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**Testimony of D. Michael Dale
Before the Senate Workforce Committee
March 29, 2017
SB 984 – Protecting Oregon’s Longstanding Overtime Statutes**

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 low wage workers. The Northwest Workers' Justice Project provides legal representation to low wage contingent workers throughout the economy in sectors such as construction, building maintenance, landscaping, hotel and restaurant industry, manufacturing, food processing, agriculture and reforestation. This bill is opposed by the Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition includes about 40 civic, labor, religious and business organizations.¹

This bill seeks to undercut Oregon’s overtime protections. It does so by allowing manufacturing employers who schedule a worker for a shift of more than ten hours (entitling the worker to daily overtime for hour more than ten under ORS 652.020) in a week that the worker also works more than 40 hours (entitling the worker to overtime for hours worked over 40 under rules promulgated under ORS 653.261) to offset one type of overtime premium against the obligations of the other statute.

ORS 652.020 was enacted in 1913 after legislative findings that working in a “mill, factory or manufacturing establishment is injurious to the physical health and well-being” of the employee and that employees should not work more hours in a day than “is consistent with his...ability to promote the general welfare by his increasing usefulness as a healthy and intelligent citizen.” ORS 652.010. *See State v. Bunting*, 71 Or. 259, 261, 139 P. 731 (1914) (holding the former criminal penalties for violation of ORS 652.010 to be constitutional). The statute permits a limited accommodation for certain situations where an employer would need an employee to work longer than the ideal maximum of 10 hours a day, but discourages this

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.

practice by requiring employees to be paid overtime after ten hours in a 24-hour period. ORS 652.010. The key purpose of this statute was to avoid excessively long work days.

ORS 653.261, on the other hand, was passed more than 50 years later to give BOLI power to regulate minimum conditions of employment, including requiring a weekly overtime premium after 40 hours a week, as part of a general minimum wage scheme applying to most workers. ORS 653.261(1). 1967 OR.LAWS, c.596. The attendant BOLI regulation, then, states that “all work [except for certain exempt work] performed in excess of forty (40) hours per week must be paid for at the rate of not less than one and one-half times the regular rate of pay....” OAR 839-020-0030(1).

The legislative and administrative records show that these are two separate overtime schemes and that they were never intended to protect the employer from paying both obligations. However, SB 984 would allow employers to set off payments of overtime premium made under one statute against the overtime earned under the other statute. The Wage and Hour Division, which enforces the state's overtime regulations and officially interprets wage and hour law, believes that the state's daily and weekly overtime regulations operate independently of one another and that therefore there is no basis for offsetting the overtime wages earned pursuant to one of the state's overtime provisions against the other in those cases where an employee has earned both daily and weekly overtime. To do so would either remove the incentive in the law to limit work days to no more than ten hours, or work weeks to no more than 40 hours. After this issue first arose in the Wage and Hour Division, the Division adopted an official interpretation reflecting this interpretation. See attached policy statement. As an official BOLI interpretation of law, this statement can be relied on by the public.

Proponents of SB 984 will no doubt refer to an unofficial BOLI technical assistance bulletin that once suggested a contrary policy. This guidance made clear on its face that it did not reflect legal advice of the agency and could not be relied upon by the public.

For the policy reasons reflected in BOLI's official interpretation of the statute, this bill should not move forward.

FIELD OPERATIONS MANUAL

VOLUME:	I – Wage Collection III – Minimum Wage/Overtime/Working Conditions	ORS: 652.020 653.261
SUBJECT:	Relationship of Daily and Weekly Overtime Requirements	OAR: 839-020-0030
SOURCE:	Administration	DATE: 12/16
<input type="checkbox"/> POLICY	<input checked="" type="checkbox"/> INTERPRETATION	<input type="checkbox"/> REFERENCE
		PAGE: <u>1</u> of <u>1</u>

Generally, unless exempt, employees in Oregon who are subject to the state’s minimum wage law are entitled to receive overtime pay at a rate of one and one-half times their regular rate of pay for hours worked beyond 40 in a work week. However, certain statutes in the state’s wage collection law also provide for overtime to be paid on a daily basis. Specifically, ORS 652.020 requires that persons employed in any mill, factory or manufacturing establishment be paid at an overtime rate of one and one-half times their regular rate of pay for hours worked after 10 in a day.

Neither ORS 653.261, which authorizes the Bureau of Labor and Industries to adopt rules concerning maximum hours of work and overtime pay for hours worked after 40 in a week, nor ORS 652.020 stipulates that overtime liability earned under its provisions should be offset by overtime earned pursuant to a separate regulation for work performed during the same work week. The two statutes enact distinct overtime requirements and serve different purposes with respect to restrictions on hours worked by employees. Whereas ORS 653.261 permits the adoption of rules designed to preserve the health of employees by requiring the payment of premium pay when an employee exceeds the weekly maximum, ORS 652.020 specifically restricts the daily hours of work in a manufacturing establishment and requires the payment of a premium when the number of hours of work exceed the daily maximum on any given day. There is no indication in either law that these two overtime regulations are intended to work in tandem, so that only one or the other would be applied when an employee earns both daily and weekly overtime.

Therefore, it is the Wage and Hour Division’s position that employers, when determining the amount of overtime earned by an employee who, during a work week, has worked more than 10 hours per day in a manufacturing establishment and more than 40 hours in the week, must calculate the amount of overtime earned by the employee under each regulation and pay both overtime amounts to the employee.

Example: A manufacturing establishment employee must be paid overtime for any hours worked over 10 in a day and 40 in a work week.

Day	Hours
Monday	12
Tuesday	8
Wednesday	5
Thursday	5
Friday	11

Total Hours Worked = 41

Daily Overtime Hours Worked = 3

Weekly Overtime Hours Worked = 1

The employer must pay for four hours of overtime.