

SB 483 A STAFF MEASURE SUMMARY**Carrier:** Sen. Taylor**Senate Committee On Judiciary and Ballot Measure 110
Implementation****Action Date:** 03/30/21**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 4-3-0-0**Yeas:** 4 - Dembrow, Gelser, Manning Jr, Prozanski**Nays:** 3 - Heard, Linthicum, Thatcher**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** Amie Fender-Sosa, Counsel**Meeting Dates:** 3/16, 3/30**WHAT THE MEASURE DOES:**

Creates a rebuttable presumption that prohibited retaliation or discrimination has occurred if within 60 days of an employee or prospective employee engaging in protected activities, the employer bars or discharges that employee or prospective employee from employment or otherwise discriminates against that person. Sets standard for employer to rebut the presumption that retaliation has occurred at a preponderance of the evidence. If a specified action is taken beyond the 60-day window, that action does not create a presumption in favor of or against a finding that a violation has occurred; the measure does not modify current case law regarding proximity of time between a protected activity and an adverse employment action. Protected activities include: opposing any legally forbidden practice; making any related complaint or participating in a proceeding related to that complaint; or in good faith reporting an assault involving health care services. States that the measure applies to decisions on complaints filed with the Bureau of Labor and Industries (BOLI) and judgments entered by a circuit court on or after the effective date of the act. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- High legal bar to prove retaliatory intent
- Switching the burden of proof from the employee to the employer for the first 60 days
- Creating an environment where workers feel safer engaging in already protected activities
- Texas, Arizona, and California's similar rebuttable presumption standards
- Employer's knowledge of a complaint and employee's reasonable belief their health and safety is at risk
- Potential legal fees for employers
- Oregon as an at-will state

EFFECT OF AMENDMENT:

Clarifies that if a specified action is taken beyond the 60-day window, that action does not create a presumption in favor of or against a finding that a violation has occurred, and that the measure does not modify current case law regarding proximity of time between a protected activity and an adverse employment action. Sets standard for person to rebut the presumption that retaliation has occurred at a preponderance of the evidence. States that the measure applies to decisions on complaints filed with the Bureau of Labor and Industries (BOLI) and judgments entered by a circuit court on or after the effective date of the act.

BACKGROUND:

Oregon law makes it an unlawful employment practice for an employer to retaliate against an employee or prospective employee because that person reported or opposed a workplace health or safety violation, filed a complaint, or testified in a proceeding under the Oregon Safe Employment Act. The elements of retaliation are: (1) the employee engaged in a protected activity; (2) the employee was subjected to an adverse employment

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action; and (3) there is a causal link between the activity and the adverse employment action. Currently, the burden is on the employee to prove the employer's action was retaliatory. An aggrieved employee or applicant may file a complaint with the Bureau of Labor and Industries (BOLI) and may file a civil action in court. In general, an action relating to an unlawful employment practice must be filed within one year of the occurrence of the practice.

Senate Bill 483 A creates a rebuttable presumption that prohibited retaliation or discrimination has occurred if within 60 days of an employee (or prospective employee) engaging in protected activities, the employer bars or discharges that employee (or prospective employee) from employment or otherwise discriminates against that person.