BOLI issuing 90-day right to sue letters after conducting an investigation under the BOLI discrimination statutes. Federal law requires EEOC 90-day right to sue letters to pursue a civil action in federal courts. That same requirement does not apply for those wanting to file in state courts. The statute of limitations to bring a suit or BOLI complaint alleging a violation of Oregon civil rights laws is five years – one of the longest time periods in the nation.

When an individual is pursuing a complaint alleging a violation of an unlawful practice under ORS chapter 659A, they have two paths to choose from. They can choose to file in state civil court and bring a lawsuit. If they file directly in civil court, the plaintiff and their attorney bear the cost of investigation, gathering witness statements and other evidence collection. Again, there is no requirement that they file with the agency before pursuing a lawsuit.

Alternatively, an individual can choose to file a complaint with BOLI. If they file a complaint with BOLI, the individual has five years from the alleged violation to file with the agency and BOLI has up to a year to complete their investigation. In this case, it is the agency that conducts the investigation, interviews all parties and witnesses, and collects other evidence. They also get a position statement from the respondent, explaining their defense of the allegations. All of this is done through the agency and at the public expense, with no direct costs incurred by the complainant or their attorney, instead those costs are borne by taxpayers. For obvious reasons, most plaintiff attorneys choose this route because it saves them the money and effort of conducting their own in-depth investigation. At the end of

the BOLI investigation, the attorney can simply request a copy of the position statement and file and evaluate whether to file in civil court. This is a standard practice among many and a significant source of complaints filed with BOLI. This system essentially allows complainants and their attorneys to pursue two different paths for pursuing their complaint.

A BOLI investigation is still a very stressful, time-consuming and expensive process for employers. Spending a year responding to requests for documents and participating in interviews takes a lot of time away from day-to-day operations. And the burden is particularly felt by small businesses where HR staff may be trying to juggle managing the workplace, overseeing essential reporting and trying to respond. But there is possible relief when BOLI finds the complaint lacks evidence and dismisses the case – because then the employer knows there is just a 90-day window of time in which the employee may file in civil court. Having certainty is key for businesses.

If HB 2957 were to pass, it would mean that employers who have engaged in a difficult BOLI investigation process and even after the agency found insufficient evidence of a violation employers would have to suffer years of uncertainty about whether a lawsuit will ultimately be filed. In that time, staff who had knowledge about the facts surrounding the allegation may have moved on. Proponents claim that the bill is intended to simply make sure that individuals have access to the full period of the applicable statute of limitations – but the bill actually eliminates time limits that benefit employers while granting employees up to an extra 90 days after the statute of limitations has expired. This is blatantly imbalanced.

We are also very concerned about the proposal to create a new unlawful employment practice prohibiting certain agreements. HB 2957 would prohibit all agreements that limit timelines to file for any law that BOLI has enforcement authority over. Oregon law already has extensive protections related to certain agreements if there are allegations of discrimination under the Workplace Fairness Act. Certain agreements to be entered into if requested by the employee but there is no exception for those agreements in HB 2957.

There are circumstances when a difficult employment relationship or other issues are best resolved through a severance agreement or settlement agreement. This bill will make those increasingly difficult. There are times when an employer simply wants to offer an employee a quiet way to leave, but there must be some benefit to the employer. HB 2957 would prohibit provisions reducing timelines for filing even when there has been no allegation of discrimination, even if the agreement is only entered into because the employment relationship is no longer working. For example, what if an employee is alleged to have misused company funds and rather than pressing charges, the employer asks the employee to enter into an agreement that includes a provision that reduces the current timeline to file a complaint. HB 2957 does not merely void the provision, but instead allows a wrongdoer employee to bring an unlawful employment action lawsuit or complaint against the

employer just for having the provision in an agreement.

Oregon has some of the most expansive and protective civil rights laws in the country and that is certainly something to be proud of, but HB 2957 only serves to create more unnecessary and expensive litigation. We feel there is a fundamental unfairness in allowing plaintiffs who have benefited from the work of our public agency and then get to proceed as if they had never filed with the agency.