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Testimony of Arthur Towers
In Opposition to
House Bill 4093
House Committee on Business and Labor
February 12, 2018

Thank you for the opportunity to testify in opposition to House Bill 4093. Members of the Oregon Trial Lawyers Association fight for workers who face unfair labor practices such as wage and hour violations, and misclassification of employees as independent contractors. We also help workers who face on-the-job discrimination and whistleblower retaliation.

Under the BOLI tests for employment status, there is no doubt that junior hockey players are employees.

For purposes of wage and hour law, BOLI uses the “[economic reality test](#)” to determine whether there is an employment relationship.

That test has five parts:

- (1) The degree of control exercised by the alleged employer
- (2) The extent of the relative investments of the worker and alleged employer
- (3) The degree to which the worker's opportunity for profit and loss is determined by the alleged employer
- (4) The skill and initiative required in performing the job
- (5) The permanency of the relationship

The workers do not have to meet each and every element of the test in order to be considered employees. Clearly, the workers in question meet the characteristics of an employee under that test.

BOLI uses the “right-to-control” test to determine if a worker is an employee or independent contractor for the purposes of determining the civil rights of a worker.

The four elements of this test are:

- (1) Direct evidence of the right to, or the exercise of, control
- (2) The method of payment
- (3) The furnishing of equipment
- (4) The right to fire

Again, the workers do not have to meet each and every element of the test to be considered employees.

As the “gig economy” grows in Oregon, questions of employment relationships are mushrooming. We believe that an industry by industry carve out is a very bad precedent. We urge a NO vote on HB 4093.