February 9, 2024

TO: Senate Committee on Labor & Business
FR: Paloma Sparks, COO & General Counsel, Oregon Business & Industry
RE: Support for SB 1515

Chair Taylor, Vice-Chair Bonham, Members of the Committee:

I am Paloma Sparks, COO & General Counsel for Oregon Business & Industry. OBI is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. In addition to being the statewide chamber of commerce, OBI is the state affiliate for the National Association of Manufacturers and the National Retail Federation. Our 1,600 member companies, more than 80% of which are small businesses, employ more than 250,000 Oregonians.

Thank you for the opportunity to testify in support of SB 1515.

As you have heard from us several times before, Oregon's patchwork of leave laws creates a great deal of confusion in workplaces. Despite previous attempts to fix the laws, that reality remains. Oregon employers, depending on the number of employees they employ, are subject to the federal Family and Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA), Paid Leave Oregon and the Oregon Sick Time law. This is not an exhaustive list. Currently the laws overlap entirely or partially, and the task of tracking leave usage causes a lot of confusion and administrative burdens for employers. It also takes a lot of time out of productive work to try to assist employees as they navigate these laws in trying times.

When other states passed their paid leave laws, they also repealed their unpaid leave laws. Unfortunately, Oregon did not follow suit when we adopted the Paid Leave law. Under current law and interpretation from agencies, employees can use all possible leave under OFLA (up to 36 weeks) and then file for their Paid Leave Oregon benefits (up to 14 weeks). During the time an employee is out on leave an employer faces a loss of a key role in their team, cannot fill their position on a permanent basis, must find a way to cover for the employee's absence, must continue to pay for the employee's insurance benefits and faces liability if they do any of these incorrectly, even if by mistake. This is why the length of leave available matters so much.

Before I begin, please note – legally we refer to certain types of leave in shorthand. That is the case for pregnancy disability. When I use that phrase, I am referring to the phrase as defined in the Paid Leave law "[a] period of disability due to pregnancy, or period of absence for prenatal care" or the definition in OFLA under SB 1515 "an illness, injury or condition related to the eligible employee's own pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the covered employer." That does not mean that employers consider pregnancy to be disabling in all circumstances.

SB 1515 makes several changes to OFLA. First it removes some duplicative leave purposes from OFLA where they are also covered by Paid Leave – such as leave for the employee's own serious health condition, leave to care for a family member with a serious health condition and leave for bonding with a new child. OFLA is then left covering only sick child leave, pregnancy disability and bereavement. We

are hopeful that this change will eliminate at least some of the problems of stacking leave between OFLA and Paid Leave.

I do want to note that SB 1515 also removes the requirement that employees provide 30-day notice for expected leave unless it is for sick child leave. That means that in the majority of cases under OFLA, employers will only be able to require employees to provide 24-hour notice. We believe that is a major change from current law and practice. There are many instances when an employee will know in advance that they will need to use leave for an illness, injury or condition related to the employee's own pregnancy – such as a scheduled C-section or planned ordered rest time for a pregnancy of multiples (e.g., twins or more). In future conversations, we hope to see some modification so employers can request advance notice, where the employee has expected leave purposes.

There are provisions that make sense in a law fully administered by employers, that do not translate as well to Paid Leave Oregon. That is the case with the change in section 5 that removes the language that employers "may permit" employees to use accrued paid leave in addition to Paid Leave Oregon benefits and inserts an entitlement for employees to use accrued paid leave to "top off" their Paid Leave Oregon benefits. The problem is this: the agency does not provide estimates of benefits to employers when their employees are out on leave. Without any sort of verification, it will be challenging for employers to make these calculations with any degree of confidence. Therefore, we urge the Employment Department to consider a rule change stating that employers can receive benefit estimates from the Department to facilitate these calculations.

SB 1515 makes significant improvements by addressing the Scheduling Law and fixing the scenario where an employer must violate one law to comply with another. Under OFLA and Paid Leave, an employer must restore an employee to their previous position, including the same wages and hours, when they return from leave. However, the Scheduling Law requires employers to give employees notice of schedules 14 days in advance. The language in section 2 addresses the problem of when an employee returns from leave and the employer has insufficient time to provide the required notice to the replacement employee who was filling in for the employee out on leave. In this scenario, the employer will be exempt from penalty pay for failing to provide the required notice.

Finally, SB 1515 makes several important technical changes that are needed to ensure the two programs continue to work alongside each other.

While we are supportive of the changes made in SB 1515, we must be clear that the burden faced by employers remains. You have heard today that this was done to help employers, and it may prove to be helpful, but this is certainly not the version of this legislation we would have drafted. The ability of employees to use sick child leave three days at a time without having to provide any sort of verification is extremely frustrating for employers. While employers want our employees to be able to take time off in times of need, we also know that many employees abuse the good intentions behind our leave laws. We remain concerned that the speed with which this legislation was drafted could result in some serious unintended consequences. For that reason, and some of the issues we have noted previously, we look forward to having an opportunity to participate in a workgroup to improve Oregon's leave laws.

Contact: Paloma Sparks, palomasparks@oregonbusinessindustry.com, 541-337-4740