

Testimony on HB 2856
House Business and Labor Committee
February 27, 2017

Chair Holvey and Members of the House Committee on Business and Labor,

I am an attorney who provided pro bono assistance at the Voz Workers' Rights Education Project in Portland for two and a half years, from summer 2014 to winter 2016. Voz is a non-profit organization that provides a safe, organized hiring site for day laborers and others who are looking for work. Voz also offers leadership training, skills classes, and a free legal clinic.

The Voz legal clinic focuses on wage theft and other workplace rights. It is open for only four hours a week and staffed 100% by volunteers such as myself. The clinic is not just available to Voz members, but also to day laborers who look for work on the street corners commonly used by employers seeking casual labor, and to any other workers who have questions about their workplace rights.

When someone visits the wage theft clinic, we do an intake to find out the facts of the case. After assessing the problem, our first step is often to call the employer and ask for its side of the story. Sometimes, an agreement is reached easily and the employer brings the worker the money owed. Far more often though, the employer will not agree to pay the wages, either because he or she doesn't believe she owes any money, or because he or she does not have the money that is owed. When the employer is willing to pay but cannot, we will write up a payment plan that is signed by both parties, and then monitor the payments. In a situation where there is a disagreement between the parties as to how much is owed, we discuss with the clients their options, which include filing a claim with BOLI, starting an action in Small Claims court, or finding a private attorney to take their case.

In my time at Voz, I saw cases where someone was owed as little as \$16, and as much as \$3,600. Sometimes, it is very difficult to know how much someone is owed, usually because of a lack of pay stubs or other information. Often, a client comes in simply with a question about the law, or a feeling that they have been mistreated at work.

One client, who I'll call Rosa, worked at a large grocery store in Gresham. She was working well in excess of 40 hours a week, but was not compensated at 1.5 times the regular rate for the overtime hours. She also was paid below the minimum wage for at least the first few months of work. She was denied breaks during her shifts, which were 11-12 hours. When she complained about this, she was told to wear a diaper to work. On top of all this, her employer kept her pay stubs when she received her paychecks, so she did not have proof of the hours she worked.

Rosa found her way to Voz through a referral from a friend. This was after the conditions I described above had gone on for over a year. The other volunteer attorney and I researched the grocery store where Rosa worked, and found out that a case had been brought by other employees through the US Department of Labor. We reached out to the DOL, but found that Rosa was too late to join the suit. We were able to tell Rosa about her other options, including filing a claim through BOLI, or hiring a private attorney to take her case.

Rosa decided to pursue her case through BOLI. Though the BOLI claim form is intended to be user-friendly, it can be daunting to a worker. [I have attached a claim form to my testimony.] In Rosa's case, the form was very hard to complete, in large part because her employer kept her pay stubs, and a claimant must fill out a calendar form for each day she was not paid properly. In this case, it took us over 3 hours to fill out just the calendar section of the claim form. A simple question like "Dates for which you have not been paid" can be extremely complicated in a situation like this. I have had more than one claim form returned to me for answering this question incorrectly. After three separate visits with Rosa at the wage theft clinic, we submitted Rosa's paperwork successfully, and BOLI took over from that point.

In situations where a client chooses to pursue their case through Small Claims Court, there are other hurdles for a claimant. Many of the clients at Voz have very limited financial resources. Filing in Small Claims Court currently costs between \$53 and \$95. This fee can be waived by filling out an Application and Declaration for Deferral or Waiver of Fees. In writing this testimony, I wanted to refer to the actual form, so I went to the homepage for the Oregon Courts. I have not looked for these forms in some months, and even locating the form took real effort. When I did find the correct page, to locate the actual form, I had to choose between five options, including "Chief Justice Order 13-015 Prohibiting Electronic Filing of Applications for Fee Waiver or Deferral under UTCR 21.050(2)(a) and Proposed Orders and Judgments under UTCR," "Order regarding Deferral or Waiver of Fees," and "Limited or Supplemental Judgment and Money Award re: Deferred Fees." (None of those are the actual form by the way.) When I did locate the form, I was reminded that it is 5 pages long, and asks for information on everything from your monthly bus expenses to whether you are currently seeking temporary child support. The form is attached to my testimony. I understand why this information is necessary for the court, but I also understand the exasperation that would lead one to give up at about page 3 and decide the few hundred dollars you are owed is not worth the headache.

All this is to say there is a real need for help navigating the administrative and legal system to recover wages. HB 2856 will provide much needed resources to organizations like Voz, and to other programs throughout the state that vulnerable workers trust to answer their questions about being treated fairly at work, and to help them help themselves through the remedial process.