



Oppose HB 3307

HB 3307-A creates a new private right of action for wage claims stemming from an employer failing to provide required meal and rest periods as set forth by BOLI rules. The bill calls for an additional 90 minutes of wages to be paid per day/per employee for each day an employer is in violation (with one narrow exception).

- The Oregon Supreme Court has already ruled in *Gafur v. Legacy Good Samaritan Hospital & Medical Center* (2008) that no private right of action can exist for missed rest breaks because rest breaks are considered “work time” and employees are already compensated for their breaks. This has effectively pre-empted class action claims.
- Many employees in agriculture work on a piece rate basis. This means that they are paid by the amount of crop they pick- as long as they are at least making the minimum wage for all hours worked during a pay period. Piece rate employment allows many workers to earn 2-3 times the minimum wage during harvest.
- BOLI’s current position is that employers are to require each employee to take these breaks, even if the employees do not want to take them. For hourly employees, enforcing meal and rest breaks is not too problematic for employers since employees are paid for the rest period. However, many piece rate employees would rather work through any such breaks and take breaks at times of their choosing because they can make more money this way. Agricultural employers in these situations have had a hard time forcing these employees to take the required breaks.
- Because HB 3307 calls for additional wages for missed breaks, penalty wages under ORS 652.150 and 653.055 would also be awardable, sweetening the pot for class action claims on an issue in which there is current stability in law.
- BOLI already handles complaints of missed breaks through the Wage & Hour Division. It is a complaint-driven process in which BOLI investigates allegations of missed breaks and is able to levy civil penalties of \$1,000 per violation.
- HB 3307 would penalize agricultural employers unfairly in situations where employees fail to follow company policy on meal and rest period breaks. HB 3307 should be amended to allow workers to choose whether or not they want to take meal or rest period breaks. In instances where employees choose not to take the required breaks, employers should not be penalized as provided under current law or as proposed under HB 3307.