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Re: HB 2818-A3 Written Comments

To whom it may concern:

My name is David Schuck. I am an attorney at Schuck Law, LLC, where I regularly represent Oregon employees in wage claims in both individual and class actions. I write in oppositioin to HB 2818-A3. This bill originally sought to change ORS 652.414 to address issues with the judgment and final order. Now it is completely re-written to gut the wage laws regarding meal periods, the definition of wages, and the amount of wages that employers can take from employees without consequences.

The bill seeks to undo the Court of Appeals opinion in *Maza v. Waterford Operations, LLC*, 300 Or App 471 (2019) *rev den* 366 Or 382 (2020). In this case, employees of two Oregon assisted living facilities sought recovery for shortened meal periods. The evidence currently before the trial court in *Maza* shows somewhere around 70,000 short meal periods occurred at those two facilities alone. Thus, like with most cases we see, these are not isolated instances.

In *Maza*, the Court of Appeals found their interpretation and application of the regulation to be "plain from the text" and consistent with the purpose of the regulation. *Maza*, 300 Or App at 477. It ruled that employers must ensure their employees get their full meal periods or pay the wages for that time. This ruling is consistent with nearly 50 years of legislative protections offered to Oregon employees in the form of rest and meal periods.

The purpose behind the rest and meal period rule is expressly the health of employees. It is critical that employers ensure that employees are actually relieved

of work duties for a full 30-minute meal period. The newly-rewritten HB 2818 would undermine the rule's express purpose, and undo the careful consideration and balancing of interests put into the rest and meal period rule.

Worse, revised HB 2818 does not just undo the meal period rule that has been in place for many decades, but it also likely will have a domino effect on other wage laws. It affects the definition of wages that courts have used since at least 1967. *Nilsen v. Oregon State Motor Ass'n*, 248 Or 133, 136 (1967) (finding wages include "all earned compensation"). The hastily-proposed changes in revised HB 2818 would create uncertainty in what are now well-settled areas of Oregon wage-and-hour law promoting unnecessary litigation.

It also, for the first time ever, would create an "insubstantial" limitation to work time. This new exception could change the express definition of "work time" in Oregon. ORS 653.010(11)("'Work time' includes both time worked and time of authorized attendance"). Nowhere else in Oregon's employee protections is there any indication that an insubstantial amount of time must not be paid. For instance, under ORS 652.140 (2), "all wages" are due, there is no exclusion for "insubstantial" wages. *See also* ORS 653.055 (allowing claims where employers pay "less than the wages" due). This proposed change would undermine the purpose and public policy of Oregon's wage laws, which is "to discourage an employer from using a position of economic superiority as a lever to dissuade an employee from promptly collecting his agreed compensation." *Nielsen, supra* at 138. Oregon's wage laws are intended to ensure that all amounts, even if small, are timely paid. *See Kling v. Exxon*, 74 Or App 399, 403-404 (1985) (noting that most wage claims are for small amounts).

In my experience, employers often take what they believe to be "insubstantial" amounts of time from their employees' wages, because the aggregate amount to the employer is not "insubstantial." The term "all wages" keeps the good employers from thinking it is profitable to take small amounts of wages from employees. This is akin to the arguments made regarding shoplifting. Stealing a candy bar, in and of itself, is not a big deal. However, to large retailers like Fred Meyer and Wal-Mart, what would be an insubstantial theft, results in significant harm because of the sheer number of times the candy is stolen. The same is true with employers who take small amounts from all their employees. The 5 minutes of time, consistently taken from multiple employees, can result in hundreds of thousands of dollars added to the bottom line for unscrupulous employers. The *Maza* case is an example. 70,000 instances of shortened lunches that could have been avoided had the employers chosen to do so. Just this one example illustrates the massive impact this new amendments would have. Creating loopholes in the

wage laws is not only prone to abuse, it will almost guarantee they occur.

For these reasons, I encourage you to reject the proposed amendments to HB 2818.

Thank you for your time.

Sincerely,

David A. Schuck

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