A STRONG VOICE
FOR OREGON'S WORKERS

TO: Chair Riley
Vice-Chair Hansell
Members of the Senate Committee on Labor and Business

FR: Jess Giannettino Villatoro, Political Director, Oregon AFL-CIO

RE: Support for SB 169 with the -1 Amendment

January 25, 2020

The Oregon AFL-CIO represents 300,000 workers across the state and a voice for all workers in the legislative process. Thank you for the opportunity to share with you our support for SB 169 with the -1 amendment and SB 13. As Senator Taylor noted SB 169 with the -1 amendment is a redraft of SB 1527A that passed out of this committee, the senate floor and the house committee unanimously during the 2020 regular legislative session.

Noncompetition agreements (or non-competes) are contracts that employers often deem a condition of employment that bar the employee from taking a job with a competing employer in the same industry for up to 18 months following the end of their employment. Often the terms of non-competes apply if they employee quits, is **laid off** or fired. This is incredibly important in the present moment when 140,000 jobs were lost nationally in the month of December – all of them belonging to women. While some non-competes are limited by industry or geography, some are very broad, covering entire regions of the United States. Many non-competes also require that employees inform their employers of their prospective new positions and obtain approval for the new position.

Employers are utilizing non-competition agreements or non-competes at record levels. According to the Economic Policy Institute the number of workers in the United States impacted by non-compete agreements has risen dramatically in recent years. 18.1% of private sector workers were covered by at non-compete agreement in 2014 compared to as many as 46.5% of workers in 2019. [1]

Under contract law, a key provision of non-compete agreements is when they are enforceable. Unlike most of our employment statutes that govern what is and isn't lawful, non-competes are predominantly effectual by how enforceable they are and when they are enforceable. According to *The Labor Market Effects of Legal Restrictions on Worker Mobility a September 2019 study*[2] completed by professors from Duke, Ohio State and Miami Universities, analyzing non-compete agreements of various enforceability shows that the more enforceable a non-compete is leads to both a decline in a worker's earning potential and job mobility. The same study showed that enforceable NCAs increase the racial and gender wage gaps -- the earnings effects among women and black workers are twice as large as the effect among white men.

[1] https://www.epi.org/publication/noncompete-agreements/

The term that is found in current statute **voidable** means that a worker must proactively seek the voiding of a contract– even if it doesn't meet the statutory criteria currently in place outlining which types of workers should be asked to enter such agreements. Which includes higher wage earners that have access to proprietary information or trade secrets. By changing the language in Section 1 (1) and Section 1 (2) we clarify for employers and workers alike that a non-compete is void if it doesn't meet the criteria in current statute. SB 169 with the -1 amendment does not change the current statute governing who and how a worker can be asked to enter a non-compete agreement. SB 13 is stronger in that it further protects against workers of any salary range being asked to enter a non-compete unless they have access to proprietary information.

The first two workers who will share their story with you today who should have never been asked to sign a non-compete agreement under the current statute.

Length of Time

SB 169 with the -1 amendment also lessens the amount of time a non-compete agreement can be enforced. The current length of time that a worker can be out of a job due to the terms of the non-compete is 18 months. With 12 months, we believe that more workers will be able to whether the time between full time jobs and are less likely to have to leave the state to seek work. Arguably, employers are applying non-competes to the most talented employees, and 18 months is a long time to expect them to be out of work and not seek employment out of state. In addition, we really shouldn't be restricting a worker's ability to seek alternate employment amidst the jobless crisis we're seeing now.

Salary Threshold

The last two changes that SB 169 with the -1 amendment makes aren't so much policy changes as they are adjusting small provisions of the policy for clarity. Instead of leaving the salary threshold currently in place tied to the census wage for a family of four which is currently in statute we tied the same wage, which is $100,533 to the CPI, indexed for inflation. That's because the census wage has proven difficult to track as years progress making it hard to determine which non-competes are enforceable or not. The census wage data wasn't available from the Federal Government at the time of the request deadline, which is why you'll find these changes reflected in the -1 amendment. The last change is to clarify that the employer must agree in writing to the terms set forth in the non-compete upon the worker leaving.

Non-compete agreements are a direct contradiction to the fundamental belief that anyone can work hard, learn skills and be able to have the mobility to make a better life for themselves. SB 169 with the -1 and SB 13 narrow the applicability of such contracts and create a fairer playing field for workers.