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**Testimony of D. Michael Dale
Before the Senate Workforce Committee
March 1, 2017
SB 279 – Avoidance of Wage Theft Penalties**

I am the Executive Director of the Northwest Workers' Justice Project. I have been a lawyer since 1975, and have spent most of that time representing migrant and seasonal workers. The Northwest Workers' Justice Project provides legal representation to low wage contingent workers throughout the economy in sectors such as construction, building services, landscaping, hotel and restaurant industry, food processing, agriculture and reforestation. This bill is opposed by the Coalition to Stop Wage Theft, of which NWJJP is a member. The Coalition includes about 40 civic, labor, religious and business organizations.¹

Today more than ever, workers' wages are being stolen from them: a 2008 study of low wage workers found that a shocking percentage are paid less than minimum wage, denied compensation for overtime, illegally charged for equipment and other expenses, or not paid at all.² While percentages vary between industries, more than two thirds of the workers surveyed had experienced at least one pay-related violation in the previous week. Some of the most egregious violations occur in day labor. Oregon has not been exempt from these trends. An analysis of wage claims filed with BOLI since 2006 shows that Oregon workers filed \$45 million in wage claims.³ Of course, this is just the tip of the iceberg, since many victims do not file claims with BOLI due to fear of retaliation, lack of knowledge of how to file or geographic isolation.

¹ Adelante Mujeres, AFL/CIO of Oregon, AFT Oregon, American Friends Service Committee, Beyond Toxics, CAUSA, Catholic Office of Life, Justice and Peace, Archdiocese of Portland, Centro Latino Americano of Eugene, Common Cause Oregon, Community Alliance of Lane County, Economic Fairness Oregon, Ecumenical Ministries of Oregon, Family Forward Oregon, Human Dignity Advocates of Crook County, Interfaith Movement for Immigrant Justice (IMiJ), Jewish Federation of Greater Portland, Mainstreet Alliance, Northwest Forest Worker Center, Northwest Workers' Justice Project, Oregon Action, Oregon AFSCME, Oregon School Employees Association, Oregon Center for Christian Voices, Oregon Center for Public Policy, Oregon Strong Voice - Southern OR Chapter, Oregon Thrives, Oregon Trial Lawyers Association (OTLA), Oregon Working Families, PCUN, Portland Jobs with Justice, Project REconomy, Rural Organizing Project, SEIU Local 49, SEIU Local 503, Tax Fairness Oregon, Teamsters Local 26, Unidos Bridging Community, United Food and Commercial Workers Local 555, and VOZ Workers Education Project.

² Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer, James DeFilippis, Ana Luz Gonzalez, Victor Narro, Jason Perelshteyn, Diana Polson, and Michael Spiller, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (Chicago: Center for Urban Economic Development, 2009). Available at www.unprotectedworkers.org/index.php/broken_laws/index.

³ "Wage Theft Increases Poverty and Costs to the Public," Oregon Center for Public Policy (February 13, 2017), <http://www.ocpp.org/2017/02/13/fs20170213-wage-theft-poverty-public-costs/>.

In this context, one would assume that employers who violate wage laws would be subject to heavy penalties to deter such lawlessness. Sadly nothing could be further from the actual situation. Although penalties are provided by law, in most cases that workers take to BOLI for resolution, if the employer simply pays the wages that were due weeks or months earlier, there is no penalty assessed. This, no doubt, contributes significantly to growing pervasiveness of wage theft in our economy.

SB 279 creates another unnecessary hurdle to workers being able to recover penalties. In Oregon, all wages are due on the last day of work or within a few days later, at most. This has been the law in Oregon for many decades, and should be reasonably well-known among employers. Penalties for not paying begin accruing the next day after payment was due. This has also long been the law in Oregon.

More recently, the law was amended to assure that, before suffering significant sanctions, an employer be on clear notice that wages are unpaid; workers are required to notify employers in writing of their claim in order to be eligible to collect full penalties. SB 279 would further require that this written notice advise the employer that penalties would be limited to the amount of unpaid wages if the employer pays up within twelve days.

Wage theft is most common when the victim is most vulnerable. Many victims have limited knowledge of the law, may have limited ability to communicate in writing and may not even speak or write English. On the other hand, one assumes that those managing a business are much more likely to be knowledgeable of the law and have better access to legal counsel. Speaking of access to legal counsel, very few low wage workers can find a lawyer to take their cases, and are relegated either to the BOLI process (where, as noted above, assessment of penalties is unlikely) or to self-help. Adoption of SB 279 would create a trap for the unknowledgeable that would frustrate self-help efforts. I am enclosing testimony from John Hoffman, a worker who testified before the House Business and Labor Committee on Monday on HB 2856, concerning how difficult and confusing this process is, even for a worker who is experienced and well-educated. Even if the worker ultimately is able to find a lawyer, employers would be able to postpone payment of wages even further while faulty notice is corrected, and a further grace period to pay elapses.

Proponents of this bill may say that it is needed to protect innocent employers who just made an honest mistake. This argument does not withstand scrutiny. First, current law provides that penalties are only assessed for wage violations that are willful, i.e., where an employer knew what it was doing and meant to do it. Further, existing law gives the employer 12 days to pay after being advised of the wage claim. This is ample time to correct an oversight or resolve misunderstandings. The only reason for the extra notice provided by SB 279 would be to protect from penalties an employer who makes the calculated decision to pay wages only because otherwise the employer will have to pay penalties. This is not “innocent.”

This bill is a big step backward in the struggle to end wage theft in Oregon. We recommend that you take no further action on the bill.

\$45 million

in wage claims filed with state officials over 10 years

is the tip of the iceberg of

WAGE THEFT IN OREGON



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Wage Theft Increases Poverty and Costs to the Public

Transportation, construction, restaurant and bar industries top wage complaints

The failure of employers to pay workers the wages they have earned harms families and the public. It increases poverty, reduces state revenue and increases the use of public assistance.

Wage theft is a persistent, widespread problem in Oregon. It is more common in some industries than others. Recent complaints to state authorities about unpaid wages arose more frequently in the transportation, construction, and restaurant and bar industries than others.

Oregon needs stronger laws to prevent violations and protect workers and public resources.

Wage theft is costly to families and the public

“Wage theft” is a term that refers to the ways in which some employers fail to pay employees the wages they have earned. Wage theft takes many forms, including when employers pay less than the minimum wage, don’t pay time-and-a-half for overtime hours, cheat on the number of hours worked, steal tips, require workers to work “off the clock,” or make unlawful payroll deductions.

Wage theft harms families and the public. A U.S. Department of Labor (DOL) study of minimum wage violations in California and New York found:¹

- **Wage theft can rob workers of significant earnings.** The study found that minimum wage workers in California experienced violations equal to 49 percent of the earnings they took home.
- **Wage theft causes poverty.** The study found that wage theft increased poverty in California by 11 percent and in New York by 32 percent.
- **Wage theft decreases state revenue.** The study estimated that California lost \$14 million in income taxes in 2011 as a result of wage theft. For New York, the loss was estimated at \$8 million.
- **Wage theft increases use of public assistance.** The study’s examination of school food assistance and Supplemental Nutrition Assistance Program (SNAP) in California and New York found that income lost due to wage violations increased use of those programs.

Wage theft is common in Oregon, especially in some industries

Wage claims filed with the Oregon Bureau of Labor and Industries (BOLI) show that there is no shortage of alleged wage violations. During the 12-month period ending June 2016, workers filed 883 wage claims with the bureau.² Those claims — worth \$3.4 million — suggest workers suffer substantial losses. Worker’s claims since 2006, which total \$45 million, reveal a persistent problem in Oregon.

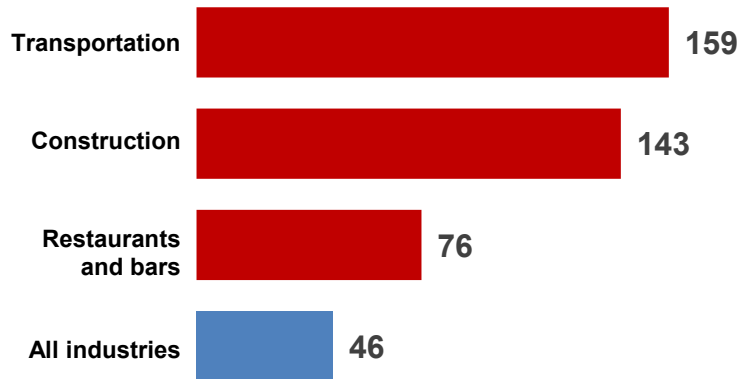
Wage Theft Increases Poverty and Costs to the Public

Transportation — primarily trucking — topped all industries in the frequency of wage complaints. These businesses saw 159 wage claims filed for every 100,000 workers in the industry during the period July 2015 to June 2016. To put that number in perspective, workers in all industries in Oregon filed just 46 wage claims per 100,000 workers.

The construction industry, as well as the restaurant and bar industry, also saw frequent complaints during the period. Specifically, construction saw 143 complaints per 100,000 industry workers. Restaurants and bars showed 76 complaints for every 100,000 workers.

Wage theft's problem industries

(BOLI wage claims for every 100,000 industry workers, July 2015 - June 2016)



OCPP analysis of Oregon Bureau of Labor and Industry data.

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The BOLI data should be considered the “tip of the iceberg” of wage and hour violations in Oregon. That is because many workers who suffer wage violations do not complain for fear of losing their job. Moreover, even those who wish to complain may not know that the bureau can help, or may choose to pursue private enforcement.

Conclusion

Wage theft increases poverty, deprives the state of revenue and increases the use of public assistance. In Oregon, complaints of minimum wage violations arise more frequently among workers in the transportation, construction, and restaurant and bar industries.

Oregon needs stronger laws to protect workers and deter wage violations from occurring.

Endnotes

¹ *The Social and Economic Effects of Wage Violations: Estimates for California and New York*, Eastern Research Group, Inc. (ERG) for the U.S. Department of Labor, December 2014, available at <https://www.dol.gov/asp/evaluation/completed-studies/wageviolationsreportdecember2014.pdf>.

² OCPP analysis of data from the Oregon Bureau of Labor Industries.

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The Center is a part of the State Priorities Partnership (www.statepriorities.org) and the Economic Analysis and Research Network (www.earncentral.org).

**Excerpts from
House Bill 2856 Testimony: John Hoffmann, Portland, OR**

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“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.”