



A STRONG VOICE FOR OREGON'S WORKERS

TO: Chair Riley
Vice-Chair Hansell
Members of the Senate Committee on Business and Labor

FR: Jess Giannettino Villatoro, Political Director, Oregon AFL-CIO

RE: Oregon AFL-CIO Opposition to HB 2819 – A3

April 29, 2019

The Oregon AFL-CIO represents 300,000 workers across the state and is a voice for all workers in the legislative process. We are wholly opposed to the concept found in the -A3 amendment. While potentially appearing innocuous, the policy found in the -A3 would have a substantial negative effect on the ability for Oregon's workers to ensure guaranteed meal and rest breaks.

Since the earliest meal and rest break provisions granted to women and minors in 1967 by the Legislature, there have been several attempts by employers to weaken meal and rest break protections. This conversation isn't happening within a vacuum of the legislature. The -A3 is in direct response to the *Maza V. Waterford Decision*, upheld by the Circuit Court in 2019, where the court rightly interpreted current practice and protections provided by ORS and OAR that held that if workers are not ensured their 30 min meal break the employer must pay them for that time. The Court fully rejected the employer's argument that all it must do is offer a 30-minute duty free meal period. The Oregon AFL-CIO submitted an amicus brief in this case. In addition, Legacy Health has a petition before BOLI that would similarly undermine meal and rest break protections for frontline healthcare workers. Current penalties are a significant deterrent to employers who would seek to undermine the critical health and safety protections afforded by a mere 30-minute break.

Workers are fired for what is called "time theft" when they take 15-minute rest breaks instead of 10, yet as contemplated by this amendment when any employee wants every minute, they are entitled to it could be considered "insubstantial."

BOLI Commissioner Jack Roberts proposed a rule in 1999 that would have taken a similar approach and after two days of hearings BOLI was **not** convinced that the proposed rule *amendments [could] be adopted without having a prejudicial effect or posing a potential threat to the health, safety and well-being of Oregon workers.*

In addition to the core impact of what's proposed in the -A3 the drafted version could have a significant impact on other wage and hour protections. It would upend over 50 years of case law that has found the definition of compensation to be all wages, and in addition introduces the term "insubstantial" work time. Nowhere else in Oregon employment law do we consider guaranteed protected time or wages "insubstantial".

We are talking about 30 minutes. Most of us have the luxury of not having to watch the clock when we take our lunch, we can go for a walk midday when things are hard, but for hundreds of thousands grocery workers, nurses, janitorial and others – the only meal break they receive during a 6-hour day is 30 minutes long. As we head into a 4th surge, now is not the time to take a 80 year old protection away from them. Please oppose the -A3 amendment to HB 2818.