OREGON BUSINESS & INDUSTRY OBI

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To: Chair Prozanski and Members of the Senate Committee on Judiciary
From: Paloma Sparks, Oregon Business and Industry
RE: OBI Testimony in Opposition to SB 483

Chair and Members of the Committee:

Thank you for the opportunity to testify on this important issue for Oregon Business & Industry members. OBI is Oregon's largest and most comprehensive business association representing approximately 1,600 businesses that employ over 250,000 people. We represent multiple sectors and serve as the state's Retail and Manufacturing Councils.

Senate Bill 483 would allow employees to allege discriminatory acts without facts to support those claims. Under current law an employee can argue that an employer retaliated against them for filing complaints under the OSHA statutes. The existing burden of proof on employees is a fairly low bar. This bill would eliminate the element of proof altogether by creating a presumption of a discriminatory action anytime an employee files a complaint with OSHA.

Employers are prohibited from retaliating or discriminating against an employee for filing a complaint with OSHA. The employee need not have evidence that a safety violation is occurring, just the belief that a violation has occurred. The definition of a retaliatory or discriminatory act is quite broad – it includes not just termination or discipline of an employee but any alleged discrimination in "compensation, or in terms, conditions or privileges of employment." That means an employee who feels they aren't getting the best shifts or have been assigned a new manager could allege discrimination.

While we certainly condemn retaliatory actions by employers and believe employers who engage in such actions should be held responsible, there must be some evidence provided by an employee for those claims. Simply stating the employee's belief that an employer retaliated against them should not be enough. Courts have already found there is a causal link between a claim being filed and the timing of disciplinary action. The burden on employees to prove a retaliation claim is relatively minimal under existing law.

This bill only provides that the employee must have filed a safety-related complaint. The complaint itself need not be supported by evidence of an actual safety issue. An employee who is already on the discipline track can use this provision to shield themselves from justified discipline. For example, an employee who has been chronically late or has failed to complete their tasks as required, may be on track for disciplinary action. This bill gives them a way to prevent the employer from taking reasonable action that would benefit the workplace as a whole, by using the shield of a presumption of retaliation. While the employer may ultimately succeed in defending against such a claim, that will only occur after they have expended a great deal in time and attorney fees. This, while the employee can obtain legal representation at no out-of-pocket expense.

We are further troubled by the reality that existing law provides the option for employees to file *anonymous* complaints to OSHA. How can an employer be presumed to have retaliated when they may not even know that the employee filed a complaint with the agency? Again, there must be an expectation that the employee prove the employer first knew and then took some action in retaliation.

Employers are constantly defending against frivolous claims. Businesses have seen all sorts of complaints unsupported by evidence or law. And employees have clear methods for bringing claims of retaliation. Employees should be expected to meet the low burden of proof required in existing law before an employer is deemed to have acted in violation of the law.

We urge you to reject this concept and allow the existing law to work as intended. Thank you for your time and consideration.

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