

TO: House Committee on Business and Labor
RE: HB 2800

I write on behalf of the Jewish Federation of Greater Portland and the Jewish Community Relations Council, in support of HB 2800.

The Jewish Community Relations Council is the advocacy arm of the Jewish Federation of Greater Portland. The Jewish Federation is the primary philanthropic, advocacy, and organizational body of the Jewish community of Portland and SW Washington.

As a former labor and employment attorney in private practice for more than three decades with the law firm of Bennett Hartman, I know how difficult it can be to prove discrimination in employment cases. A common tactic of the employer is to find some "legitimate" pretext, however thin, to justify an adverse job action, and to assert that pretext as a complete defense to the charge that the action was taken for discriminatory reasons. HB 2800 would effectively narrow the range of pretexts which the employer may assert as legitimate.

This will certainly not completely solve the problem; age discrimination cases will still be at least as difficult to prove as other forms of discrimination (which is to say, quite difficult). Employers may still assert other common pretexts such as work performance or staff reorganizations. But those pretexts at least create a fact issue for a jury to consider. Pretexts such as pension eligibility, length of service or salary are generally not contestable, and the legitimization of such pretexts under Federal Law effectively denies the victim of age discrimination their day in court, because the employer contends that because they have raised a "legitimate" and factually true pretext for their employment action, the court need not let the issue go to a jury. Nevertheless, federal court jurisprudence aside, common sense says that someone who is terminated because they are close to retirement age or who is demoted because they've held a position "too long" is being discriminated against because of age.

The Jewish community, like most faith communities, believe each individual has intrinsic worth and must be judged for their character, deeds, abilities and performance – not on the basis of such superficial aged-related criteria as permitted under Federal law.

We hope you will seriously consider this bill and recommend its passage.

Sincerely,

Hank Kaplan
Chair, Portland Jewish Community Relations Council