

March 17, 2023

RE: SB 907

Dear Chair Taylor, Vice Chair Bonham, and Members of the Committee:

Associated General Contractors – Oregon Columbia Chapter represents a broad cross-section of the commercial construction industry, including open shop and union, rural and metro, highway and building contractors.

AGC is dedicated to safety on the jobsite – it is one of the key principles of our organization. AGC has a safety department with seven safety professionals that provide substantive training and other safety services to our members. We also sponsor safety award programs, to further incentivize and recognize safety in the construction industry.

Safety is paramount to our association and to our members individually. This bill claims to increase safety for our workforce; however, it will not increase safety. This is because these protections already exist at Oregon OSHA, an agency who is charged with ensuring safety on jobsites across the state. Employees already have the right to refuse work. Employees are required to report hazardous conditions. The employer is required to follow OSHA's rules, warn of hazards, and protect the employees from hazardous conditions. This cooperative agreement encourages communication and recognition of each other's responsibilities.

The employer's responsibilities are clearly outlined in OSHA rules, as are the employee's. It is important to note that employees are required to report "hazardous conditions or practices observed at any time" and are required to do it "as soon as practicable" (437-001-0760(2)(h)). It is clear that Oregon OSHA rules not only protect the worker from having to do unsafe work, but require that they be reported, so that these conditions are addressed and not left to harm another employee.

This bill does not address the hazardous conditions, nor does it correct the hazardous conditions which cause the employee to refuse work. The purpose of rules and guidelines being inside the OSHA rules is so there are checks and balances to the employee and employer for their responsibilities.

It also needs to be noted how subjective this proposed legislation is. Using the "reasonable person" standard opens the door to extensive litigation over what refusals are reasonable and what are not. What one person might see as dangerous work, is not the same as what someone else does. This puts the employer in an impossible position of having to determine whether or not the court would consider the employee's assertion reasonable, and opening themselves up to litigation if the employer legitimately determines it is not. And, what if an employee feels it is unsafe, but OSHA allows it to be done?

Also, there is a significant difference between work that is dangerous and work that is unsafe. There are certain areas of work that are inherently dangerous, and employees make

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the choice to do that type of work, and are compensated for it. However, just because a type of work is dangerous, does not mean it is unsafe. Safety is about taking all the precautions necessary to ensure that all manageable risks are dealt with. This bill is not looking at whether there are proper safety guards in place and whether the work can be done safely. Rather, it is looking at one person's perception of the potential danger of the job, not the actual safety of the job or jobsite.

Retaliation has been cited as a reason for why this bill is needed. Again, these rules are already in place at Oregon OSHA, with claims of retaliation investigated by BOLI. It is not accurate that there needs to be new legislation to ensure retaliation does not occur when reporting unsafe work environments, since that is already protected in Oregon law under ORS 654.062(5). This statutory provision makes it an unlawful employment practice for any person to discharge or discriminate against an employee because they have opposed any practice forbidden under the Oregon Safe Employment Act, or made a complaint related to the OSEA. There is no need for further legislation to cover retaliation, since it is already prohibited under statute.

AGC believes that safety is critical and strong safety practices are a necessity. However, this bill does nothing to further the actual safety on our jobsites, and rather creates confusion for employees and employers alike. We urge that this bill not move forward, since Oregon OSHA already has a well-established process for dealing with these types of situations.

Thank you for your time, and please reach out with any questions.

Best Regards,

Kirsten Adams  
Director and Counsel – Policy and Public Affairs

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