

SB 1586 A STAFF MEASURE SUMMARY

Carrier: Rep. Bynum

House Committee On Business and Labor**Action Date:** 02/23/22**Action:** Do Pass the A-Eng bill.**Vote:** 9-2-0-0**Yeas:** 9 - Boshart Davis, Bynum, Evans, George, Grayber, Holvey, Salinas, Smith Warner, Witt**Nays:** 2 - Bonham, Cate**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Tyler Larson, LPRO Analyst**Meeting Dates:** 2/21, 2/23**WHAT THE MEASURE DOES:**

Extends the prohibition regarding certain nondisclosure provisions in an agreement between private or public employers and employees to cover former employees. Clarifies that the prohibition covers current employees. Provides that whenever an employer and former, current, or prospective employee enter into an agreement that releases a claim of unlawful conduct constituting specified types of discrimination, including sexual assault, against the employer, the agreement may include one or more specified provisions only upon request of the employee. Specifies that a provision preventing the disclosure of the amount of or fact of any settlement may be included only upon request of the employee. Declares that an employer's offer of settlement that is made conditional upon the employee's request to include a specified provision to be a violation. Requires an employer to provide to a person with whom the employer seeks to enter into an agreement a copy of the employer's written policy regarding procedures and practices to reduce and prevent discrimination and declares a failure to provide the policy to be a violation. Provides an exclusion for agreements that are entered into following the employer's good faith determination that the employee engaged in prohibited conduct regarding specified forms of discrimination, including sexual assault. Permits a person who files a complaint related to violations to recover liquidated damages of up to \$5,000. Declares an agreement that is not permitted by an exception to be void and unenforceable. Permits an employer to enforce a nondisclosure agreement that is unrelated to an agreement regarding alleged discrimination by an employer. Requires mediators to provide to an unrepresented party in a mediation related to alleged discrimination by an employer a copy of the model procedures and policies for the reduction and prevention of specified forms of discrimination made available by the Bureau of Labor and Industries.

ISSUES DISCUSSED:

- Original intent and subsequent interpretation of Oregon's Workplace Fairness Act (WFA)
- Need to clarify original intent and address issues raised in the administration and enforcement of the WFA
- Provisions of the measure
- Potential impact of nondisclosure prohibition on future settlement agreements

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

The Legislative Assembly passed the Workplace Fairness Act (WFA) in 2019. Under the WFA, a private employer must adopt a written policy outlining their procedures and practices for reducing and preventing discrimination and sexual assault. The WFA also prohibits employers from entering into a nondisclosure agreement (NDA) as a condition of employment, continued employment, promotion, compensation, or receipt of benefits if the NDA

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prevents an employee or prospective employee from disclosing or discussing employment discrimination or sexual assault that occurred between employees or between the employer and the employee. Also in 2019, the Legislative Assembly passed Senate Bill 479 which applied the same requirements and prohibitions to public employers.

The law currently provides two exceptions that would permit an employer to enter into an otherwise prohibited NDA. First, an NDA is permitted if an employee claiming to be aggrieved by employment discrimination requests the NDA as part of a settlement, separation, or severance agreement. Second, an NDA is permitted if the employer makes a good faith determination that the employee engaged in employment discrimination. An aggrieved employee may file a complaint with the Commissioner of the Bureau of Labor and Industries and file a civil action, which can result in recovery of back pay for the prior two-year period as well as compensatory and punitive damages.

Senate Bill 1586 A extends the prohibition regarding NDAs to cover former employees of private and public employers and clarifies that the prohibition covers current employees. The measure permits otherwise prohibited NDAs under specified circumstances and declares prohibited NDAs to be void and unenforceable. The measure permits a person who files a complaint related to violations to recover liquidated damages of up to \$5,000.