



March 14, 2023

TO: Members of the Senate Committee on Labor and Business

FR: Derek Sangston, Oregon Business & Industry

RE: Opposition to SB 851

Chair Taylor, Vice-Chair Bonham, members of the Senate Committee on Labor and Business. For the record, I'm Derek Sangston, policy director and counsel for Oregon Business & Industry (OBI).

OBI is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. Our 1,600 member companies, more than 80% of which are small businesses, employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

Thank you for the opportunity to testify in opposition to SB 851, as it would be amended by the - 1 amendment. OBI opposes SB 851 because the bill would impose judicial review of day-to-day employment decisions, unnecessarily duplicates remedies already available under federal and state law, and tasks the Bureau of Labor and Industries (BOLI) with establishing a new program without a subsequent referral to the Joint Committee on Ways and Means where the use of taxpayer funds needed for it can be properly determined.

A long-held maxim in employment law is that courts should not act as super personnel departments tasked with reviewing the merits of a given employment decision, except for when the decision involves discrimination. SB 851 would reject this maxim and would make Oregon the first state where employers would face lawsuits over demotions, unfavorable reassignments, and when an employee does not receive a desired promotion. Under SB 851, employers would also face lawsuits when disagreements arise between employees. In each situation, an employee would not need to claim or prove the employer acted in a discriminatory manner or, in some cases, that the employer acted at all. This is a substantial change from current employment law protections.

SB 851 would expand lawsuits against employers for hostile work environments in a way that is duplicative of remedies that are already available to employees. Employees who experience discrimination in the workplace may seek a remedy under many federal laws including, but not limited to, Title 7 of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and the Family and Medical Leave Act (FMLA). Under state law, employees may already seek a remedy for discrimination under ORS Chapter 659A and for workplace bullying by filing lawsuits for intentional infliction of emotion distress. The remedy provided by SB 851 is not only duplicative of remedies already available under federal and state law, but by expanding lawsuits against employers as it does, SB 851 could have the unintended consequence of diluting and diminishing the harm suffered by the victims protected by those statutes.

Finally, SB 851, as it would be amended by the -1 amendment, would require BOLI to “establish and make available on [its] website model procedures and policies that employers may use as guidance.” OBI appreciates the education BOLI would provide under SB 851, but in the event SB 851 moves out of committee, OBI urges a subsequent referral to the Joint Committee on Ways and Means so that the requirements of SB 851 do not take away from BOLI’s important role in enforcing Oregon’s employment laws and educating employers on how to follow them without proper fiscal review.

For the foregoing reasons, OBI respectfully urges this committee to reject SB 851. Thank you for your consideration.

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