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Date: Wednesday, October 2, 2024 at 1:55 PM
To: Risk Management <riskmgmt@ohsu.edu>, OHSU Board <ohsuboard@ohsu.edu>, Danny Jacobs <jacobsda@ohsu.edu>, Alice Cuprill Comas <cuprillc@ohsu.edu>
Subject: [EXTERNAL] Tort Claim Notice (10/2/24)

Hello,

Please, find attached a tort claim notice, pursuant to ORS 30.275,

Please acknowledge receipt of this notice within 15 days.

Thank you

Nabil Khlafa

cc: OHSU Board of Directors, via e-mail only: ohsuboard@ohsu.edu

Danny Jacobs, OHSU president, via e-mail only: jacobsda@ohsu.edu

Alice Cuprill-Comas, OHSU Legal Counsel, via e-mail only: cuprillc@ohsu.edu

Nabil Khlafa
5331 S Macadam Ave
Suite 258-107
Portland, OR 97239
nabilnoble77@gmail.com
971-337-8987

October 2nd, 2024

Risk Management Via E-Mail and Certified Mail:
riskmgmt@ohsu.edu

Oregon Health and Science University
3181 SW Sam Jackson Pk Rd Campus
Mail Code: L328 Portland, OR 97239

Re: Nabil Khlafa, Former OHSU Employee - Tort Claim Notice, pursuant to ORS
30.275

Dear Risk Management,

My name is Nabil Khlafa, I am a former OHSU employee. This letter serves as a tort claim notice, pursuant to ORS 30.275, pertaining to my experiences of employment discrimination, retaliation, and an unlawful and unconstitutional employment ban imposed by OHSU.

I am writing to formally notify Oregon Health & Science University (OHSU) of my intention to file a lawsuit against this public institution under the following Oregon state laws:

1. ORS 659A.370(2)(c)
2. ORS 659A.030
3. ORS 659A.112
4. ORS 659A.199
5. ORS 659A.880
6. ORS 659A.885
7. ORS 656.236
8. Oregon Whistleblower Protection Laws (ORS 659A.230)
9. Oregon Family Leave Act (OFLA) Retaliation (ORS 659A.150-186)

Additionally, I intend to pursue the following common law claims:

1. Wrongful Termination in Violation of Public Policy
2. Intentional Infliction of Emotional Distress
3. Defamation
4. Conspiracy to Commit a Tort
5. Fraud

Finally, I will be asserting claims under Oregon Statutory Whistleblower Protection (ORS 659A.200-224).

Location of Events:

Oregon Health and Science University, 3181 SW Sam Jackson Park Rd, Portland, OR 97239.

Time, Place and Circumstances Giving Rise to Claims:

1. I am a 57 year old Arab male originally from Morocco, of Islamic faith and heritage. I suffer from a disability.

2. I was employed by OHSU as a Health Information Specialist, an entry level position, for more than 15 years. OHSU ignored and dismissed, knowingly and intentionally, all my professional and academic abilities and potentials throughout the entire duration of my employment.

3. OHSU discriminated against me, pervasively, in the scope of my employment, on the basis of my age, race, national origin, engagement in protected activities, and disability.

4. OHSU discriminated against me based on my religion. During my more than 15 years working in the Health Information Management Department, I experienced systematic religious discrimination. I also witnessed the department's management abusing other Muslim employees. I believe our faith and religious identity played a significant role in how we were treated as employees and as human beings. Despite these discriminatory practices, the managers and directors involved were not held accountable and faced no consequences from OHSU.

5. Throughout my years of employment at OHSU, I applied internally for numerous positions for which I was professionally and academically qualified. Despite my qualifications, I was consistently denied these opportunities, preventing any chance for career advancement.

6. OHSU exploitatively used my disability and serious health condition against me, leveraging them as part of a well-planned retaliatory strategy. This effort was meticulously designed to support OHSU's ongoing and concerted attempts to retaliate against me for speaking out against the systemic discrimination, racism, nepotism, and abuse of employees within the institution, ultimately leading to the termination of my employment.

7. In June 2022, OHSU initiated a sham investigation against me in secret, without my knowledge or involvement. I was not informed of this investigation until November 2022, several months after it had begun. The investigation was knowingly fabricated with the intent to retaliate against me for engaging in protected activities and was designed to serve as a pretext for my eventual termination. Despite its supposed purpose, the investigation was never properly concluded, and its findings were never disclosed to me. This secretive and fraudulent investigation was part of a coordinated effort by OHSU to undermine my position and retaliate against me for standing up for my rights, in clear violation of Oregon State laws. This malicious and illegal action not only lacked any legitimate basis but was also intended to inflict harm and further isolate me within the organization.

8. My employment at OHSU was terminated on 11/15/2022, effective 11/16/2022 when I was on a protected medical leave to take care of my own serious health condition.

9. On 11/15/2022 I was coerced under duress, threats, and fraudulent inducement to sign an employment separation agreement and a waiver of rights.

This agreement illegally included a clause that barred me from seeking future employment with OHSU, in direct violation of ORS 659A.370(2)(c).

10. I allege that OHSU engaged in discriminatory practices by imposing a lifetime employment ban based on my race, age, disability, religion, country of origin, and participation in protected activities, in violation of ORS 659A.030.

11. The imposition of a lifetime employment ban constitutes discrimination against individuals with disabilities, which is prohibited under ORS 659A.112.

12. The lifetime employment ban was retaliatory, aimed at punishing me for engaging in protected activities, as defined under ORS 659A.199.

13. Violation of ORS 659A.880 – Right to File a Civil Action:

I am exercising my right under ORS 659A.880 to file a civil action against OHSU for unlawful employment practices, including the aforementioned discriminatory and retaliatory actions and the unconstitutional employment ban.

14. Violation of ORS 659A.885 – Civil Action for Unlawful Employment Practices:

This notice serves as an indication of my intent to pursue a civil action under ORS 659A.885, addressing claims related to the discrimination and retaliation I experienced and the illegal employment ban.

15. OHSU conditioned the settlement of my workers' compensation claims on my resignation, a practice prohibited by Oregon law. Under ORS 656.236 (Compromise and Release of Workers' Compensation Claims), the settlement of a

workers' compensation claim cannot be contingent upon the worker's agreement to resign from their employment. This means that an employer or insurer cannot require a worker to resign as a condition for settling a workers' compensation claim. By making the settlement agreement contingent upon my resignation, OHSU violated ORS 656.236.

16. Violation of Oregon Whistleblower Protection Laws (ORS 659A.199, ORS 659A.230): OHSU violated Oregon's whistleblower protection statutes by retaliating against me for reporting and opposing unlawful practices.

17. Violation of Oregon Family Leave Act (OFLA) Retaliation (ORS 659A.150-186): The actions taken against me were retaliatory in nature, due to my utilization of rights protected under the Oregon Family Leave Act.

18. Common Law Claims – Wrongful Termination in Violation of Public Policy: I was wrongfully terminated in violation of public policy, as my termination was a result of my opposition to illegal practices, as well as discriminatory and retaliatory actions by OHSU.

19. Common Law Claims – Intentional Infliction of Emotional Distress (IIED): Between June and November 2021, OHSU orchestrated a sham investigation designed to retaliate against me, carefully constructed with the intent to undermine my credibility and silence my opposition to unlawful practices. This investigation was conducted in secrecy, with predetermined outcomes, ensuring that the process served as a mere facade for retribution rather than a genuine effort to address any concerns. The sham investigation constructed by OHSU and subsequent actions by OHSU were intended to cause, and did cause, severe emotional distress.

20. Common Law Claims – Defamation: False statements were made during the sham investigation and other related actions have damaged my reputation, giving rise to a claim for defamation.

21. Common Law Claims – Conspiracy to Commit a Tort:
OHSU and its representatives engaged in a conspiracy to harm me through the coordinated construction of a sham investigation, and subsequent actions intended to terminate my employment unjustly.

22. Common Law Claims – Fraud: OHSU’s actions involved deceit, misrepresentation, fraudulent inducement and omission of material facts, constituting fraud.

23. Violation of Oregon Statutory Whistleblower Protection (ORS 659A.200-224): OHSU retaliated against me after I reported illegal activities, violating Oregon’s whistleblower protection statutes.

24. On 11/15/2022 OHSU imposed a lifetime employment ban on me, which I contend was a result of discriminatory practices and/or retaliation related to my race, age, disability, religion, country of origin and my participation in protected activities.

The lifetime employment ban imposed by OHSU has caused me significant harm in several ways including but not limited to:

a) This ban effectively prevented me from pursuing or obtaining any future employment opportunities at OHSU, a major employer in the region. This restriction has limited my career growth, professional advancement, and access to positions for which I am academically and professionally qualified.

b) Financial Loss: By barring me from employment opportunities at OHSU, the ban has led to lost wages, benefits, and retirement contributions that I would have otherwise earned. This financial impact also extends to diminished earning potential over the course of my career.

c) Professional Reputation: The ban has damaged my professional reputation within my field. It could be perceived by other potential employers or colleagues as a reflection of my professional conduct or competence, even if unfounded.

d) Emotional and Psychological Impact: The lifetime ban has caused significant emotional distress, leading to feelings of rejection, humiliation, or worthlessness. The ongoing nature of the ban has contributed to chronic stress, anxiety, and depression.

e) Stigma and Isolation: Being singled out for a lifetime ban has resulted in a sense of social and professional isolation, after I had previously built relationships and a reputation within OHSU.

f) Violation of Legal and Constitutional Rights: The ban is a violation of my legal and constitutional rights, including the right to equal treatment and protection under the law. This legal harm has long-term implications for my ability to seek redress.

g) Barriers to Seeking Justice: The lifetime ban, combined with the legal and institutional obstacles I have faced, has made it more challenging to seek justice or hold OHSU accountable for their actions. This has resulted in a sense of powerlessness and frustration, further compounding the harm.

h) Impact on Future Employment: The lifetime ban might also affect my ability to secure employment with other institutions, particularly if they have affiliations with or are influenced by OHSU. This has limited my employment prospects more broadly in the healthcare or academic sectors.

i) Increased Scrutiny and Discrimination: The ban has subjected me to increased scrutiny and potential discrimination in my professional life, as other employers may be wary of hiring someone who has been banned from an institution like OHSU.

25. The employment separation agreement and the waiver signed on 11/15/2022 to release Oregon Health and Science University from liability for any past claims was signed under threats and coercion and fraudulent inducement.

26. This coerced waiver is not in compliance with state statutes regulating limitations on an employer's ability to obtain an enforceable waiver of employment law claims and it does not meet the standards that must be met under Oregon State employment laws, to be a valid waiver and release of claims without litigation. This waiver OHSU coerced me to sign was not voluntary, and it was not knowing.

Notice of Prior BOLI Complaint and Right to Sue Authorization

Please be advised that I have previously filed a complaint with the Oregon Bureau of Labor and Industries (BOLI) regarding these matters. BOLI has issued a Right to Sue letter dated August 22, 2024, authorizing me to pursue legal action in court against OHSU for the violations of my rights under state employment laws.

Claims and Damages Sought:

These facts and events give rise to claims of discriminatory and unlawful employment practices under ORS 659A.030(1), based on race, national origin, religion, disability and age. I also assert violations of my constitutional and civil rights. Specifically, the lifetime employment ban imposed by OHSU violates Oregon state law under ORS 659A.030, which prohibits employment discrimination based on protected characteristics such as age, religion, race, disability, and national origin. Additionally, this ban is a retaliatory act in violation of ORS 659A.199, as it was imposed in response to my lawful whistleblowing activities and complaints regarding systemic discrimination and racism at OHSU. The inclusion of this employment ban in the separation agreement further violates ORS 659A.370(2)(c), which prohibits settlement agreements from containing provisions that bar an employee from seeking reemployment. Moreover, this ban deprives me of equal treatment under Oregon Constitution, Article I, Section 20, which ensures equal privileges and immunities for all citizens.

I also assert rights under ORS 656.236, which stipulates that a workers' compensation claim settlement cannot be contingent upon the worker's agreement to resign from their employment.

The discriminatory and retaliatory impact of the employment ban remains ongoing, with its harmful effects continuing each day. This ban unlawfully restricts my ability to seek and secure employment with OHSU, representing a continuous violation of my rights. As such, this tort claim notice reflects the most recent and ongoing harm, affirming that the discrimination and retaliation are not past occurrences but persistent injustices. Given these violations, I intend to pursue all available legal remedies, including the filing of a civil lawsuit in an Oregon State Court.

These actions have caused significant harm to my employment opportunities, emotional well-being, and reputation. I will be seeking legal redress under the following Oregon state laws:

- ORS 659A.030
- ORS 659A.199
- ORS 659A.230
- ORS 659A.150-186 (Oregon Family Leave Act Retaliation)
- ORS 656.236 (Compromise and Release of Workers' Compensation Claims)
- ORS 659A.370
- ORS 646.608
- ORS 659A.112 (Disability Discrimination)
- ORS 659A.109 (Retaliation)
- ORS 659A.203 (Retaliation)
- ORS 659A.183 (Discrimination and Retaliation)
- Common Law Claims: Wrongful Termination in Violation of Public Policy, Intentional Infliction of Emotional Distress (IIED), Defamation, Conspiracy to Commit a Tort, Fraud
- Oregon Statutory Whistleblower Protection (ORS 659A.200-224)

I may seek economic damages, non-economic damages for emotional and mental suffering, loss of self-esteem and reputation, as well as attorney fees, costs, and prevailing party fees due to these violations. I may also seek injunctive relief to prevent further legal violations by OHSU.

Please preserve all documents related to my employment, the employment ban, including recordings, investigative documents, evidence, email communications, texts, management notes, and supervisory files. Please, suspend any purge cycles of documents related to my employment at OHSU. Direct any responses to this tort claim notice to me at the address listed above.

Please acknowledge receipt of this notice within 15 days.

Sincerely,

A handwritten signature in Arabic script, appearing to read 'Nabil Khlafa'.

Nabil Khlafa

cc: OHSU Board of Directors, via e-mail only: ohsuboard@ohsu.edu

Danny Jacobs, OHSU president, via e-mail only: jacobsda@ohsu.edu,

Alice Cuprill-Comas, OHSU Legal Counsel, via e-mail only: cuprillc@ohsu.edu