



812 SW Washington, Suite 1100, Portland, Oregon 97205 • (503) 525-8454 • www.nwjp.org

Testimony of D. Michael Dale
Before the House Committee on Business and Labor
March 13, 2013
HB 2176 – Protecting Contracted Workers and Day Laborers

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 sponsored by the Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition includes 35 civic, labor, religious and business organizations.¹

In the last generation, workers could reasonably expect to find a job at a firm, work for forty years at reasonable wages that permitted a middle class life style, send their children to college, and retire with an employer-funded pension and a gold watch. Today we see a vastly different reality. International trade, global competition, and economic crisis at home have forced employers to cut costs in whatever ways they can. This often means hiring workers who are “contingent”—who have neither explicit nor implicit contracts for long-term, full-time employment, and who can thus be hired on short notice and easily let go at an employer’s convenience. The most temporary and informal of contingent workers are “day laborers,” hired on a day-by-day basis to perform specific unskilled or semi-skilled tasks. Employers often obtain the services of day laborers and other contingent workers through temp agencies or subcontractors, whose function is to provide employers with workers on an as-needed basis and at reduced costs.

Contracted labor may just be an inevitable adaptation to a global economy. However, some employers use contracted services and the informal, flexible nature of contingent labor to profit by providing substandard wages and working conditions. Today more than ever, workers’

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 Americano 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 Education Project and We Are Oregon.

wages are being stolen from them: a 2008 study of 4,387 low wage workers found that a shocking percentage are paid less than minimum wage, denied compensation for overtime, illegally charged for equipment and other expenses, or not paid at all.² While percentages vary between industries, more than two thirds of the workers surveyed had experienced at least one pay-related violation in the previous week. Some of the most egregious violations occur in day labor. A 2004 study of 2,660 day laborers from 264 randomly selected day labor site across the United States found that day laborers are regularly denied payment for their work.³ Oregon has not been exempt from these trends. An analysis of wage claims filed with BOLI shows that Oregon workers filed 8,558 wage claims worth \$24.5 million during the five-year period ending June 2011.⁴ Of course, this is just the tip of the iceberg, since many victims do not file claims with BOLI due to fear of retaliation, lack of knowledge of how to file or geographic isolation.

Employers are able to shield themselves from liability for these labor law violations by using subcontractors, and arguing that only the subcontractors are responsible for fair wages and working conditions. Labor subcontractors and temp agencies are largely unregulated under Oregon law. Employers also exploit the basic vulnerability of day laborers that arises from their precarious employment situation.

This situation is bad for the employees affected, but also hurts honest employers who are made to look bad, and forced to compete with those who cheat their workers. It also hurts the taxpayer, who must make up for taxes that don't get paid on wages that are earned, but never paid.

This bill addresses these issues in 4 ways. **HB 2176** would:

- Re-regulate temporary employment agencies, including day labor services agencies, by extending coverage to agencies that provide temp workers, but do not collect a fee directly from the worker. (However, agencies providing professional workers are not covered under this bill.) Oregon has a long-standing requirement that temporary agencies post a bond with the Oregon Bureau of Labor and Industries and provide certain disclosures to workers. However, unless the agency directly charges the worker a referral fee (now a very uncommon practice in the temp industry), the agency is exempt from this law. This exemption is eliminated, and temporary employment agencies are required to register with BOLI. Bond amount is updated to \$20,000. Temporary employment agencies are prohibited from charging workers for tools and

² Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Hckathorn, Mirabai Auer, James DeFilippis, Ana Luz Gonzalez, Victor Narro, Jason Perelshteyn, Diana Polson, and Michael Spiller, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (Chicago: Center for Urban Economic Development, 2009). Available at www.unprotectedworkers.org/index.php/broken_laws/index.

³ Abel Valenzuela Jr., Nik Theodore, Edwin Melendez, and Ana Luz Gonzales, *On the Corner: Day Labor in the United States* (Los Angeles: UCLA Center for the Study of Urban Poverty, 2006). Available at <http://www.uic.edu/cuppa/uicued>.

⁴ "Evidence of Widespread Wage Theft," Oregon Center for Public Policy (May 21, 2012), <http://www.ocpp.org/2012/05/21/fs20120521-evidence-widespread-wage-theft/>

equipment they need for the job, charging for transportation or to cash a check and from interfering with an employee's obtaining a regular job. Temp agencies that pay workers directly are required to provide a wage stub explaining the basis for calculating the wage. Workers are given rights to enforce the requirements of the law.

- Establish workplace protections for day laborers in particular, by regulating both day labor service industries and individual employers of day laborers. Day labor service agencies are required to provide written disclosures of the terms of a job referral. Day labor employers could not promise one wage, but change the terms of employment mid-job, must provide pay stubs, and could not charge for tools or equipment or transportation or check-cashing services. If transportation is provided, the worker must be transported back to the point of hire at the end of the day.
- Require that contingent workers be paid the same as regular workers doing the same work, allowing for differences in skill and responsibility.
- Provide that a person or entity that sub-contracts to obtain contingent workers in construction, day labor, farm labor, janitorial or as a security guard, under terms that any reasonable business person knows or should know do not provide sufficient compensation for the sub-contractor to meet minimum lawful conditions of employment, is jointly and severally liable with the sub-contractor for claims by the workers of the sub. Labor or services provided to a person's residence are exempted.

We recommend that this bill be approved with a do pass recommendation.