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TO: Chair Holvey

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Members of the House Committee on Rules

FR: Tom Chamberlain, President, Oregon AFL-CIO

RE: Support for HB 2498, Addressing the Misclassification of Workers in a Changing Economy

March 4, 2019

The Oregon AFL-CIO represents 300,000 workers across the state and is a voice for all workers in the legislative process. Thank you for the opportunity to testify today in support of this effort to modernize the way current independent contractor tests function. The federation of labor has long been engaged in conversations about what we refer to as *misclassification*, or when employers say that workers are independent contractors, when in fact they really should be classified as employees.

Though we have always cared about misclassification, we believe this to be a critically important conversation to be having now. In the era of the "gig-economy," where workers who can't find a steady well-paying job with benefits, are forced to piece together multiple "gigs." These "gigs" don't provide healthcare, minimum wage or overtime, the right to collectively bargain, or unemployment insurance. This type of employment is becoming a rapidly growing trend. We must re-evaluate the current matrix, or test that proves whether someone has been misclassified, like HB 2498 sets out to do. Though we've currently heard more about misclassification as the Uber and the Lyft's of the world attempt to circumvent regulatory structures from cities to the Bureau of Labor and Industries, it's important to remember that the idea of employers calling workers independent contractors is not new. There is a fundamental incentive for unscrupulous employers to misclassify their workers.

Workers have the most to lose when misclassification happens. An independent contractor has no protections against sexual harassment, like a musician that we've recently heard about who must choose between playing at a high wage venue and making money for her profession, or not working there because she's being harassed. An independent contractor does not have a guarantee of making the minimum wage, like many drivers for TNCs that we've talked to who aren't quite sure how to most accurately calculate their wage because the apps are difficult for them to calculate the costs of gas, wear and tear with the wages and tips. Independent contractors don't have access to workers compensation that is paid by the employer, should they get injured at work, including folks in the construction industry who you'll hear more about on subsequent panels. Each of these problems are real examples of problems faced by workers who have been misclassified that we've talked to over the past four years.

Additionally, the costs of misclassification to both the state and federal governments are significant. Washington commissioned an audit[1] and investigated specific industries and found that 62% of employers that were audited were found to have misclassified their workers. The cost of that misclassification was $2.51 million in Unemployment Insurance payments that went initially unpaid (that the state later collected), $25.4 million is workers compensation payments that went unpaid, and $29.7 million in unpaid state income taxes (that were later collected).

We applaud Representative Holvey's leadership on this issue and look forward to engaging in this conversation as future amendments come forward. Our hope for this policy is that there is a fundamental recognition that the system we have now is failing workers by forcing workers to appeal their classification and that the legislature updates the test to ensure it reflects the way misclassification is now happening. We are working on an amendment that would reflect what the California Supreme Court upheld in its landmark *Dynamex* decision last year. The law states the presumption will be employee status, until the employer or entity, can prove a worker meets a three out of three test, also known as the ABC test. Another option is to approach HB 2498 with a similar concept to the one the base bill speaks to but put the first question in the series to ask whether or not the worker has the ability to set their own rates, and then if the workers does meet that criteria, take them through the remaining questions. If they do not have the ability to set their own rates, then in fact, they are not an independent contractor.

The Oregon AFL-CIO recognizes that there always have been and will be independent contractors and their work should be accurately classified. We also know that misclassification occurs, and we have a duty to ensure our regulatory procedures match that of a changing economy. Thank you for the opportunity to testify today in support of HB 2498, and the effort to modernize the independent contractor tests.

[1] https://s27147.pcdn.co/wp-content/uploads/Independent-Contractor-Costs.pdf