



Oregon

Ltr. sent via email + snail/mail to all.
Bureau of Labor and Industries
Brad Avakian
Commissioner

August 15, 2012

The Honorable Hilda Solis
Secretary
United States Department of Labor (USDOL)
200 Constitution Ave. NW
Washington, DC 20210

Re: Cessation of the Hot Goods Provision

Dear Secretary Solis,

Oregon's Bureau of Labor and Industries, including its Farm Labor Unit, is our state's sole law enforcement agency protecting workers from wage and hour as well as civil rights violations. In addition, we work closely with our agricultural employers, educating them on how to comply with state and federal employment laws. Our mission is to aggressively protect Oregon workers through an enforcement process that respects the legal rights of all parties involved.

I know that USDOL has recently threatened or used the "hot goods" provision in Oregon to address suspected farm worker wage and hour violations. Further, I understand USDOL has plans to make much greater use of this method in Oregon.

I am concerned both by the use of the "hot goods" provision with agricultural operations and that USDOL has implemented any method in Oregon without first considering joint efforts with our agency. We can be a valuable resource and always welcome a substantive conversation before you begin operations within our state.

The "hot goods" provision has been an effective enforcement tool since its passage in the 1938 Fair Labor Standards Act. More than a law to protect workers, it was established as a law to prevent unfair competition from employers who artificially decrease costs through substandard wages and working conditions.

As originally intended, the "hot goods" provision has been applied to the garment industry and other similar sectors that produce non-perishable goods. The interstate sale of suspected "hot goods" in these industries can be restrained without the result of destroying the value of the goods. In this sense, the potentially offending employer has incentive to correct its actions in order to continue its profitable transactions – which enables future proper payment of wages.

(continued)

PORTLAND
800 NE Oregon St. Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

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Eugene, OR 97401-7103
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Applying the "hot goods" provision to perishable goods presents significant problems. Seizing items that will quickly spoil creates leverage by potentially destroying the value of the goods. If the goods spoil, however, the incentive for the employer to correct its action is largely lost as is the ability to gain income from the goods to pay proper wages. The intent of the law is, therefore, not realized.

More importantly, the likelihood of the conversion of perishable goods before the employer's actions are fully investigated and the employer is found in violation, raises serious Fourth Amendment search and seizure as well as Fourteenth Amendment due process issues.

Protecting vulnerable workers is a necessity, as is protecting the rights of any party involved in the enforcement process. It is the conclusion of the Oregon Bureau of Labor and Industries that the seizure of perishable items on Oregon farms under the "hot goods" provision likely violates the constitutional rights of farmers who have yet to be found guilty of anything.

I invite you to meet with us to discuss a way of addressing suspected wage and hour violations in Oregon that effectively protects workers while maintaining the fair process we use in our enforcement actions. Until then, I ask that USDOL immediately cease using the "hot goods" provision to seize perishable goods on Oregon farms and instead use an enforcement tool that does not result in irreparable harm prior to full investigation and a fair process of adjudication.

Sincerely,



Brad Avakian
Commissioner
Oregon Bureau of Labor and Industries

cc: Governor John Kitzhaber
U.S. Senator Ron Wyden
U.S. Senator Jeff Merkley
U.S. Representative Earl Blumenauer
U.S. Representative Peter DeFazio
U.S. Representative Greg Walden
U.S. Representative Kurt Schrader
U.S. Representative Suzanne Bonamici
Director Katy Coba, Oregon Department of Agriculture