



812 SW Washington, Suite 1100, Portland, Oregon 97205 • (503) 525-8454 • www.nwjp.org

**Testimony of D. Michael Dale
Before the Senate Workforce Committee
May 3, 2017**

HB 3008 – Forcing Workers to Submit False Time Records

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 maintenance, landscaping, hotel and restaurant industry, food processing, agriculture and reforestation. I am here to support of HB 3008. This bill is supported by the Oregon Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition includes about 40 civic, labor, religious and business organizations.¹

Wage theft is a huge problem that continues to grow: 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. 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.

In most wage and hour cases, the key facts in dispute are the hours worked by the plaintiff. In theory, it is the obligation of employers to make, keep and share accurate wage records. If this were routinely done, there would be little to dispute in court. Unfortunately, employers who want

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/>.

to cheat as to what they pay workers will often either not keep records or maintain false records justifying what they choose to pay. Then the case turns on the credibility of the workers, themselves, in showing that the employers' records aren't accurate and how many hours they worked. Since workers aren't expected or required to keep their own wage records, at best, this is a daunting challenge.

However, all too often we see a particularly pernicious practice. The employer, as a condition of employment or payment of wages, sometimes forces the workers to submit, sign or attest to wage records that misrepresent the hours they have worked. In this situation, workers are put at a terrific disadvantage in that they not only have to dispute the employer's records, they must contest documents that may be in their own hand. And, of course, this practice completely undermines other statutes that require the submission of certified payroll records such as the Oregon Contractor Registration Act and prevailing wage statutes.

This practice represents a grievous affront to workers' right to be paid, and, indeed, their dignity in the work place. This represents a wrong above and beyond the loss of wages. At its core is a manifest intent to defraud. Why else would an employer require a worker to report hours falsely? Because it is particularly venal, requiring employees to misreport hours deserves a special remedy. That remedy is provided by HB 3008.

We recommend that this bill be approved with a do pass recommendation.