

House Bill 2856 Testimony: John Hoffmann, Portland, OR

Good Afternoon. My Name is John Hoffmann. I am a resident of Portland, OR. Thank you for the opportunity to speak to you today.

In December, I responded to a job posting on Craigslist for Brand Ambassadors to support a promotional event for a nationwide wireless company. I sent in my resume and received an email which provided more details about the parameters of the job and about work policies. The email said:

“By receiving this email, you are agreeing to the terms of this contracted job to work all shifts and times for which you are scheduled. We will not accept any excuses for ‘no shows’, cancellations before and /or the day of, or lateness (this includes family emergency, car troubles, etc.) If you fail to show up for any of your shifts for any reason for the time of your booked days, you will forfeit your entire pay.”

This raised flags for me- Just by receiving an email I agree to the conditions? And, If i miss a day, due to illness, or a family emergency, I would forfeit the pay for the entire program? If I work 8 of the 9 days, and get sick and cannot work, I would not be paid for any of the work?

This email also communicated the requirement of being onsite at least 15 minutes prior to the scheduled shift. I also had to agree that I was an independent contractor, indicating that the company will not maintain any liability regarding workman’s compensation or unemployment insurance. I would also be responsible for any State and Federal tax liabilities.

Finally, the agreement stated the payroll policy. *“I understand that I will receive payment no less than 30 days but no more than 60 days based on the client payment...”* It also noted that payroll would **only** be processed on the 1st and 15th of the month, 30 days after the end of the event.

Prior to starting work, I contacted BOLI to raise my concerns. The BOLI representative validated my concerns and said some of the policies contradicted Oregon law. But, I was also informed that there wasn’t much that could be done before I started working for this company.

So, I was faced with a choice. Do I back out of the job due to concerns? Or, do I proceed with caution. As I needed the income, I proceeded with caution.

The job entailed handing out flyers and engaging “potential” customers at 4 different locations in the Portland area. On Christmas Eve, our team was assigned the CLACKAMAS TOWNE CENTER MALL.

During the shift, the team leader sent a text instructing the team members to meet at a location. When I arrived at the spot, I saw three of the team members talking to two security agents. The security agents summoned us to issue citations for trespassing and illegal activities. As the mall was private property, our company needed to get permission to hold a promotional campaign on the property. The company did not obtain the necessary permission to execute the event at the TOWNE CENTER.

This was another bright big red flag. The company did not obtain permission nor a permit for their promotional activities. The local wireless company store did not know anything about our presence. As the team leader addressed the issue, my concern elevated. The company would

not be receiving a citation. Their office is out of state. Because the team members were executing the event , we as individuals, we as “independent contractors” would be held PERSONALLY RESPONSIBLE FOR THE CITATIONS.

At this point, I was half way through the commitment. And, I began to wonder what risk I was subjecting myself to, and if I would ever be paid.

I continued to work as I agreed, but I gave notice that I would quit at the end of the program, about a week later. At the end of the program, I submitted my required timesheets and expense receipts. I also sent an email requesting my final payment of all wages. I had provided 72 hours notice of my intent to quit. After talking to BOLI and doing some research of my own, I knew the company was required to pay me upon my last day of work

The program co-ordinator replied, “ As per our invoicing instructions...we run on a net 30 pay cycle.....Unfortunately, we cannot pay out immediately upon an employee choosing to terminate their relationship with us.”

This contradicted what I knew to be the law. I spoke with the BOLI rep again. She confirmed my assessment. Based on the documents provided, the relationship was that of an employee. I had tendered proper notice. And, to comply with the law, I should have been paid ALL earned and unpaid wages on my final day of work. The BOLI rep pointed out labor code indicating the continuation of wages, as penalty wages, until I was paid in full.

The rep also provided a practical assessment of how the claim would proceed. I could file a claim. BOLI would pursue the earned wages. But, they would not pursue the penalty wages if the company paid the earned wages in response to the claim. If I wanted to pursue penalty wages, I could do that in Small Claims. But, if I filed a claim through BOLI, that would preclude further action in small claims court. Essentially, I would waive my right to pursue the penalty wages if I filed a claim through BOLI. Also, due to case load and limited resources, it was highly likely that the company would pay me prior to BOLI processing the claim.

I came to the conclusion I was on my own to ensure that my rights were upheld.

Taking the information provided by the BOLI rep, I continued to seek assistance. I entered an interagency complaint on the oregonindependentcontractors.com website. I followed up with phone calls, which led me back to the website or referring me to BOLI to address the issue. In essence, I encountered a circle of referrals.

Through the Oregon Bar referral system, I consulted two attorneys. The first attorney did not have time to consult with me. The second referral consulted with me. She felt confident about the violations. She offered to take the case on a contingency basis. While I would not pay any fees unless I received an award, I would be responsible for filing and deposition fees throughout the case. How much would that cost? It could be in the thousands of dollars.

The attorney outlined the small claims option. She also communicated that the defendant could request a jury trial which would take the issue into civil court. If that were the case, she recommended hiring an attorney.

In my case, a company based in California was conducting business in Oregon, without registering as an Oregon business, employing Oregonians and circumventing its responsibilities

as required by State Law. Not only did they impose a document which falsely defined the work relationship, they implemented policies which directly contradict law regarding payment of wages and falsely denied earned wages if an employee got sick or had car trouble. They also committed wage theft of 15 minutes each day on each worker's earnings.

These are blatant violations. And, yet, as a worker, I have a tremendous task in finding resources to ensure the enforcement of my rights as a worker, to ensure timely payment of my wages and to hold companies accountable for their blatant violation of my rights.

In my case, the company has neither incentive nor fear of punishment to adhere to the law. Due to BOLI's case load and limited resources, the company can render payment when it is convenient for them. Even if the claim is filed, once the company pays the wages, BOLI will not pursue the penalty wages. SO, why should a company follow the law?

If a worker enters the intimidating option of small claims court, they are on their own. Then, if the employer requests a jury trial, the worker needs an attorney, which is hard to find and comes with upfront costs.

Now, I did receive my wages. Arriving three weeks after I had finished working, the first check contained a discrepancy. Even though I included the REQUIRED 5 minute pre shift time in the invoice, the company did not pay me for that time, though I showed up to work 15 minutes early every day.

I did not receive my full wages for another week, a full 30 days past due. Oddly, both checks were issued by GT Events, Inc, not GTE AGENCY as indicated in all email correspondences. The checks listed a Nevada address. In addition to not being registered as a business in OREGON, this company is playing a bit of a shell game with its corporate "names". So, if I decide to pursue the penalty wages, who do I name as the defendant in a legal action? Another riddle to figure out.

As part of the Small Claims Court filing, a Plaintiff must make a good faith effort to collect the penalty wages. So, I sent the company owners an email citing the relevant labor code indicating the violation and the continuation of penalty wages for the 30 day waiting period.

In response, the company president replied, "*We have encountered this before and we are prepared if you continue your pursuit of extortion. You have been paid in full for your time as an independent contractor and you were never an employee of GTE AGENCY nor do we have an agreement of employment with you.*"

And, so, I am considering my options. After following the multiple agency referrals in a circular pattern, after consulting with an attorney, after being called an extortionist, how do I hold this company accountable? Clearly, they have violated the law. But, in their eyes, I am the extortionist. Is standing up for my rights, as designated by OREGON LABOR CODE worth the continued investment of time, energy, and uncertain financial resources ?

I wish I could say this is a rare experience. Since finishing this job, I sought similar employment with three other companies. All three companies are based out of state, all three companies hire as "independent contractors". And, all three companies pay on the net 30 policy. This is a rampant problem.

And, yet, I have a relative advantage over many workers. I am a single, middle aged man in my fifties. I have been in the work force for over thirty years. I have some experience. I have educated myself as to my rights as a worker. I have a strong command of English. But, I still am going in circles trying to uphold my rights.

I ask you to consider the other workers on this promotional team, most of them in their early twenties. DO they know the legal parameters regarding employee vs independent contractor status? I wonder if they know that if a company requires you to be onsite for a certain time period, you need to be paid for the entirety of the shift. I wonder if they got paid their entire wages for this program? Do they realize that if they get hurt on the job, they are not protected? I ask the Committee to consider all Oregonian workers.

What about the workers that speak English as a second language? Do they have the resources to assist them? What about the workers that are working two and three jobs to make ends meet, to support their families? Do they have the time to research and pursue violations without State and community support?

The passage of House Bill 2856 provides an opportunity to bridge the gap. I urge the members of the House Committee on Business and Labor to approve this bill. Pass it onto the full House. Support its passage and support Oregon workers. In this moment, the workers of Oregon are counting on you.