



Service Employees International Union – Oregon State Council
6401 SE Foster ▪ Portland, OR 97206

April 4th, 2019

Chair Taylor, Vice Chair Knopp, members of the committee:

My name is Ethan Krow and I am offering testimony representing the Service Employees International Union Oregon State Council. On behalf of the more than 80,000 public and private sector workers represented by SEIU local 49 and 503, we urge your support of Senate Bill 750.

For many years SEIU both on the national and the state level has led campaigns to enact worker- and family-friendly policies, like a livable minimum wage, paid sick leave, pay equity, and a fair workweek. Our work has been guided by the conviction that these policies are crucial to building an economy that works for everyone, not just special interests.

But these gains – as well as longstanding protections against sexual harassment and discrimination, and basic standards like overtime and safe workplaces – can't deliver stability for thousands of families if they're not effectively enforced.

We applaud the challenging work this Committee has done this year putting in place protections for workers in this building and public offices across our state. Unfortunately Oregonians working for employers throughout our communities are at risk of being unable to access these protections because of inadequate funding and unfair tools like private arbitration.

The civil servants at BOLI do amazing work - earlier this week SEIU testified in favor of increasing resources for these tremendous investigators. Currently, there are far too few of them to meet the challenge we face. Since 1993, the number of BOLI staff has shrunk by over a third. For all of Oregon, BOLI has only 34 staff in the division that enforces minimum wage, overtime, and other basic standards. That means that for every civil servant in the Wage and Hour division, there are 55,487 workers.

Oregon's workplace laws typically include a private right of action to allow workers to enforce their rights independently through the courts, but that option is no longer available to many workers. More than half of American workers are now forced to sign away their right to go to court, leaving "forced arbitration" as the only option. In private arbitration, the employer writes the rules, and the deck is stacked against workers. In a report published in the North Carolina Law Review, the author concluded that "The great bulk of employment disputes that are subject to mandatory arbitration agreements (MAAs) simply evaporate before they are ever filed. They are 'MIA,' or 'missing in arbitration'."

SEIU has direct experience with these issues. Starting in the aughts, we began hearing from workers in the janitorial industry who were victims of an exploitative scam. Workers in these industries are often subject to misclassification, but in this case they were actually being sold what was called a "franchise." National Maintenance Contractors was charging workers huge sums of money for the privilege of working for them. NMC told janitors they were starting their own business but really the company maintained broad control. NMC underpaid their employees, according to numerous worker accounts, and ultimately terminated them for little or no reason, to turn around and sell the "franchise" to another vulnerable worker.

In 2005, we first approached BOLI about this company and its model. BOLI opened an investigation, but due to lack of resources no enforcement action was taken at that time. The Employment Department ended up pursuing a case against the company for unpaid unemployment contributions and established in the courts that the workers were employees.

Still, the company did not change its model. Today we are exploring other avenues for helping these workers enforce their rights, but there are many challenges because of the aggressive contracts these workers are made to sign waiving many of their rights, including private arbitration. If Oregon had a law like the OCAA already in place, it would create another avenue for enforcement against companies like this that systematically violate workers' rights.

Last year, the U.S. Supreme Court gave its blessing to forced arbitration, ruling that corporations can prevent coworkers who experienced the same abuse from banding together in collective legal action and force each individual to go it alone—which means most cases will never see the light of day. The Supreme Court has effectively closed the courthouse doors on us, allowing corporations who violate our hard-won rights at work to get away with it.

Companies that want to profit by cheating workers know they will probably get away with it. Between 2006 and 2017, wage theft in Oregon exceeded \$45 million—money that should be going into working families' pockets. And it's hasn't just been wage theft: Last year the National Association of Attorneys General, made up of both Republican & Democratic Attorneys General, sent a letter to Congress asking that victims of sexual harassment be allowed to "...pursue justice and obtain appropriate relief free from the impediment of arbitration requirements."

One effective solution is to expand BOLI's capacity to identify lawbreakers and impose consequences for violating workers' rights. SEIU supports SB 750, the Oregon Corporate Accountability Act (OCAA), because it would increase funding for BOLI and allow workers to partner with government to hold lawbreakers accountable. Under OCAA, whistleblowers would identify companies that are cheating workers and pitch in to bring enforcement actions. Most of the penalties recovered in these cases would go to the state. In other words, law-breakers—not taxpayers—would foot the bill for increasing our enforcement resources, a smart reform in this time of tight budgets.

SB 750 would also enable BOLI to adopt innovative enforcement strategies designed to reach workers who are most vulnerable to workplace abuses, including low-wage workers and immigrant workers. OCAA would designate a portion of revenues for partnerships with community organizations that are trusted by vulnerable workers, which have proven effective in educating these workers about their rights and empowering them to confront violations. The bill would also allow workers who fear retaliation to participate in OCAA actions anonymously, represented by community organizations.

Oregon has been on the forefront of efforts to modernize workplace protections. But BOLI's shrinking budget and fine-print forced arbitration clauses undermine our ability to hold bad actors accountable. SEIU supports the Oregon Corporate Accountability Act because it's time to make our workplace standards real and ensure basic fairness for people on the job.

Thank you for your time,

Ethan Krow