

## FISCAL IMPACT OF PROPOSED LEGISLATION

81st Oregon Legislative Assembly – 2021 Regular Session  
Legislative Fiscal Office

Measure: SB 483 - 5

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

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### **Measure Description:**

Creates rebuttable presumption that person violated prohibition against retaliation or discrimination against employee or prospective employee if person takes certain action against employee or prospective employee within 60 days after employee or prospective employee has engaged in certain protected activities.

### **Government Unit(s) Affected:**

Statewide, Oregon Judicial Department (OJD), Department of Justice (DOJ), Bureau of Labor and Industries (BOLI), Department of Consumer and Business Services (DCBS)

### **Summary of Fiscal Impact:**

Costs related to the measure are indeterminate at this time - See explanatory analysis.

### **Analysis:**

SB 483 with the -5 amendment creates a rebuttable presumption that a person violated a prohibition against retaliation or discrimination against an employee or prospective employee if a person takes certain action against employee or prospective employee within 60 days after employee or prospective employee has engaged in certain protected activities. The measure also provides that an employee or prospective employee bears burden of proof when a person takes certain action against the employee or prospective employee more than 60 days after the employee or prospective employee has engaged in protected activities. The measure specifies that these provisions apply to complaints filed with the Commissioner of the Bureau of Labor and Industries (BOLI) in which a decision on the complaint is made on or after the effective date of this 2021 Act and to civil actions brought in a circuit court in which judgment is entered on or after the effective date.

### Bureau of Labor and Industries (BOLI)

The fiscal impact of this measure on BOLI is indeterminate depending on the number of cases filed prior to the effective date of the measure that BOLI may need to restart. BOLI is responsible for investigating and enforcing complaints of retaliation made by an employee or prospective employee after reporting or opposing an Oregon Occupational Safety and Health (Oregon OSHA) workplace health or safety violation. An employee or prospective employee must file a complaint within 90 days of the date of any discriminatory action/harm. Oregon OSHA retaliations complaints are subset of the general whistleblower protections. Therefore, an individual who files an Oregon OSHA retaliation complaint can file a companion whistleblower complaint. Currently, complaints that are dual filed are investigated simultaneously and analyzed using the one legal theory, one in which the employee or prospective employee bears burden of proof.

For the subset of Oregon OSHA retaliation complaints covered by the presumption proposed by this measure, that also file a companion whistleblower complaint, a BOLI civil rights investigator will have to analyze the complaints under two legal theories, presumption and non-presumption. This will increase the work for that subset of complaints, but that increase is expected to have a minimal impact. Moreover, BOLI does not anticipate that there will be an increase in the number of complaints filed or dual filed as a result of this measure.

However, the measure applies the rebuttable presumption to complaints filed with BOLI in which *a decision on the complaint is made* on or after the effective date of this 2021 Act and to civil actions brought in a circuit court

in which *judgment is entered* on or after the effective date of this 2021 Act. This language will affect complaints filed with BOLI prior to the effective date of the measure in which a determination had not been yet been made. To comply with this requirement, BOLI investigators would have to restart the investigation of an Oregon OSHA complaint, subject to the presumption, in which any part of the investigatory process had been initiated. On average, BOLI has between 50-75 retaliation complaints in various stages of the investigation process. In order to restart cases to comply with this provision of the measure, BOLI may require a limited-duration civil rights investigator 2 position for the 2021-23 biennium.

Department of Consumer and Business Services (DCBS)

The fiscal impact of this measure on DCBS is indeterminate depending on the extent that the rebuttable presumption encourages additional whistleblower cases. If passage of this measure results in an increase of whistleblower cases under the Oregon Safe Employment Act, DCBS would incur increase costs. BOLI is the state agency that investigates all whistleblower cases in Oregon. However, DCBS Oregon OSHA compensates BOLI \$2,000 per case for investigating the whistleblower cases under the Oregon Safe Employment Act.

Statewide, Oregon Judicial Department (OJD), Department of Justice (DOJ)

The fiscal impact of this measure on OJD, DOJ, and state agencies and local government as employers is indeterminate but anticipated to be minimal.