

SB 726 A STAFF MEASURE SUMMARY**Carrier:** Rep. Williamson, Rep. Salinas**House Committee On Judiciary****Action Date:** 05/16/19**Action:** Do Pass the A-Eng bill.**Vote:** 11-0-0-0**Yeas:** 11 - Barker, Bynum, Gorsek, Greenlick, Lewis, McLane, Piluso, Power, Sprenger, Stark, Williamson**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** Channa Newell, Counsel**Meeting Dates:** 5/9, 5/16**WHAT THE MEASURE DOES:**

Makes it an unlawful employment practice for an employer to enter into a nondisclosure agreement as a condition of employment, continued employment, promotion, compensation, or receipt of benefits if agreement prevents employee from disclosing or discussing employment discrimination or sexual assault. Specifies conditions for entering into a settlement, separation, or severance agreement between employer and employee. Requires employee claiming to be aggrieved by prohibited conduct request to enter agreement and provides seven days in which employee may revoke agreement after entering into it. Allows employer to enter into settlement, separation, or severance agreement, including agreements with no-rehire provisions, with employee who, after good faith investigation, is determined to have engaged in employment discrimination or sexual assault. Allows employment action based on violation of nondisclosure agreement provisions. Defines sexual assault. Requires every employer in state to adopt a written policy codifying their procedures and practices for reducing and preventing discrimination and sexual assault. Requires policy to contain at least: 1) a process for employees to report prohibited conduct; 2) identification of the individual responsible for receiving reports; 3) the statute of limitations for actions arising out of prohibited conduct; 4) a statement that the employer cannot coerce or require employees to enter into nondisclosure agreements; 5) an explanation of process for requesting agreement, including a statement that employee has at least seven days to revoke an agreement; and 6) a statement advising employers and employees to document any incidents involving prohibited conduct. Requires Bureau of Labor and Industries to provide model policy on website. Requires employer make policies available to employees and provide copy to each employee upon hire. Provides five-year statute of limitations for action based on prohibited conduct.

ISSUES DISCUSSED:

- Examples of workplace harassment
- Provisions for documenting instances of harassment
- Companies may avoid paying severance packages if employment ends due to prohibited conduct
- Measure does not revive claims

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Oregon law makes it an unlawful employment practice for an employer to discriminate in wages or in the terms, conditions, or privileges of employment based on race, color, religion, sex, sexual orientation, national origin, marital status, age, expunged juvenile criminal record, person's service in a uniformed service, or disability. See ORS 659A.030, 659A.082, and 659A.112. An aggrieved employee or applicant may file a complaint with the

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Bureau of Labor and Industries (BOLI) or may file a civil action in court. The remedy in either case can include recovery of back pay for the prior two-year period as well as compensatory and punitive damages. An action based on unlawful employment practices must be filed within one year of the occurrence of the practice, unless a complaint was made to BOLI.

Senate Bill 726-A creates a new unlawful employment practice. An employer is prohibited from entering into a nondisclosure or nondisparagement agreement (NDA) with an employee or prospective employee containing provisions that prevent an employee from disclosing unlawful employment discrimination: (a) between employees; (b) between an employer and employee in the workplace or at off-site work-related events coordinated by the employer; or (c) between an employer and employee off-site. Senate Bill 726-A also defines sexual assault as unwanted conduct of a sexual nature inflicted upon a person or compelled through force, manipulation, threat, or intimidation and makes it unlawful employment discrimination that an employee may not be prohibited from disclosing via a NDA. Senate Bill 726-A requires a complaint regarding a NDA be filed with BOLI or in circuit court no later than five years after the occurrence of the alleged unlawful employment practice and applies to conduct occurring on or after October 1, 2020. The remedy in either case can include recovery of back pay for the prior two-year period as well as compensatory and punitive damages.

Senate Bill 726-A provides two exceptions for employers wishing to enter into a NDA that would prevent an employee from disclosing unlawful employment discrimination. First, an employer may enter into a NDA if an employee claiming to be aggrieved by employment discrimination requests it as part of a settlement, separation, or severance agreement, provided the employee has seven days to revoke. Second, an employer may enter into a NDA with an employee whom the employer determines has engaged in employment discrimination. The employer may include a no-rehire provision in a settlement, separation, or severance agreement under the same circumstances.

Senate Bill 726-A requires private and public employers to adopt written policies to reduce and prevent unlawful employment practices. At a minimum, the policies must include a process for employees to report prohibited conduct; the identity of the person tasked with receiving reports; a description of the applicable statute of limitations; and the prohibition regarding NDAs and its exceptions. The measure directs BOLI to make available model procedures and policies that employers may use as guidance.