February 10, 2025

TO: House Committee on Labor and Workplace Standards

FR: Paloma Sparks, Oregon Business & Industry

RE: Opposition to HB 2957 – Eliminating 90-day Right to Sue Notices

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Chair Grayber, Vice-chairs Elmer and Munoz, members of the House Committee on Labor and Workplace Standards. For the record, I am Paloma Sparks, Executive Vice President & General 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. 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. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

HB 2957 would upend a long-standing practice of BOLI issuing 90-day right to sue letters after conducting an investigation under the BOLI discrimination statutes. This practice aligns with federal processes under the EEOC.

When an individual is pursuing a complaint alleging a violation of an unlawful practice under ORS chapter 659A, they have two paths to choose from. They can choose to file in state civil court and bring a lawsuit. If they file directly in civil court, the plaintiff and their attorney bear the cost of investigation, gathering witness statements and other evidence collection.

Alternatively, an individual can choose to file a complaint with BOLI. If they file a complaint with BOLI, the bureau has up to a year to complete their investigation. In this case, it is the agency that conducts the investigation, interviews all parties and witnesses, and collects other evidence. They also get a position statement from the respondent, explaining their defense of the allegations. All of this is done through the agency and at the public expense, with no direct costs incurred by the complainant or their attorney. For obvious reasons, most plaintiff attorneys choose this route because it saves them the money and effort of conducting their own in-depth investigation. At the end of the BOLI investigation, the attorney can simply request a copy of the position statement and file and evaluate whether to file in civil court. This is a standard practice among many and a major source of complaints filed.

A BOLI investigation is still a very stressful, time-consuming and expensive process for employers. Spending a year responding to requests for documents and participating in interviews takes a lot of time away from many individuals day-to-day jobs. And the burden is particularly felt by small

businesses where an HR staff may be trying to juggle managing the workplace, overseeing essential reporting and trying to respond. But there is possible relief when BOLI finds the complaint lacks evidence and dismisses the case – because then the employer knows there is just a 90-day window of time in which the employee may file in civil court. Having certainty is key for businesses.

After changes in 2019, an employee alleging discrimination has five years to file a complaint in court or with BOLI. The bureau has up to one year to complete its investigation. Again, the employee can simply choose not to file with BOLI and file their complaint in court at the 5-year deadline. But, if the employee and their attorney go the route of a BOLI investigation and all that it entails, there should be some small expectation that there be reasonable timelines to file in civil court after that process concludes.

We are also very concerned about the proposal to create a new unlawful employment practice prohibiting certain agreements. Oregon law has made it increasingly difficult for employers to enter into agreements with their employees. And even where these agreements are not prohibited, existing laws have removed the motivation for employers to enter into severance agreements or settlement agreements. There are times when an employer simply wants to offer an employee a quiet way to leave, but there must be some benefit to the employer. Often, this type of scenario has nothing to do with any allegation of discrimination and is simply an employment relationship that is no longer working.

Oregon has some of the most expansive and protective civil rights laws in the country and that is certainly something to be proud of but HB 2957 only serves to create more unnecessary and expensive litigation. Of note, one of the cases where the employee failed to timely file in court within the 90-day limit: a case alleging discrimination because a health care employer was enforcing a state requirement that employees in health care settings be vaccinated from COVID-19.