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Kate Suisman
Testimony to the Senate Workforce Committee
SB 750- The Oregon Corporate Accountability Act
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Good Morning Chair Taylor and Members of the Committee.

My name is Kate Suisman. I am an attorney at the Northwest Workers' Justice Project in Portland. We are a non-profit law firm that helps low-wage workers in employment matters. NWJP helped draft the bill before you today, in coalition with UFCW Local 555, Oregon AFL-CIO, the Working Families Party, the Oregon Trial Lawyers Association and PCUN.

As this committee knows, the last few sessions have brought several new protections for workers including an increase in minimum wage, earned sick leave, equal pay guarantees, and predictive scheduling. But laws need to be enforced to be meaningful.

Workers have two options when it comes to enforcing their rights- they can ask BOLI to investigate or they can file a lawsuit in court. BOLI now has about half the capacity it did 25 years ago. (See testimony from Oregon Center for Public Policy.)

The other option workers have is to file a lawsuit, but workers face many barriers in enforcing their rights through the court system, including fear of retaliation, difficulty finding an attorney and the explosion in use of forced arbitration clauses. Forced arbitration clauses now bar over half the U.S. workforce from seeking justice in court. (For more on the crisis around forced arbitration, see testimony by Professor Myriam Giles of Cardozo Law School and Rachel Deutsch of the Center for Popular Democracy.)

The Oregon Corporate Accountability Act provides an effective solution to under-enforcement that will not be a burden on state resources, and will in fact provide revenue for the state. This model is based on an ancient cause of action known as *qui tam*, which authorizes private individuals to bring enforcement actions on behalf of the state. Since 1863, the Federal False Claims Act has relied on whistleblowers with inside knowledge of fraud against the government to assert claims on behalf of the state. California has had a similar law since 2004, the Private Attorney General Act, or PAGA.

An OCAA action works like this:

- A worker files a complaint with BOLI, alerting the agency to the basic facts of the alleged violation. A worker can bring a complaint regarding wage and hour violations, rest and meal breaks and other employment conditions, as well as discrimination and retaliation.
- BOLI then decides whether to bring an enforcement action or let the whistleblower (also known as the relator) manage the suit on the state's behalf. If the whistleblower proceeds, the state continues to oversee the litigation.
- If a judge finds that the employer broke the law, it is ordered to pay penalties based on the number of impacted workers – so, small businesses would pay small fines and multinational corporations would pay larger ones.
- 70-80% of the penalty revenue goes to the state, with the rest rewarding the whistleblowers. The state can use the revenue to hire more investigators, invest in technology, or partner with community organizations to educate workers about their rights.

As we drafted this bill, we worked very closely with BOLI staff to make sure this bill assists them in enforcement, and does not hinder the important work they do.

We also spoke to government officials and lawyers in California to learn from their experience. There are a number of improvements in this bill that make it both stronger and fairer than California's PAGA. These Oregon improvements include:

- No suits are allowed for most violations of reporting or notice postings, nor for minor variations in the legal name or address of the employer on paychecks.
- BOLI can object to a certain attorney handling a case in their name.

- The state has more options to intervene in the case: even if BOLI passes on the case in the initial notice stage, the agency can take the case back within 30 days of filing in court, or at any point for good cause.
- The court or BOLI has to approve all settlements, ensuring they serve the state's interest in punishing serious offenses.

Effective enforcement of our worker protection laws depends on a combination of public and private enforcement. The Oregon Corporate Accountability Act will help workers enforce the important protections the Legislature has enacted, while bringing revenue to the state.