

Testimony, HB 2818, Age Discrimination in the Workplace House Business and Labor Committee, March 13, 2019

I'm Jim Davis, a retired gerontologist/psychologist and gerontology professor, representing the Oregon State Council for Retired Citizens, United Seniors of Oregon, and the Oregon Consumer League, in support of HB 2818.

Advocacy and consumer organizations have joined together to support HB 2818, which will make needed changes in state employment discrimination statutes to prohibit employers from using age-identifying information against older applicants in the initial job application process or use age-related criteria against older employees workers such as length of service or higher salary/benefit cost factors. For those experiencing age discrimination, victim compensation is increased.

With the boomers working their way toward doubling the elder population, more older workers are working past the traditional retirement age and are expected to be the fastest growing demographic in the workplace. Older workers 50 plus bring proven job and leadership experience to their chosen occupations, but are frequently met with barriers based on age discrimination that makes their path to that ideal job is rocky one at best. The most telling piece of data is the fact that two-thirds of older workers between 45-74 believe that there is age discrimination in the workplace and/or barriers to getting a job.

Too many work environments foster internal cultures of age bias/ageism, where older workers are considered obsolete at 50, including: excluding older workers from key activities/projects; removing key responsibilities; limiting older workers from job-related education and career development; and pressuring them with financial incentives, before ultimately laying them off.

Too often, employers don't understand or appreciate that older workers are a great resource to both the public and private sectors, with vast experience, knowledge, wisdom, stability, ~~and~~ high levels of motivation, engagement, and productivity. Many studies have shown the tremendous benefits of having older workers. But, unfortunately, many employers buy into the traditional stereotypes of older workers being less capable and able. Nothing could be further from the truth. Older workers help create a more positive, effective and productive workplaces.

Older workers face the constant threat of lay-off. There have been on-going trends for decades of older workers being pushed out of jobs, only to be replaced with less, expensive younger workers. A good example would be IBM, who were sued for targeting older workers for lay-offs. Since 2013, IBM has eliminated 20,000 employees age 40 and above. Many businesses have done the same. I truly believe businesses will pay the price for the loss of knowledge, experience and the history with clients that older workers bring to the table.

If out of work, older workers spend a lot more time searching for employment, are requested for fewer interviews, and often settle for less than they hoped for. Studies show clearly that older workers are less likely to receive a request for an interview, especially middle aged and older women. Younger applicants are far more likely to get a call back for an interview. According to an AARP survey of 2,492 older workers aged 45-70, of those that found jobs, more than half ended up working in a different field/profession. Close to half had to take a pay cut,

with a third working part-time to make ends meet. Seventy-one percent said employers thought they were too old. Another study (Neumark, Burn and Button) looked at 40,000 job applications for more than 13,000 positions in 12 cities across 11 states. In measuring the number of call-backs to younger and older job applicants, there was a considerable gap of 30 to 47 percent between the younger and older applicants.

Many older workers, particularly those laid off during the Great Recession, have given up the job search and taken early retirement. Often, frustrated older workers feel they had no choice but to retire and sign up early for Social Security. At the same time, many older workers lost significant investment and or retirement savings, as well as housing values. Older unemployed workers that don't qualify for Medicare or have access to family health plan coverage can face heightened health care problems as they cut back drastically on health care, including medical and dental visits and prescriptions for needed medicines.

Oregonians of all ages deserve to work in their chosen field and earn an income to secure a financial future for themselves and their families, free of ageism. The World Health Organization calls Ageism "an insidious practice which has harmful effects on the health of older adults". Political satirist Bill Maher called it the "last acceptable prejudice in America."

There should be no place for ageism in our state, and yet age discrimination makes up more than 1 in 5 of the discrimination charges received by the U.S. Equal Employment Opportunity Commission. More than 2,500 Oregonians filed age discrimination claims with BOLI in the last decade – about one per workday, but this represents a much smaller percentage of the age bias that actually exists and is not reported or complaints filed. There have been a substantial increase in litigation and settlements in EEOC age discrimination cases since 2000. Of the 18,376 EEOC age discrimination cases filed in 2017, only 2.2 percent were found to have a "reasonable cause." There is a hard burden of proof whether employment action was taken because of age.

The federal Age Discrimination in Employment Act (1967) and Oregon law (ORS 659A.030) generally prohibit workplace discrimination on the basis of age. However, the burden of proof is much more difficult for the older worker, primarily because of a 2009 Supreme Court decision that interpreted the Age Discrimination in Employment Act in a way that created a higher standard for proving causation than plaintiffs in civil rights cases. Victims of age discrimination must prove that age was a factor and then provide direct evidence that age motivated the decision. This impossibly high burden of proof, often leaves age discrimination victims without viable options.

HB 2818 will more comprehensively define age discrimination in Oregon statutes, providing more clearly defined protections for older workers from age discrimination in the application process and on the worksite. It also creates a stronger deterrent to age discrimination by establishing a minimum level of liquidated damages for an affected older worker.

We urge your strong support for HB 2818.