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COMBATING WAGE THEFT IN CONTINGENT LABOR: 2011 PROPOSED LEGISLATION

Employment laws today are failing to protect the basic workplace rights of all Oregon’s workers. Wage theft has become a common practice in many low-wage industries in Oregon and nationwide—a recent study of low-wage workers in three major US cities found that *more than two-thirds* of workers had suffered wage theft in the previous work week, including pervasive minimum wage and overtime violations.¹ When employers steal wages and benefits it hurts everyone—the workers that don’t get paid, other workers whose standards are undermined, ethical employers who have to compete with scofflaws, communities robbed of local spending, and taxpayers who have to make up for the taxes that can’t be collected on unpaid wages.

It is no accident that wage theft is becoming increasingly common. Over the last three decades, a significant percentage of full-time jobs have disappeared. Employers are relying increasingly on “contingent” labor—labor that is contracted, temporary, or part-time. It is easier for employers to exploit workers in these less formal employment relationships, and it is often unclear who is liable for the exploitation that results.

This package of bills proposes a number of ways in which Oregon law should be strengthened in order to protect the rights of low-wage workers, increase regulation of temporary agencies and labor brokers to prevent abusive employment practices, and provide workers with more tools to recover unpaid wages.

I. PROTECTING THE RIGHTS OF CONTINGENT WORKERS AND DAY LABORERS

The core idea of these bills is to strengthen the protection of contingent workers by holding end employers accountable for meeting legal standards for wages and working conditions and removing incentives to subcontract permanent jobs to abusive labor brokers.

1. HB 2833/SB 610 would:

- Provide that a person or company that subcontracts to obtain workers is jointly liable for labor law violations, if they knew or should have known that they were not providing sufficient compensation to allow the subcontractor to meet the minimum lawful conditions of employment.
- Re-regulate temporary employment agencies by closing a loophole that has allowed some agencies to avoid registering with the Oregon Bureau of Labor and Industries (BOLI).
- Increase the amount of wage bond that an employment agency must maintain.
- Establish a “bill of rights” for temporary workers that would, among other things: prohibit employers from charging day laborers for tools, equipment, transportation, or to cash a paycheck; ensure that day laborers who are transported to the worksite are also transported back at the end of the day; require employers to pay day contracted workers at the same wage rate as their permanent employees doing the same work, allowing for differences in seniority, experience, and skills; bar temporary labor agencies from prohibiting workers from being hired permanently by an employer to whom they are referred; require day labor services agencies to register with BOLI; and require day labor services agencies and employers to disclose wages and working conditions to day laborers and to provide a detailed pay stub.

¹ 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).

2. **HB 2834/SB 611** would standardize the definitions for “employ,” “employer,” “employee,” and “wages” throughout Oregon law. This would clarify liability for labor law violations for the courts, employers, and employees alike.

II. REGULATING CONSTRUCTION LABOR BROKERS

All Oregon construction contractors are supposed to be licensed under the Construction Contractors Board. However, some legitimate building contractors have begun to subcontract with labor brokers to supply workers to construction sites, and state regulation of these recruiting practices is minimal. Often, labor intermediaries are undercapitalized, do not have professional business practices, and are exploitive of workers. These bills would address this erosion of workplace standards by increasing regulation of labor brokers in construction.

3. **HB 2835/SB 612** would make *certain* construction labor brokers—those whose primary function is simply recruiting and supplying workers to construction sites—subject to the existing labor contracting system used in agriculture and reforestation. (This would not apply to “regular” construction contractors, even those who operate on a small scale.) The effect would be to require those construction labor brokers to be licensed by BOLI, post a bond to ensure payment of wages, provide written disclosure of wages and working conditions, and comply with contracts entered into as a labor contractor. A person or company that knowingly uses an unlicensed contractor would be jointly liable to the workers.
4. **HB 2836/SB 727** would improve the effectiveness of the Construction Contractors Board (CCB) in helping workers to recover unpaid wages from contractors and subcontractors. To do so, it would make the CCB wage complaint process more accessible to exploited workers by removing language barriers and simplifying the requirements for filing a CCB bond claim. It would also require the CCB to suspend the licenses of contractors found guilty of outstanding unpaid wages, recognize the concept of joint employment, and increase the amount of the bond that would be available to pay unpaid wages.

III. ENHANCING THE ABILITY OF WORKERS TO COMBAT WAGE THEFT

Although there are laws that protect workers from wage violations and require employers to pay additional penalties for non-payment of wages, many workers are not able to collect the money they are owed. Some are unable to find legal assistance to help bring their employers to justice. Others file successful wage claims but have little leverage to force the offending employer to satisfy the wage judgment. These bills would provide workers and state enforcement agencies with stronger tools to collect unpaid wages.

5. **HB 2837/SB 624** would allow workers to file a lien against the property of an employer who fails to pay the legally required wages. The lien would have super-priority up to \$3,000 dollars.
6. **Another bill, modeled after Maryland law**, would suspend the driver’s license of an employer found guilty of wage theft who has used a motor vehicle in connection with the violations, until the employer pays the workers the full amount provided by the wage judgment.

We are also supporting the following bills submitted by the Commissioner of Labor and Industries:

- **HB 2039** would allow BOLI to award employees penalties when they are paid with a bad check.
- **HB 2041** would grant cease and desist authority to BOLI in wage and hour violations.

Support low-wage workers and ethical employers by joining the following Oregonians in support of this important legislation: Northwest Workers’ Justice Project (NWJP), PCUN, Rural Organizing Project (ROP), Oregon Center for Public Policy (OCPP), VOZ Workers’ Rights Education Project, Oregon School Employees Association (OSEA), CAUSA, Portland Jobs with Justice, and SEIU Local 49.