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Testimony of D. Michael Dale
House Committee on Business and Labor
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HB 3307 – A Remedy to Assure that Workers Receive Required Meal and Rest Breaks

I am the Executive Director of the Northwest Workers' Justice Project. I have been a lawyer in Oregon since 1977, and have spent most of that time representing migrant and seasonal agricultural workers. The Northwest Workers' Justice Project provides legal representation to low wage contingent workers throughout the economy in sectors such as construction, building maintenance, landscaping, hotel and restaurant industry, food processing, agriculture and reforestation. This bill is supported by the Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition includes 35 civic, labor, religious and business organizations.¹

BOLI regulations require two 10 minute paid breaks during an eight hour shift. They also require a paid 30 minute meal period unless the employee is relieved of all duties. However, if an employer fails to provide the breaks and meal periods, there is no effective remedy for workers. BOLI has the power to fine the offender, but, unfortunately, lacks the capacity to investigate most complaints that workers are not getting breaks. In 2008, in *Gafur v. Legacy Good Samaritan Hospital*, the Oregon Supreme Court held that employees were not entitled to any direct remedy for such violation. Thus, employees often receive neither required breaks and meal periods nor any other remedy.

Being able to leave work for a few minutes during the work day to relax and take care of personal matters not only is a matter of the comfort and dignity of working people. For certain workers, like diabetics, pregnant women, or those with disabilities, adequate rest breaks are required to maintain good health and the ability to stay at work. Workers engaged in

¹ Adelante Mujeres, AFL/CIO of Oregon, American Friends Service Committee, CAUSA, Beyond Toxics, Catholic Office of Life, Justice and Peace, Archdiocese of Portland, Centro Latino American of Eugene, Common Cause Oregon, Community Alliance of Lane County, Economic Fairness Oregon, Ecumenical Ministries of Oregon, Family Forward Oregon, Human Dignity Advocates of Crook County, Jewish Federation of Greater Portland, Mainstreet Alliance, Northwest Workers' Justice Project, Oregon Action, Oregon School Employees Association, Oregon Center for Christian Voices, Oregon Center for Public Policy, Oregon Strong Voice - Southern OR Chapter, Oregon Thrives, PCUN, Portland Jobs with Justice, Project REconomy, Rural Organizing Project, Oregon New Sanctuary Movement, SEIU Local 49, SEIU Local 503, Tax Fairness Oregon, Teamsters Local 26, United Food and Commercial Workers Local 555, VOZ Workers Rights Education Project, We Are Oregon and Working Families.

hazardous or repetitive activities, or working long hours, are put at risk of occupational injury by not getting breaks.²

This is not just a hypothetical question. In my experience representing workers in low wage industries, this is a very common complaint. By the time workers get to our office, the issue has usually been unsuccessfully raised by the workers with their employer. At present, there is simply no good advice to give workers about what to do about not being accorded the rest periods that the law requires.

HB 3307 creates a remedy for workers who aren't being given breaks. It requires that the employer pay the employee one and one half hours of pay at the regular rate for each day that required breaks are not taken or paid. Workers could enforce this remedy, themselves, through a wage complaint. But more importantly, the availability of a remedy will create strong incentives for employers to comply with the existing BOLI regulation and to allow breaks.

After discussing this bill with employers and others an amendment was drafted to protect employers in a work place in which the employee's duties are such that the worker is not directly reliant upon the employer to be able to take breaks. The -1 Amendment creates an exception when all of the following facts exist:

1. The employer has a written policy regarding breaks conforming to BOLI regulations,
2. Employee can leave the work station without being replaced or getting permission, and
3. The employee fails to establish that the employer knew breaks were not being given.

It should be noted that in situations in which the employee proves that the employer has created a workplace culture in which taking breaks is discouraged to the point of establishing a *de facto* no breaks policy, the mere adoption of a formal written policy would not defeat the employee's claim to extra compensation for breaks. In other words, it is intended that the written policy must be the actual policy of the employer.

I understand that the Commissioner of Labor is concerned that this amendment to the bill might alter BOLI regulations either by implying that an employer could pay the extra wages and be excused from providing appropriate breaks, or by shifting the burden of proving compliance with the regulation from the employer, as the regulation now specifies, to the employee. Language in the -1 amendment specifies that this bill has no effect on whether an employer is in compliance with the BOLI regulations or is subject to a fine by the agency. The -1 amendment explicitly says that paying the extra wages does not excuse not allowing breaks.

We recommend that the Committee pass out this bill with a do pass recommendation.

² See, e.g., TAKE MORE BREAKS TO AVOID BACK INJURY AT WORK, STUDY SAYS, Research Communications, Ohio State University, <http://researchnews.osu.edu/archive/muscleox.htm> (accessed 4/11/13).