NORTHWEST **WORKERS' JUSTICE** PROJECT

Testimony in support of HB 3187 (2025)

Chair Grayber, Vice Chairs Elmer and Muñoz, and members of the Committee,

My name is Kate Suisman. I am an attorney at the Northwest Workers' Justice Project (NWJP). Thank you for the opportunity to provide testimony on this important bill. We represent workers in low-wage jobs when bad things happen to them at work: when they are not paid, or are discriminated against for being in a protected class or are retaliated against for speaking up. Finally, we engage in policy advocacy and try to bring the important perspectives of workers in low-wage jobs and immigrant workers to these policy discussions.

NWJP takes all kinds of employment discrimination cases. Injured worker retaliation is usually the most common, which also often involves disability discrimination and sometimes whistleblower claims. But we also accept race, sex/gender, national origin and other types of discrimination cases.

One type of case we rarely accept is age discrimination. Age discrimination cases are significantly harder to prove than other types of discrimination, primarily due to the narrow interpretation of age discrimination in case law. We usually decline cases involving only a potential age discrimination claim, because the case is likely too difficult to prove, especially for low-wage workers where there is rarely a paper trail to prove intentional discrimination. Currently, we generally offer only "limited representation" to investigate age discrimination cases and have historically not been able to offer to continue representing workers past that stage. This is true even when we believe what happened to the worker was wrong. Because NWJP's mission is to meet the legal needs of underserved workers, we are often the last chance the worker has to find an attorney.

We recently saw a potential case of a farmworker who had been at his job 40 years and was in fine physical health. There were no reports of the quality of his work decreasing. Yet he was told it was time for him to retire and he was let go. We had another recent potential case where all of the older workers at a manufacturing facility were told to reapply for their jobs, and most of them were not rehired. (This situation is a similar to that described by an anonymous worker who submitted testimony on this bill in 2023.)

Though age seems to be a motivating factor in these two types of situations, they may not be enough to get your foot in the door to prove an age discrimination claim under current law. The amount and kind of evidence one needs to prove age discrimination is, as a practical matter, more than the amount or kind of evidence you need to prove other protected classes under ORS 659a.030, because of the narrow way age claims are treated under federal law. Federal courts have interpreted age discrimination so narrowly that factors that are often, but not always, closely associated with age like, years of service or retirement status cannot even be considered by courts in deciding whether what really was going was age discrimination. Yet, in the real

world, these things are often used as a proxy for age with the goal to weed out older workers. As a result, while other areas of the law, such as disability discrimination laws, have expanded over the years, age discrimination laws have retracted. HB 3187 aims to address this by allowing common proxies for age like salary, length of service and retirement/pension status to be considered in how courts interpret "because of age." This is a commonsense change that lets judges and jurors make decisions based on the actual evidence, not based on an artificially narrow, out of touch view of age discrimination that federal courts have imposed over the years. This change would not mean that every worker who alleges salary or the other factors were a proxy will convince a judge or jury of that. It just means the worker has a chance to tell their story in court, a chance few workers are getting under current law.

Again, the statute does not automatically equate things like salary or years of service with age discrimination. It just makes it so a court can choose to look at those commonsense factors, which are often used as a cover for age discrimination, in deciding whether age was or was not a factor. An employer may still make a business decision on who to employ, and whose salaries they can support. If an employer makes non-discriminatory decisions based on purely financial factors, such as salary, that is not age discrimination even with this new language. After all, an employee must still prove age was a factor in the decision. However, if an employer has a plan to weed out older workers and does so my terminating everyone who is eligible for retirement, that likely would be age discrimination under this new language. After all, in that example, the decision to weed out people of a certain retirement age was motivated by a discriminatory plan to terminate older workers. Under the change proposed here, age *may* include salary, length of service and retirement/pension status, but a judge and jury will ultimately decide if it in fact *does* include these things in an individual case, based on what is often nuanced evidence. As long as age discrimination is not what is really going on, employers are still free to continue to make decisions based on what is best for their business.

Further, attorneys cannot bring meritless claims. If they do, the court can award attorney fees to the prevailing party and a $5,000 fee after weighing certain factors, including "[t]he objective reasonableness of the claims and defenses asserted by the parties." (ORS 20.105(1)); ORS 20.190(3)(a-h)). Attorneys diligently research claims and defenses before bringing cases, since there is much on the line and we have to choose cases carefully. This would continue to be the case.

Currently, workers have a difficult time proving age discrimination. This bill would give them a fighting chance. I urge your yes vote.

Thank you.