

## SB 726 -3, -4 STAFF MEASURE SUMMARY

### Senate Committee On Workforce

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**Meeting Dates:** 2/12, 3/21, 4/2, 4/4

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#### WHAT THE MEASURE DOES:

Prevents employer from requesting nondisclosure agreement relating to claims of discrimination under specified conditions. Prohibits employer from requesting provisions in settlement agreement with terminated employee having the effect of preventing their rehiring. Extends Statute of Limitations for employment discrimination claims from one to seven years. Creates Individual Liability for owners, president and corporate officer under specified circumstances. Directs BOLI to create policies and procedures for employers/employees relating to sexual harassment. Prohibits court from enforcing severance contracts where employer has made a good faith determination terminated executive employee committed harassment.

#### ISSUES DISCUSSED:

- Interplay of investigations by employer and union
- Circumstances under which agreements include nondisclosure and no-rehire clauses
- Types of severance agreements
- Current statute of limitations for discrimination claims generally
- Reasons for underreporting of discrimination, particularly by victims of sexual harassment

#### EFFECT OF AMENDMENT:

-3 Replaces original measure. Makes it an unlawful employment practice for employer to enter into agreement with employee or prospective employee containing provisions preventing employee from disclosing unlawful discrimination occurring between employees, or employer and employee in the workplace or at off-site work-related events coordinated by employer, or employer and employee off-site. Allows non-disclosure provisions, disclosures of factual information, and no-rehire provisions in settlement, separation, or severance agreement only upon request of employee claiming to be aggrieved by unlawful discrimination provided the employee has seven days to revoke. Requires all employers to adopt written policies to reduce and prevent unlawful discrimination, including sexual assault. Proscribes minimum standards for written policies including details on reporting process, applicable statute of limitations for claims, and explanation of limitations on nondisclosure agreements. Requires Bureau of Labor and Industries (BOLI) to create model policies and procedures. Allows employer to void payment of severance to supervisory employee when employer determines supervisory employee violated written policies related to unlawful discrimination. Extends statute of limitations for filing civil action or BOLI complaint from one to five years for violations of existing anti-discrimination laws described in bill. For violations of new unlawful employment practices contained in the bill, the statute of limitations is five years but the provisions do not take effect until October 2021.

-4 Identical to dash three amendments in all substantive respects except for one minor clarification as follows: clarifies that employer may not enter into an agreement with employee or prospective employee preventing the employee from disclosing from disclosing unlawful discrimination **that the employee experiences** that occurs between employees, or employer and employee in the workplace or at off-site work-related events coordinated by employer, or employer and employee off-site.

#### BACKGROUND:

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In 2017, nearly 7,000 charges alleging sexual harassment were filed with the Equal Employment Opportunity Commission. Title VII of the Civil Rights Act of 1964 recognizes sexual harassment as a form of sex discrimination and applies to private employers with 15 or more employees, as well as government and labor organizations.

In 2016, California enacted a law prohibiting confidentiality provisions in civil settlement agreements related to sexual assault but it did not specify sexual harassment. During the 2018 legislative sessions, at least 16 states introduced legislation aimed at limiting or prohibiting the use nondisclosure provisions as they relate to sexual harassment.