



*Testimony in opposition to HB 2957 in its current form (2025)*

Chair Taylor, Vice Chair Bonham, 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.

I am in strong support of HB 2957A, the bill that passed out of the House. I have serious reservations about the -A5 amendment which you are hearing today. Though this amendment offers marginal improvement over the terrible situation workers are currently in after filing with BOLI, it is not a good solution, will likely lead to confusion, and will result in no change for many affected workers.

My main concern with the -A5 is that it is built on the false premise that a BOLI investigation reliably gives workers a fair shake. NWJP files cases with BOLI regularly. BOLI just simply receives too many cases to regularly engage in investigations that are robust, thorough or, in many cases, fair, particularly for those workers who are not represented in the process by attorneys. Our client communities – low wage, immigrant and contingent workers – are the workers who are least likely to be represented by attorneys through the BOLI process because there simply are not enough resources available to support them, so navigating the BOLI process without an attorney is often the only option.

The state's rate of finding substantial evidence of discrimination (SED) should give every member of this committee pause. The most recent data set I have is from fiscal year 2023. At that time, BOLI found substantial evidence of discrimination in only 13.1% of race claims, 15.9% of gender/harassment claims, 11.3% of injured worker retaliation claims and 15.5% of age discrimination claims. (For FY 2024, I understand SED was found in age discrimination cases just 6% of the time, so sadly, the trend is likely not improving.) I do not think 74% to 94% of all workers who go to BOLI are not telling the truth about the discrimination they have experienced. Instead BOLI staff are overworked and under-resourced. They may not be aware of dynamics in low-wage jobs. They over-rely on the written word provided by employers, instead of worker testimony. They often do not conduct relevant witness interviews.

I know the current Commissioner is making efforts to increase the number of investigators at BOLI and provide more training for current investigators, but change takes time, and BOLI would need a tenfold budget increase to meet the needs of workers in this state. That is not likely to happen in any of our lifetimes. BOLI will continue to be underfunded and to do cursory

investigations where meritorious workers' claims are found to lack evidence. My office regularly successfully litigates and wins cases that BOLI has found to have no merit.

To repeat, the –A5 amendment reinforces the false idea that a BOLI investigation offers workers a remedy to the discrimination and retaliation they experience. Under the amendment, workers who receive a finding of “nothing to see here” (or “no SED”) would be in a worse position than workers whose cases were found to be meritorious by BOLI. In reality, the opposite should be true. Workers who receive a no SED finding will have a harder time finding an attorney than those with SED, even though as I said, a no SED finding should not carry much weight.

While the –A5 seems to offer some improvements to the status quo, its structure with five different statutes of limitations (SOLs) will be incredibly confusing to workers and in most cases will not result in workers having longer than 90 days to file suit. A worker needs to know their underlying SOL, as well as the BOLI outcome of their case to be able to seek and find representation to file in court. I do not think BOLI will be calculating SOLs for workers due to the risk of being sued for any errors in that calculation. I also think many attorneys will be reluctant to calculate the SOL for someone who is not their client, so the worker will be in effect no better off than they are now. They (and the legal community) will likely assume the SOL to be 90 days, in order not to malpractice or miss the time to file in court. That means important cases will continue to be turned away because there isn't time for attorneys to conduct an investigation and file the case.

One final significant concern has to do with the long delay in getting workers' files from BOLI after the case is closed. Civil rights files are sealed while the investigation is going on, but when it is closed, anyone can request a redacted copy of it. BOLI is supposed to turn these files over within a reasonable amount of time, but historically this has not been happening. The current Commissioner has made great strides to get through the backlog of public records request by creating an online portal and hiring another staff in the unit, but long delays are still common. The reason this is important is an attorney wants to see what is in the BOLI file before deciding whether to take the case to court. I personally want to know what the employer said to BOLI, as well as find out about any evidence the investigation turned up that I (and my client) may not have known about. (Sometimes, seeing the file alerts an attorney to a fatal flaw in the case, causing them not to file a case at all.) But due to the delays, I often have to file in court without having seen the file. This is obviously more important in cases where BOLI did not find evidence of discrimination. If workers had a longer SOL, there would also be more time for BOLI to produce the file. 180 or even 150 days would be a great improvement.

I urge you to support the version of this bill that passed the House. In 2019, the Oregon Legislature passed landmark SB 726 after moving testimony, much debate and careful consideration. You extended the statute of limitations for sex and race discrimination claims, among others, to five years, to make sure victims had time to process, consider and move forward in the way that makes sense to them. As a reminder, SB 726 was passed during a time when we were all trying to listen to victims of sex abuse and harassment, and seeing that sometimes one victim's bravery helped many others come forward, even if the harm was some years in the past. It is time to make a technical fix to make sure the promise of that law is fulfilled. I appreciate compromise, but this bill creates more problems than it solves. Thank you.