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Via email
Chairman Michael Dembrow and
Senate Committee on Workforce and General Government members
swgg.exhibits@state.or.us

Re: -3 Amendments to SB 1587 as introduced

Dear Mr. Chairman and Committee Members:

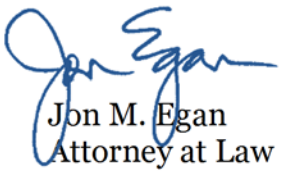
On January 31, 2016, I submitted a letter in support of SB 1587 as originally introduced. I was disappointed to review the proposed -3 Amendments posted this evening on the Legislature's web site, for discussion at tomorrow's Work Session(s). Eliminating a **private right of action** would create a toothless right—the statute as amended would require employers to produce time and pay records, but provide no way for the employee to enforce that right, and no penalty for noncomplying employers. It would be better to include even a private right of action with no monetary penalties, but which an employee could enforce by injunction. But in the -3 Amendments, any enforcement of this right would have to be undertaken by BOLI, which already has more than enough on its plate. And removing the **tolling** provision incentivizes employers to "run out the clock," by allowing them to escape wage liability simply by refusing to produce the records that the law requires them to produce. I therefore urge the Committee Members to reject the -3 Amendments in favor of the bill as originally introduced. If political realities absolutely require adoption of the -3 Amendments, however, I have two suggestions to improve the proposed amendments' language.

First, the proposed ORS 652.610(1)(b)(D) should include the words "**of the employer**" at the end of line 21 on page 1.

Second, the -3 Amendments replace the clear 3-year retention period in the Introduced bill, with an unclear period adopted from the Fair Labor Standards Act. It does this by incorporating "the period required by the Fair Labor Standards Act, 29 U.S.C. 211(c), and accompanying regulations" for time and pay records. I see in the Chairman's Amendment Letter that this amendment is intended to incorporate a 3-year standard. However, the -3 Amendments' incorporation of federal standards as written is not so clear. Section 211(c) of the FLSA does not specify any retention period at all. The accompanying regulations provide a 3-year period for some records (including "payroll records" and contracts), but only a 2-year period for other records (including "basic employment and earning records," "wage rate tables," and deduction records). 29 C.F.R. §§ 516.5–516.6. The lines between what must be preserved for 2 years vs. 3 years under the FLSA are unclear and have resulted in substantial litigation. Moreover, the -3 Amendments delegate to BOLI the ability to define what constitutes the term "time and pay records" used in the statute. BOLI's current recordkeeping obligations (OAR 839-020-0080 et seq.) include records in the FLSA's 2-year list, records in the 3-year list, and records in neither list. How is a court to apply the FLSA's mixed period to each item? If a clear 3-year retention period is intended, then I respectfully suggest that the bill replace "the period required by the Fair Labor Standards Act, 29 U.S.C. 211(c), and accompanying regulations" with "**the period required for retention of payroll records in 29 C.F.R. 516.5(a)**".

Thank you.

Sincerely,



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