



Associated Oregon Industries

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The Honorable Richard Devlin
Oregon State Senate
900 Court Street NE S-211
Salem, OR 97301

Dear Senator Devlin:

As you may know, BOLI has recently convened a work group to address the limited definition of employer location in SB 1532—Oregon’s 3-tiered minimum wage bill. The below signers are both participants on this work group and interested parties who are greatly concerned that the proposed rules, and aggressive advocacy from the employee advocates, far exceed the Legislature’s intent when enacting SB 1532. Specifically, Legislative intent makes it clear that employee wages should be based on the employer’s location, not on where an employee may work for a temporary period of time. BOLI’s draft rules far exceed this intent.

BOLI Rulemaking Authority--Urban Growth Boundary

At the time SB 1532 was passed, ORS 653.261(1) prohibited BOLI from adopting rules concerning minimum wage: “The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation as may be necessary for the preservation of the health of employees.” SB 1532(1)(4) made a narrow exception to this general rule, giving BOLI limited and specific rule writing authority to define whether an employer’s location is within the Urban Growth Boundary of Portland: “the Commissioner shall adopt rules for determining an employer’s location under subsection (2) of this section.”

Section 1(2) establishes a higher minimum wage rate in the Portland Urban Growth Boundary (UGB), including parts of Washington and Clackamas counties. Based on that narrow grant of authority, BOLI does not have the latitude to promulgate rules defining employer location relative to the other wage tiers. Nevertheless, the draft rules define employer location in relation to all three wage tiers. BOLI justifies this overreach by claiming that the limitation on their rulemaking authority was simply a drafting error.

BOLI Rulemaking Authority—Employee vs. Employer Location

BOLI’s draft rules also exceed their authority by tying the definition of employer location to the location where an employee works. This interpretation directly contravenes clear statements of legislative intent, which define employer location as the physical location to which the employee reports for work. Senator Michael Dembrow made the following statement when this topic was raised on the Senate floor:

“Senator Thatcher...mentioned the issue of how you determine, where an employee works – where is the employer location? And I just want to clarify...in committee we used the example of a Les Schwab, located here in Salem. Imagine a worker who works for Les Schwab... they’re willing to go anywhere, they go out and answer a call out in an area that’s within the Portland UGB, right? So they have a worker, if we would imagine they would make such a roadside call, if they go into the UGB, are they now to be paid at the Portland metro rate, or do they remain at their Salem rate – their Marion County rate? Or, the corporate headquarters for Les Schwab is in Bend – are they paid at that rate? Well the answer is that they would be

paid at the Salem rate, the Marion County rate, because that's where they're based, even if they leave to perform some sort of service outside of that area."

We feel the Legislature was clear on the topic. Unfortunately, BOLI is disregarding this clear statement of intent by writing rules that make "employer location" a function of the hours an employee spends in a temporary location.

What the Draft Rules Say:

The draft rules require an employer to pay the higher wage for each hour their employee spends in a higher wage zone, if the employee spends at least four hours of the workweek in that zone. This requires all employers, regardless of their business location, to maintain extensive records and travel logs. The draft rules provide an exemption from this mountain of record keeping by "allowing" employers to simply pay the higher wage for the entire work week.

Just think of the impact to day care providers that provide multiple field trips during the summer months, pizza delivery drivers, and grocery stores that deliver directly to seniors in their homes. Many suburban employers have no idea where the UGB falls in their neighborhood. Recordkeeping to track employee movements will create a significant administrative burden for many businesses.

We are concerned that a legal challenge may be the only way to prevent BOLI from dramatically exceeding their authority. It is our assumption the state will pay to defend BOLI, and we are asking you, as supporters of the legislation, to help us in this necessary and expensive legal battle. Business groups may have to defend the clear intent of the law in court, if BOLI continues with their current draft rules.

Please consider submitting a letter to BOLI during the comment period explaining that your support for the bill was based on your understanding of the intent stated above.

As employers that will have to increase their wages in July 2016 and face potential penalties from BOLI when these rules take effect, we have limited resources. Your support in this matter would be greatly appreciated.

We will be contacting you directly to ask for your support.

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Amanda Dalton
National Federation of Independent Businesses
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Northwest Food Processors Association
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Oregon Dairy Farmers Association
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Oregon Association of Nurseries

Jeff Stone

Oregon Association of Plumbing, Heating & Cooling Contractors

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Oregon Farm Bureau

Jenny Dressler

Oregon Homebuilders Association

Jon Chandler

Oregon Restaurant and Lodging Association

Jason Brandt, Bill Perry

Oregon School Boards Association

Lori Sattenspiel

Oregon Seed Council

Roger Beyer

Oregon State Chambers of Commerce

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Oregon Trucking Associations

Bob Russell

Oregon Wheat Growers League

Amanda Dalton

The Chamber of Medford/Jackson County

John Watt, Sean Tate