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FR: Jess Giannettino Villatoro, Political Director, Oregon AFL-CIO

RE: Protecting Workers from Sexual Harassment and Discrimination on the Job

January 22, 2019

The Oregon AFL-CIO represents 300,000 workers across the state of Oregon and is a voice for all workers in the legislative process. Around half of those 300,000 workers identify as women. Our organization has been prioritizing internal work around gender justice and addressing gender-based inequities for over two years and we're excited to be here today to highlight one of our key priorities for the 2019 legislative session.

The Legislature, and specifically this committee, have made important strides to create equity in the workplace, especially for women and women of color. A complementary policy to address is how we deal with the inherent power dynamic in all Oregon workplaces that allows for discrimination, particularly sexual harassment. Sexual harassment inhibits a worker's ability to have a fair chance at economic success.

It's important to remember that the way laws have governed gender discrimination and sexual assault in the workplace have always lagged other types of worker protections. In the late 19th century, even after having been sexually assaulted at work, if a worker expressed that she faced economic coercion and had exerted physical resistance, the judicial system would not allow for the employer to be held accountable. Obviously, it is not 1874 any longer, but statutes have not kept up with the way discrimination or even sexual assault occurs in the workplace.

Sexual harassment law arose primarily because women spoke out about their experience at work, not dissimilar to what we've witnessed with a resurgence in the #metoo and #timesup movements over the past year and a half. Under the historic Civil Rights Act of 1964, discrimination "on the basis of sex" was

made legally actionable, but all through the 1970's those same women and attorneys had to prove to the American judiciary that yes, sexual harassment is a form of discrimination on "the basis of sex." [1]

According to the Equal Employment Opportunity Commission, at least one in four women have experienced sexual harassment at work, but as many as 94% of women do not file a formal complaint, 75% of women experienced retaliation when they did report the harassment and out of 28,000 EEOC complaints in 2015, 45% of them were sexual.[2] These statistics don't reflect a statutory structure that is protecting women in the workplace.

Prior to 2006, there had been no studies of how both sex and ethnicity might affect the incidence of both sexual and ethnic harassment at work. According to a study published by the American Psychological Association in 2006 *Workplace Harassment; Double Jeopardy,* women experienced more sexual harassment than men, people of color experienced more ethnic harassment than white men and women, and women of color experienced more harassment overall than white men, men of color, and white women.[3]

An analysis by the National Women's Law Center, of the charges filed with the EEOC for the 5 years leading up to #metoo going viral, painted a stark picture about not only the disproportionate impacts that race plays on someone's likelihood to experience workplace sexual harassment, but also how low wage workers are more likely to be impacted. Women in primarily low wage industries, including food services, retail and healthcare filed more EEOC charges from 2012 – 2016 than other industries. [4]

The legislative concept before you, while not final, aims to address what we believe to be some of the remaining gaps of where current protections fail to address sexual harassment and assault in the workplace. All of the protections I'm going to address will apply to all types of discrimination and sexual assault that occurs in the workplace.

Section 2:

- Addresses non-disclosure and no-rehire provisions in employment scenarios. When we talk to women who have attempted to address discrimination they have faced in the workplace, we're often told that upon entering severance negotiations, these two provisions are often the first thing employers put on the table. NDA's and no-rehire agreements are not only problematic for the worker that has just experienced the discrimination, but they make it so much more difficult for other workers who have experienced discrimination to come forward or to find places of employment where the harassment is pervasive and severe. If there's a NDA in place and if subsequent workers are faced with the same situation, there's no way to know if multiple violations have occurred. If a no-rehire provision is signed and that worker can't work for that employer or any of their subsidiaries again, why would another worker come forward? Continuing to allow employers to request these agreements creates an environment that is

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1 https://law.yale.edu/system/files/documents/pdf/Faculty/Siegel_IntroductionAShortHistoryOfSexualHarrasmentLaw.pdf

2 https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf

3 https://pdfs.semanticscholar.org/c5cd/8934b5d10b331560b24bcc3d7dc3c4a4818d.pdf

4 https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/08/SexualHarassmentReport.pdf

directly in conflict with allowing workers to come forward. This section also clarifies for workers and employers that any confidentiality agreement signed prior to the discrimination occurring does not apply to discrimination that has yet to have occurred.

Section 3:

- Extends individual liability to executive level officers when they took no action to address discrimination happening in the work place.
- Adds "conceal" to aiding and abetting protections, after an internal investigation has been completed to executive level officers, so that they will be made aware of the discrimination

Section 4:

- Directs BOLI to create model policies and procedures for employers and instructs that those policies be made available to employees upon hire. The goal here is to address the situation we have heard from many workers of not bringing up the harassment because they didn't know what would happen next and the fear of losing their economic security and the reality we believe to be true that many employers just don't know what to do when a worker alleges that discrimination has occurred.

Section 5:

- As we've witnessed in the past few months of executives awarded large severance agreements, in Google's example, providing Andy Rubin, their former Senior Vice President of Mobile and Digital Content, a $90 million exit package after being credibly accused of sexual harassment. We can't expect a statutory structure that allows employers to ask victims to sign away their right to work there or at any subsidiaries and then provides the harasser with large sums of money to produce anything other than the egregious statistics I shared with you earlier. This section aims to give employers an alternative to large sums of money by saying that when their own good faith determination has found that an executive committed discrimination, any severance they made may be rendered unenforceable.

Section 6:

- Extends statute of limitations to 7 years for all forms of discrimination. This section will likely need some narrowing.

As you can see, and are likely aware, the pervasiveness of sexual harassment in the workplace is severe and embedded into so much of our culture. We need a solution that is as big as the problem. We look forward to working with this committee to address these much-needed statutory changes this session.