

Written Testimony for SB 851 and amendment(s) for Public Hearing March 30, 2023, Thursday 8 am in Hearing Room B

Submitter: Micheline Mosher

On Behalf Of: Oregonians

Committee: Senate Committee on Labor and Business

Measure: SB 851 and amendment(s)

My name is Micheline Mosher and I am submitting this written testimony for the March 30, 2023 Public Hearing and Work Session on SB 851 as a Citizen, Activist, and **Taxpayer** (CAT). I am very appreciative of being allowed to both testify at the March 14, 2023 and offer written testimony for the Public Hearing on that date. Thank you for the opportunity to be heard that day and to join my concerns with those other voices that are experts in the public arena while I am not.

I have been thinking of the testimony in the former public hearing and have some additional information that I don't believe was brought forth at that time, but I consider it to be relevant to shaping new law with SB 851 and the bills that have already changed Oregon laws thanks to the work of legislators.

In 2018 while I was still employed as a state worker, I was relieved to see that Oregon BOLI had produced a flyer titled "Workplace Bullying". I have attempted to add the flyer to my testimony.

The BOLI flyer was posted on all union bulletin boards at my state worksite because it included valuable information for employees regardless of employment status [classified, bargaining represented, management service, etc.] The document begins with a statement and then a definition:

"Bullying harms employees, employers, and businesses by creating a disrespectful, unhealthful, and nonproductive work environment. Workplace bullying generally is not illegal in Oregon, however, it is harmful and in some cases can lead to lawsuits based on discrimination. Oregon and federal laws protect individuals who are harassed and discriminated against because of their race, national origin, gender, veteran status, or other protected class status."

The flyer continues with a definition: **What is workplace bullying?**

"Workplace bullying is a pattern of repeated mistreatment that harms, intimidates, undermines, offends, degrades or humiliates an employee. Bullying situations may involve:

- * Bosses or supervisors against their subordinates
- * Employees against their peers
- * A group of co-workers targeting another worker (mobbing)
- * An organization or institution when bullying is entrenched and becomes accepted as part of the workplace culture
- * A third party such as a client or customer who bullies an employee"

"Managers and supervisors who have high expectations, present a tough demeanor, identify areas requiring improved performance, or impose discipline within established workplace guidelines are not engaging in bullying as long as their actions are carried out in a respectful and fair manner."

The remainder of the 2018 flyer contains information on the following areas:

Examples of situations and actions commonly considered bullying;

Why it Matters;

What can I do if I'm being bullied?; and

What can an employer do?

The BOLI flyer uses the 2018 accepted term, "**Abusive Work Environment**" and not "toxic work environment" and the term(s) "**abuse(s)**". I suggest that all references to "toxic" in SB 851 and all amendments be changed to "abusive". With the growing opposition to bullying in the workplace and the sharp climb nationally in workplace bullying occurrences, clear definitions of terms should be included in the bills. "Toxic" within Oregon OSHA terminology can refer to situations with chemical exposures. The term "hostile" is identified with federal laws for protected classes. The 2018 BOLI flyer also recognizes the health-harming behavior to targets to be both "physical and mental health problems that can last for many years."

The 2018 BOLI flyer suggests that along with other actions, employers "Take claims of bullying seriously and consistently enforce your workplace code of conduct."

The Oregon Workplace Fairness Act requires all Oregon employers to adopt a written policy containing procedures and practices to reduce and prevent specific types of unlawful discrimination and sexual assault. I was able to view a "Model Policy on Workplace Fairness" [Title: SB726_model_policy_03292022] which was created by Dylan Morgan of BOLI on March 29, 2022 (just one year ago). The Model was amended to include SB 1586 which was made into law on January 1, 2023; however, the introductory paragraph specifies the policy is intended to "**reduce and prevent** specific types of **unlawful discrimination** and **sexual assault**."

It is my opinion that **each and every employee deserves a safe, healthy and respectful workplace free of bullying**. From my personal observations, it appears to me that we need effective and fair LAW, not only workplace policies and codes of conduct.

SB 851 would be improved if it were understood that Workplace Bullying should be eliminated entirely from the workplace for **every employee**. I urge Diversity, Equity and Inclusiveness (DEI) that includes each and every employee in a law written to be a **minimum floor** that allows those with collective bargaining contracts to increase the protections for represented employees. SB 851 in its current form uses the terms "an employee"; that language is confusing and does not appear to be inclusive as bargaining represented employees are specifically not included and the language appears vague as to employees that are not members of one or more protected classes (federal or Oregon).

SB 851-2 in Section 1(3) defines the term "**Employee**" as having the meaning given those terms in ORS 659A.001 Definitions: (3) "**Employee**" **does not include any individual employed by the individual's parents, spouse or child or in the domestic service of any person**. The statute language is very specific and quite broad.

I ask that the language describing "reporting time" in SB 851-2 be consistent with the reporting times that are already law. Because of the health-harming impact on targets that may be both physical and mental, it is reasonable that protected classes and non-protected classes should have the same length of time to report.

Support for new law has grown, please see Workplace Bullying Institute's 2021 U.S. Survey of Adult Americans [<https://workplacebullying.org/wp-content/uploads/2021/03/2021-Flyer.pdf>] asked about the support for new law in America:

Question: Do you support or oppose enactment of a new law that would protect all workers from repeated, harmful, abusive mistreatment *in addition to current laws against discrimination and harassment?*

90% of respondents said they either strongly or somewhat supported the supplement to current law. Please note that support is consistent across the ideological spectrum. Support for new law has increased since the previous Workplace Bullying Institute survey in 2017.

Lastly I commend the work of the several committees who have consistently brought workplace bullying to our Legislative assembly. Your dedication and courtesy are appreciated. Thank you for your work, thoughtful consideration, and continuing to work on SB 851, an important bill, for all Oregonians who wish to work in this state with dignity.

2018 BOLI flyer below

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What is workplace bullying?

Workplace bullying is a pattern of repeated mistreatment that harms, intimidates, undermines, offends, degrades or humiliates an employee. Bullying situations may involve:

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Managers and supervisors who have high expectations, present a tough demeanor, identify areas requiring improved performance, or impose discipline within established workplace guidelines are not engaging in bullying as long as their actions are carried out in a respectful and fair manner.

Examples of situations and actions commonly considered bullying:

Abusive Work Environment: The bully makes physical or verbal threats against the target, insults, or publicly humiliates them. The bully spreads malicious untruthful information or gossip to intimidate or turn others against the target.

Undermining and Discrediting: The bully makes false accusations of incompetence, blames target for others' errors, and/or takes credit for target's successes at work.

Retaliation: The target experiences intentional exclusion and ostracism after raising concerns. This may also include retaliatory loss of job opportunities or favored work activities and schedules when not related

Why it Matters

Workplace bullying often involves an abuse or misuse of power. Bullying behavior creates feelings of defenselessness and injustice in the target and undermines an individual's right to dignity at work. The targets of bullying may suffer from physical and mental health problems that can last for many years. Bullying can also reduce productivity, decrease retention, and increase employer health costs.

Targets of bullying frequently experience one or more of these significant impacts:

- Stress, depression, and sleep disorders
- Reduced self-esteem
- Increased physical illness and sick days
- Increased accidents and injuries
- Lack of focus and loss of effectiveness

Bullying can be costly for organizations too:

- Distraction and loss of productivity by the target, the bully, and bystanders
- Poor workplace morale and loss of reputation
- Possible investigations, grievances, and lawsuits
- Inability to recruit and retain good staff
- Increased medical costs and attendance issues

What can I do if I'm being bullied?

Regain control! Bullying is about control, and therefore it has nothing to do with your performance. Here are some options for what you can do:

- Check if your organization has a code of conduct or workplace violence program that addresses intimidation or harassment at work.
- Carefully document bullying incidents (dates, times, places, what was done or said and who was present). Keep documents that contradict the bully's accusations, such as timesheets, emails, and audit reports. Assess whether changes in your own behavior could help resolve the situation.
- Set boundaries with the bully. If safe to do so, describe the offensive behavior and declare that you expect it to stop. The bully is likely to deny and even misconstrue your accusations initially. However, their behavior may improve over time. Having another person present as a witness and remaining calm can be helpful and strengthen your position if the bully responds negatively.
- Do not retaliate or escalate the behavior, because you may be blamed or subject to discipline.
- Report the problem to your supervisor, another manager, or to another "higher-up" at work. This is where the documentation will be helpful to demonstrate that you did not contribute to the situation.
- Find emotional support from trusted people at work, outside of work and at home.

What can an employer do?

First and foremost, employers must recognize and prevent workplace bullying by creating a respectful workplace culture. If you are an employer, supervisor, or manager who is aware of bullying and do not take action, then you are accepting a share of the responsibility for future abuse. Take steps to:

- Develop a respectful workplace code of conduct that specifically prohibits bullying behavior and identifies consequences for employees who engage in bullying.
- Establish a culture where supervisors are expected to treat employees fairly and respectfully and engage in informal conflict resolution.
- Provide opportunities for confidential reporting and for mediated conflict resolution when needed.
- Educate all employees about respectful professional behavior and the company code of conduct.
- Take claims of bullying seriously and consistently enforce your workplace code of conduct.

For more information, visit our website at www.oregon.gov/boli or contact us at 971-673-0761 or mail@boli.state.or.us.