

## **HB 3187 – Updates and clarifies the law about age discrimination**

### **What the bill says:**

1. When bringing a claim based on workplace age discrimination, the definition of “age” may include salary, length of service and retirement or pension status.

2. Prior to an initial interview or making a conditional offer of employment, employers can’t require disclosure of the applicant’s age or when the applicant attended or graduated from any educational institution.

3. Employers can’t reject an apprenticeship because the apprentice will be age 70 or more when completing the apprenticeship.

NOTE: This is a minor and totally uncontested part of the bill so there’s no need to mention it. The federal government has mandated that the Bureau of Labor and Industries must follow this rule.

### **Talking Points:**

1. *HB 3187 takes a narrow approach in closing up a loophole in Oregon law by providing that evidence of salary, length of service and pension/retirement status can be used to establish a claim for workplace age discrimination. While these factors don’t establish a claim in and of themselves, claimants should be able to present this evidence to the court when proving their case.*

2. *EXCEPTION: HB 3187 explicitly allows employers to take an employment action that uses these factors if it is in accordance with a seniority system or employee benefit plan.*

3. *Before an initial interview or making a conditional offer of employment, employers can’t require disclosure of the applicant’s age or graduation dates. They may, however, ask that information when it is needed to ensure the applicant meets the specific job requirements.*

4. *It’s time that those discriminated against by age be given as fair a shot at proving their case as those who try to prove discrimination based on gender and race.*

### **Pushback**

1. Claim: We already have an age discrimination bill and don’t need another

#### Our Responses:

(a) Yes, Oregon has a statute dealing with age discrimination, but because of Oregon Court rulings, claimants can’t even introduce evidence of salary, length of service or retirement status as proof of their claim. These factors don’t decide the case in and of themselves, but HB 3187 says they may be used as part of the proof for a claim.

(b) Other Oregon laws regarding discrimination have also had to be updated, including the definition of discrimination based on sex which added pregnancy, childbirth, related medical conditions (2019), and the definition of race to include physical characteristics closely associated with race such as natural hairstyles (2021).

2. Claim: There’s no need to include language banning employers from including age or graduation date from job applications because the resume itself gives enough information for employers to guess the age of the applicant.

Our Response: That may be true, although job seekers have become more adept at writing resumes that don’t “look” like they come from older applicants. More importantly,

before even being considered by HR or a human person, in these days computers automatically reject applications when the age is considered “too old.”

3. Claim: The language that discrimination “because of age may include but is not limited to” the factors associated with age (salary, length of service, retirement status) is too broad.

Our Response: This is a technical objection and the phrase “include but not limited to” is used in a wide variety of Oregon statutes. NOTE: Included at the bottom of this outline of HB 3187 are examples of the inclusion of “include but not limited to” language.

4. Claim: HB 3187’s use of the phrase “proxy for age” when referring to the named factors is confusing and too broad.

Our Response: This language comes straight from the US Supreme Court’s recent decision on age discrimination.

5. Claim: Some employees have to be of a certain age, i.e. bartenders

Our Response: HB 3187 explicitly provides that age can be used when it’s a bona fide occupational qualification or is otherwise required under law.

#### **Current status:**

Public Hearing held February 19, 2025, before the House Committee on Labor and Workplace Standards; Work Session not yet scheduled

#### **Information Provided by AARP:**

Age discrimination at work is not uncommon, with over half (55%) of Oregon voters age40-plus in the labor force saying they have seen or experienced age discrimination at work. Among them, nearly nine in ten (88%) think age discrimination at work is a common occurrence (86% Republican, 88% Independent, 89% Democrat).

Practices relating to age discrimination are also reported by Oregon voters age40-plus in the labor force. Among those who applied for a job in the past five years (55%), half (50%) were asked to provide their birth date, graduation date(s), or other age-related information during the job application process. Moreover, three in ten (29%) applicants saw job postings containing age-related language, such as recent college graduates, college-aged, or digital native preferred which could be seen as age biased and deter older workers from applying.

#### **Organizations supporting HB 3187**

AAUW of Oregon  
Or St Cn for Retired Citizens United Seniors  
AAUW Roseburg Branch  
LWV of Oregon  
SEIU Local 503 Local 001  
AFT-Oregon  
Oregon Nurses Association  
SEIU Local 503  
OR AFL-CIO  
Oregon School Employees Association

Oregon Women's Rights Coalition  
NW Workers' Justice Project  
Oregon Law Center  
PCUN  
Oregon Gerontological Assoc.  
American Association of University Women of OR  
Age Equity LLC  
Oregon Education Association

**Organizations opposing HB 3187**

Oregon State Chamber of Commerce  
Oregon Retail Council  
Oregon Farm Bureau

**NOTE:** Here are examples of Oregon statutes that use the “include but not limited to” language:

- HB 2341 (2019) expanded discrimination because of sex to include but not be limited to pregnancy, childbirth and related conditions. HB 2935v(2021) expanded discrimination based on race to include “physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles ...”

- ORS 659A.030(1)(b) – Oregon's anti-discrimination statute for employment states that it is unlawful for an employer to discriminate based on protected characteristics, and related rules often include "including but not limited to" in listing specific examples.

- ORS 342.704(4) – This section on educator sexual misconduct states that "Sexual conduct includes but is not limited to..." when defining inappropriate behaviors.

- ORS 441.166(1)(a) – This section on hospital nurse staffing requires the plan to consider factors "including, but not limited to, specialized qualifications and the intensity of patient care."

- ORS 459A.100(2) – Regarding recycling, it specifies that materials collected must include but are not limited to certain types of paper, metals, and plastics.