

# Age Discrimination in the Workplace

## HB 2818

### BACKGROUND

Older employees bring proven job and leadership experience to their chosen occupations but are frequently met with barriers based on age discrimination, such as:

- Not getting hired for a job they applied for because of their age,
- Being passed up for a promotion or another chance to get ahead, or
- Being subjected to negative remarks related to their older age from colleagues or supervisors.

**In a study released by AARP in August, 2018, more than 3 out of 5 workers have seen or experienced age discrimination on the job.** Among the 61% of respondents who reported age bias, 91% said they believe that such discrimination is common. Women are more likely than men (64% vs. 59%) to say they have seen or experienced age discrimination.

Oregonians ages 45+ want to obtain and keep their jobs for similar reasons to their younger counterparts -- because they need the money to support themselves and their family members. All Oregonians deserve to earn an income and to secure a financial future for themselves and their families. There should be no place for ageism in our state, and yet:

- Age discrimination makes up more than 1 in 5 of the discrimination charges received by the U.S. Equal Employment Opportunity Commission.
- In 2016 alone, 20,857 such complaints were filed with the EEOC.
- More than 2,500 Oregonians filed age discrimination claims with BOLI in the last decade – about one per workday.

### CRISIS

The federal Age Discrimination in Employment Act (1967) and Oregon law (ORS 659A.030) generally prohibit workplace discrimination on the basis of age. However, the burden of proof is difficult to reach without a “smoking gun.” Victims have little recourse when the discrimination is based on characteristics closely associated with age, or that are a proxy for age, such as years of service, or retirement or pension status. Currently, such persons must not only prove that age was a factor, but that there is direct evidence that age is what motivated the decision. Faced with this nearly impossible burden of proof, advocates for victims of age discrimination report that they can’t help these clients because the burden of proof for such claims is impossibly high.

## SOLUTIONS:

### HB 2818 will help prevent age discrimination by doing the following:

1. **Ban the Age Box.** Prohibit employers from asking age-identifying information on job applications, so older workers aren't screened out in advance.
2. **Improve the definition of age discrimination in 659A.028.** Employment actions based on characteristics closely associated with age would now be considered age discrimination, unless the employer can show that age was not at all a factor in the decision. The legislation ensures that bona fide perks for longer term workers (e.g. seniority system and early retirement) are not disrupted.
3. **Increase the victim compensation** for those who experience age discrimination in order to deter such behavior by employers. The state statute would now be more in line with federal age discrimination statutes (ADEA) in this regard.



#### For More Information:

- John Mullin, AARP Oregon, [johnmullinhce@gmail.com](mailto:johnmullinhce@gmail.com), 971-276-0610
- Trish Garner, American Association of University Women of Oregon [garner37@mac.com](mailto:garner37@mac.com) 503-407-2341
- Jim Davis, United Seniors of Oregon & OSCRC, [davisjasr503@gmail.com](mailto:davisjasr503@gmail.com), 503-720-4908