1009 S. Farragut Street
Philadelphia, PA 19143

February 22, 2023

Oregon Senate Committee on Labor & Business

Dear Senators Patterson, Bonham, Hansell, Taylor, and Jama and Counsel at the Legislative Policy and Research Office,

I am director of volunteers and partnerships at End Workplace Abuse (EWA), a volunteer-led and volunteer-driven corps of advocates for workers' rights and psychological safety in the workplace. My support, however, comes from an even more personal connection with workplace bullying and mobbing, and that is why I urge you to make adjustments to SB851 which proposes to shield workers from psychological abuse on the job.

One of my biggest concerns about the proposed bill is the requirement to show health harm. By the time workers reach the point where health harm can be demonstrated, irreparable damage has already been inflicted. I ask that the bill be amended to allow for reporting to happen earlier with the reporting of a toxic work environment. I can personally attest to the fact that it has taken me 3.5 years since I was last subjected to bullying to not feel heavy psychological and physical pain on a daily basis, the result of severe trauma. In my capacity as EWA's point-person for volunteers, I regularly meet people who continue to experience emotional and mental suffering even 5 years after facing bullying. For many former bullying targets, including myself, this suffering also includes the loss of a career. It's critical to prevent this serious, irreversible harm from happening in the first place. Also of concern is how the focus on health harm will lead employers to use heavily biased health assessments to discredit impacted workers. ** The way that the bill is written now would be like asking nuclear power plant workers to wait till they have suffered radiation rather than their being able to report danger at their plant. **

My second biggest concern is the onus of proving intent that is suggested by the use of "deliberately" in Section 2 (1). Showing intent is a highly subjected and elusive task which has essentially disabled antidiscrimination statutes. It is no wonder that intention has become a shield for employers to deny discrimination at court. Instead, we should rely on confirming bullying behaviors which have been identified and defined by a multitude of researchers. A focus on bullying behaviors is especially important when the majority of bullying targets are those in protected demographics -- people of color, women, older workers, the disabled, and members of the LGBTQ community -- who have already been failed by our legal system.

Attached is a more detailed summary of amendments that would strengthen SB851. I commend you for your effort to legislate psychological safety measures in Oregon and hope that you will take the steps needed to craft truly effective legal safeguards for Oregon workers' well-being.

Sincerely,

R. Mimi Iijima
End Workplace Abuse

C: “Why We Need Amendments to SB851”

**WHY WE NEED AMENDMENTS TO SB851**

We can amend SB851 to give employees the right to a psychologically safe work environment.

Health harm in Section 1(4 and 5). The focus on health harm requires a high threshold from workers that sexual harassment law doesn't even require. If workers will be required to prove health harm, they will 1) need to wait until their health is harmed and 2) be subjected to employer-controlled examinations that for decades employers have used to discredit employees and attribute harm to another aspect of the employees' lives.

Intent by use of the word "deliberately" in Section 2(1). Research shows anti-discrimination law does not adequately protect employees nor has it proved to disrupt social hierarchies at work — all because discriminatory intent is too high of a threshold to prove — even when it's there. The courts moved from a focus on impact in the early years of Title VII of the Civil Rights Act of 1964 to a focus on intent during the 1980s.

This pushback from the courts has left those suffering from harmful behavior with a discriminatory impact — and their colleagues suffering from similar behaviors without obvious discriminatory impact — without legal recourse.

To fix this significant loophole, we need to focus on behavior. We already legislate discriminatory forms of workplace bullying, but members of protected classes still suffer due to lack of adequate protections. General abuse at work has a disproportionate impact on members of protected classes, especially women and non-white workers, and anti-discrimination law is insufficient to protect employees.

This bill is based on the Healthy Workplace Bill rather than the submitted Workplace Psychological Safety Act. Brandeis professor Carol Osler states, "In most legitimate cases the definition of bullying... would protect the bully while harming the target and the employer…. [The bill] is unlikely to bring substantial improvements and, for well-understood reasons, could make our workplaces less safe."

As it stands, the bill is a pro-employer bill that will not protect employees who suffer from abuse at work. It has been proposed in several states and has not passed anywhere in the United States.

**Considerations for the bill**

Section 1(4 and 5). Targets should not have to wait for severe — or any — psychological or physical harm to have a legal claim. As the EEOC reiterated, we want to stop harassing behaviors as soon as possible. We need a law that says the toxic environment itself is damage, just as the EEOC has already recognized a hostile environment caused by harassment based on protected status is harmful. As written, this bill is regressive, as the Supreme Court has already decided that a hostile work environment is actionable and that psychological injury need not be proven:

1986: Meritor Savings Bank v. Vinson. The classic sexual harassment scenario involving gendered work roles. A bank teller complained that shortly after she was hired, her supervisor invited her out to dinner and then "suggested that they go to a motel to have sexual relations"; after resisting, she surrendered. The Supreme Court affirmed that sexual harassment involving a hostile work environment is actionable under Title VII.

1993: Harris v. Forklift Systems. The “new” sexual harassment scenario involving non-gendered work role conventions. A higher-up of a company that rented equipment to construction companies continually made a woman manager the target of such comments as, “You’re a woman. What do you know?,” “We need a man as the rental manager,” and called her “a dumb ass woman.” “In front of others, he suggested that the two of them ‘go to the Holiday Inn to negotiate [Harris’ ] raise.’ … Hardy occasionally asked Harris and other female employees to get coins from his front pants pocket …. He threw objects on the ground in front of Harris and other women, and asked them to pick the objects up …. He made sexual innuendos about Harris’ and other women’s clothing.” The behavior is humiliation tactics to address his own anxiety about a threat to his male authority. The Supreme Court decided that Title VII workplace-harassment suits need not prove psychological injury.

In addition, the issue of employee harm opens up employees for scrutiny and re-trauma; employers often use their own physicians to minimize harm or attribute the harm's origin to a different cause other than their mistreatment.

Section 1(6). The law should outline the specific behaviors deemed unlawful. False narratives and rigged internal reporting protocol are common abusive behaviors used but are omitted from this bill language, which should contain a comprehensive list of specific unlawful behaviors.

Section 2(1). To prevent and eliminate damaging behavior, we can not require targeted employees to prove the abuse is intentional, deliberate, extreme, or outrageous. As written, this bill will create a legal loophole protecting the bully rather than the victim of abuse because the threshold for proof is too high/nearly impossible to reach. This point is backed by extensive research.

Section 5(2a). Reasonable care is not defined. The courts need specific direction on what constitutes reasonable care.

Section 5(2b). Employees should not have to be limited to an employer's protocol. Too often, employers establish internal processes for reporting unacceptable behavior and run trainings on them. Trusting in their processes, employees report even discriminatory behavior, only to be ignored by Human Resources, who follow their legal department's advice to avoid liability. Employees believe a fair investigation is happening behind-the-scenes only to realize months later that the process is being prolonged while they're still subjected to a toxic work environment. It's a "we're against discrimination, but it doesn't happen here" response backed by research. When they see a lack of action from the employer, others avoid speaking up for fear of the same lack of response and retaliation.

Section 5(3a and 3b). Bullies and employers create and maintain a false narrative. Performance evaluations are often weaponized against employees to begin a paper trail of a false narrative against the employee for simply posing a threat to the bully's personal agenda. The employer often backs that false narrative to avoid liability.

**Other considerations:**

More likely to be bullied but less likely to afford legal representation, low-wage workers should not have to use the pay-to-play legal system to seek help. These cases could be added to Bureau of Labor and

Industries' (BOLI's) workload so an agency whose representatives understand the underlying issues can assist practically.

This behavior must be criminalized in extreme situations. Not only does this behavior ruin lives, but it also can open up federal funding for resources for victims when this behavior is criminalized as should have happened for Evan Seyfried and Kerri Moynihan, two employees who took their lives after abuse at work when they saw no hope for their situations.

This issue is only an individual one. It is also a systemic one and should be treated as one. If we want to create psychologically safer workplaces, we should go after the root issue: the oppressive, dehumanizing system that reinforces positive stereotypes for men, white workers, and high-wage workers and negative stereotypes for women, people of color, low-wage workers, and other groups considered “other” by the dominant groups. We should call for organizational accountability: the quarterly reporting of the number of discrimination and psychological abuse complaints and discipline, workers’ compensation claims, absenteeism rates, termination rates, stress leave rates, attrition rates, investigation rates, followup action rates, the workforce gender and racial makeup, and de-identified wage and salary data by protected category to government agencies for public access.

We as workers have an inherent right to basic human rights. Equality. Dignity. Respect. Fair Process. This bill would provide much-needed incentive for employers to acknowledge, monitor, detect, prevent, discourage, and adequately address incidences of psychological abuse before targets incur significant harm if amended.