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**Testimony of D. Michael Dale
Before the Joint Committee on Ways and Means
Subcommittee on Transportation and Economic Development
April 1, 2019
SB 5516 – BOLI budget package**

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. This bill is supported 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

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. 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 (IMiR), 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/>.

Although the problem has grown, the relative resources available to the Bureau of Labor and Industries, the primary enforcement agency of the State of Oregon, have not. Attached to my testimony is a recent report done by OCPP that examines BOLI's budget over the years in comparison to its enforcement responsibilities. Basically to restore BOLI's enforcement resource level to what it was in 1993, the legislature would have to double its current budget level, but even that would not be adequate because of the many new responsibilities BOLI has been given. While doubling the budget isn't in the cards, the Commissioner's investment package is reasonable and badly needed.

We support the entire investment package. However, I'd like to call out a few specifics for comment. For a victim of discrimination, justice delayed is especially justice denied. Given the current work loads of BOLI civil rights investigators and intake staff, long delays are common. This makes it difficult to find witnesses, and accord an appropriate response. The ability to receive, index, store and receive data from the public is essential not only to the agency's functioning, but to private litigants who are depending on BOLI's records. Finally, after having practiced in Ontario for about ten years, I can personally say how important it is that the agency plans to invest resources east of the Cascades for technical assistance.

We recommend the adoption of this bill.

Oregon's Capacity to Fight Wage Theft Has Eroded

by Janet Bauer

The state agency tasked with investigating claims of wage theft — the Oregon Bureau of Labor and Industries (BOLI) — has seen its resources erode over the years. Relative to the size of Oregon's workforce, BOLI has about half of the investigative capacity it possessed in the mid-1990s. As such, the state has fewer resources to protect workers when unscrupulous employers steal their wages.¹

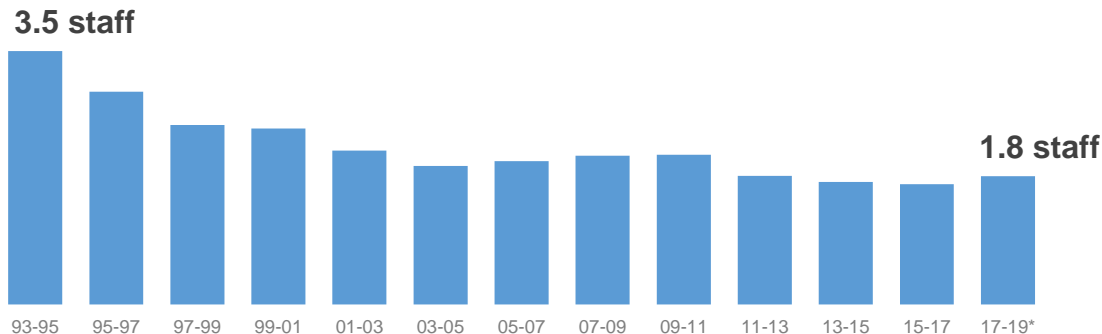
Oregon has half its former firepower to fight wage theft

When Oregonians go to work, they expect to be paid for their efforts. Despite laws to protect employees from being stiffed by their boss, too many workers in Oregon aren't paid as they should. In such instances of wage theft, many workers turn to BOLI for help.

The bureau's capacity to protect workers from wage theft has dwindled over the past several decades. Twenty-five years ago, the time of the earliest available data, BOLI had the equivalent of 47.8 full-time employees helping Oregonians recover wages their boss owed them. By the 2017-19 budget period, that number had fallen just 33.8 employees, a drop of 30 percent.²

State resources to fight wage theft cut by half

BOLI Wage and Hour full-time staff per 100,000 Oregon workers per biennium



* Projected employment for 2019.

Source: Oregon Bureau of Labor and Industry, Office of Economic Analysis, and U.S. Bureau of Labor Statistics.

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When measured against the size of Oregon's workforce, the decline in staffing is starker. The state now has about half the capacity to go to bat for workers it did 25 years ago. Specifically, in the 1993-95 budget period, BOLI had 3.5 staff persons devoted to investigating wage claims for every 100,000 workers. By the 2017-19 budget period, BOLI had just 1.8 employees working on wage claims for every 100,000 Oregon workers.³

Even BOLI's 1993-95 staffing level is not the high water mark for the state's wage enforcement capacity: Over a decade of budget cuts had already pummeled the agency. In 1981, 30 employees

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were cut from the bureau, handicapping the state's ability to investigate wage claims. In the 1991-93 biennium, lawmakers let go 20 percent of the agency's remaining staff due to budget shortfalls.⁴

By 1993-95, the agency had eliminated wage and hour functions in the Pendleton field office. Resource cuts caused the closure of other wage and hour field offices since then. The Bend office was shuttered during the 2001-03 biennium, and the Medford office was closed in 2009.⁵ Today, only offices in Portland, Salem, and Eugene remain to provide in-person assistance to workers stiffed by their boss.

Need for oversight and enforcement has increased

BOLI's Wage and Hour Division's responsibilities to protect workers are broad. The division investigates many types of wage claims. These include failure to pay minimum wage, the agreed wage rate, and overtime, as well as violations of farm labor and child labor laws. The division is also tasked with issuing permits and licenses for such things as employing minors and operating a labor broker "temp" business.

As BOLI's staffing levels have shrunk, the state's responsibilities have grown. In the past few years alone, Oregon has added four important worker protection laws. In 2015, the legislature approved paid sick leave for most businesses. In 2017, it passed a pay equity law designed to rectify pay gaps for women and other groups. That year the legislature also approved a first-in-the-country law designed to protect workers from the burden and cost of unpredictable work schedules. Also in 2017, lawmakers enacted licensure requirements for janitorial companies to prevent the misclassification of workers as independent contractors and other unfair labor practices.⁶ BOLI is responsible for educating the public about and enforcing each of these new laws.

Even as the legislature has increased BOLI's workload, it has done little to beef up its oversight and enforcement capacity.

Limited state capacity results in forms of wage theft being ignored

One way Oregon's reduced capacity to fight wage theft harms workers is the restrictions on the kinds of wage claims the state will investigate.⁷ For instance, BOLI does not accept a claim if:

- **A worker delays filing a claim for other than minimum wage or overtime.** Except for minimum wage and overtime claims, the state will not accept a wage claim more than six months after the employee has left a job. This restriction applies to a wide swathe of claims filed more than six months after separation, including those regarding not being paid any agreed-upon rate above the minimum wage.
- **The first instance of wage theft occurred more than a year ago and doesn't involve minimum wage or overtime.** This restriction is problematic for workers who may delay taking action for fear of losing their job or who are unaware for a year that a business practice is unlawful. For instance, BOLI will not take the case of a worker

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who, for more than a year, doesn't realize that it is wrong for the boss to make payroll deductions for a required uniform.

- **The claim is in excess of \$10,000 and doesn't involve minimum wage, overtime, or prevailing wage law.**⁸ BOLI only accepts claims over \$10,000 if they involve minimum wage, overtime, or prevailing wage violations. It prioritizes smaller claims, believing they are more likely to be filed by lower-wage workers who lack the resources to bring their own lawsuit.⁹

These limits on the kinds of claims BOLI accepts are driven by insufficient resources. When asked about the reason for the limits, a BOLI official stated, "The reason BOLI implemented a policy restricting the types of wage claims we would accept was because we don't have the resources necessary to accept/investigate every wage claim."¹⁰

While the state accepts many types of wage claims, these restrictions mean some workers who are shortchanged by their boss are left to fight for their wages on their own.

Restoring BOLI capacity would cost \$9.4 million in 2019-21

Oregon would need to make a substantial investment in BOLI's Wage and Hour Division to restore its capacity to the former 1993-95 level. The Wage and Hour Division's budget for the 2019-21 biennium is \$10 million.¹¹ To return to its prior-level capacity, it would need to boost staffing by 35 FTE, which would require an additional \$9.4 million for the biennium, nearly a doubling of its current budget.¹²

It is important to note that even if the state doubled BOLI's Wage and Hour Division capacity, the agency would likely not have the resources it needed to adequately defend workers against wage theft. The funding level per employee for 1993-95 is nearly twice what it is today, and yet even that level was inadequate to protect workers at the time. And BOLI's responsibilities have only grown since.

Conclusion

Oregon must take action to protect workers from wage theft, as it harms workers, their communities, honest businesses, and the state budget.¹³ The state should bolster funding for BOLI as much as possible. But given even a doubling of BOLI's Wage and Hour Division capacity would not be sufficient, the state should additionally find creative ways to enlist the community in helping the agency to accomplish its mission of protecting workers and enforcing Oregon's labor laws.

Endnotes

¹ "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.

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² Email communication from Gerhard Taeubel, BOLI Wage and Hour administrator, to OCPP staff January 3, 2016.

³ In the 1993-95 budget period, BOLI had 47.76 full time workers in its Wage and Hour Division at a time Oregon had 1.3 million workers. In 2017-19 period, Oregon had 33.76 workers in its Wage and Hour Division serving 1.9 million Oregon workers.

⁴ *BOLI: One Hundred Years of Service to Working Oregonians*, unpublished manuscript, p. 57, Robert Bussel, University of Oregon, emailed to OCPP on January 18, 2019.

⁵ Email communication from Gerhard Taeubel, BOLI Wage and Hour administrator, to OCPP staff January 3, 2016.

⁶ A list of most of the statutory language for the recent legislation appears on page 153 of the 2019-21 BOLI Agency Request Budget, available at https://www.oregon.gov/boli/SiteAssets/pages/about_us/BOLI%20Agency%20Request%20Budget%202019-21.pdf. A description of the Pay Equity Law can be found at <https://www.oregon.gov/boli/TA/Pages/FactSheetsFAQs/PayEquity.aspx>.

⁷ A complete list of the types of claims BOLI will not accept is available at https://www.oregon.gov/boli/whd/pages/w_whhowinf.aspx.

⁸ A list of claims BOLI will not accept appears on the "Filing a Wage Claim" page, found at https://www.oregon.gov/boli/whd/pages/w_whhowinf.aspx.

⁹ Email from Saul Hubbard to OCP, February 21, 2019.

¹⁰ Email from Saul Hubbard to OCPP February 19, 2019.

¹¹ Bureau of Labor and Industries Agency Request Budget, "Detail Revenues & Expenditures - Requested Budget," p. 36, available at

https://www.oregon.gov/boli/SiteAssets/pages/about_us/BOLI%20Agency%20Request%20Budget%202019-21.pdf.

¹² OCPP analysis of Oregon Office of Economic Analysis data and BOLI budget information.

¹³ Juan Carlos Ordóñez, "We all share the cost when workers aren't paid," OCPP Commentary, Forest Grove News-Times, September 8, 2010, available at <https://www.ocpp.org/2010/09/08/clip-we-all-share-cost-when-workers-arent-paid/>.

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