

OREGON TRIAL LAWYERS ASSOCIATION

319 SW Washington Street, #607

Portland, OR 97204

www.oregontriallawyers.org

503-799-1017

Testimony of Arthur Towers
In Opposition to
House Bill 4093-A
Senate Committee on Workforce
February 27, 2018

Thank you for the opportunity to testify in opposition to House Bill 4093-A. 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.

Winter Hawk players meet all of the state's tests as employees.

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.

The team makes money from their labor and from selling their likenesses. The player/employees are generating income for the hockey team. The Winter Hawks average attendance is 5,673 for 36 games a year. Assuming the average ticket price of \$25, ticket revenue is north of \$5M/ year. The Winter Hawks also market a plethora of souvenirs, clothing, and memorabilia. They profit off the images of the players. They have major league concession prices, charging more than \$10 for a glass of beer. I am not sure of the share that the Winter Hawks get from concessions, parking, in-arena advertising, and other ancillary income streams.

The Winter Hawks’ league gets a payment from the NHL. The NHL also pays the Winter Hawks if a player on the Winter Hawks roster is called up to the NHL team.

House Bill 4093-A Sets a Terrible Precedent That Can Be Easily Replicated
How many other businesses in Oregon would like the opportunity to avoid employment laws, minimum wage, other wage and hour laws, and compensation for on-the-job injuries for workers 16-20 years of age?

Take a major construction project for example. Thousands of workers will be needed. What if apprentices were not covered by all the protections that they enjoy now? A young woman who wants to pursue her dream of being an electrician decides she will move into company temporary housing, learn on the job, all for a few hundred dollars a month, squishy promises of future education benefits, and the hope of making a career out of chosen craft.

In some countries, large factories build housing for their workers. Why would factory work for 16-year-olds be treated any different than the work contemplated by this bill?

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.

The legislature limits all kinds of choices for 16- and 17-year-olds.

We don't let 16 year-olds make those sorts of choices. The legislature would not allow any of the Winter Hawks players to choose to buy a cigarette. We don't believe the 16- and 17-year-old Oregonians who play for the Winter Hawks have the mental capacity to choose to vote in elections. The legislature has determined that no Winter Hawk has the capacity to choose whether or not to purchase alcohol or marijuana. Many companies feel these players do not possess the requisite judgement to rent a car. Yet the legislature wants to pass a law to allow current and future players to choose to work in violation of our state's employment laws?

We urge a NO vote on HB 4093-A.