

# WORKERS DEMANDING JUSTICE

## HB 2205: JUST ENFORCEMENT ACT



### ✗ THE PROBLEM:

The Bureau of Labor and Industries (BOLI) and OSHA enforce employment laws but lacks the staff to meaningfully enforce them. They cannot be everywhere at once. This means bad actors get away with breaking the law, knowing they have little chance of getting caught.

**Workers need additional tools to have a voice in their workplaces and ensure their employers follow the law.**

### ✓ THE SOLUTION:

**The Just Enforcement Act** (House Bill 2205) will empower workers by giving them the ability to **enforce their workplace rights** and use their voices to be heard by their employers.

An individual or group of workers or a private organization can complain to the state when an employer breaks the law. The state then has the option to enforce or not. If not, the workers step in on the state's behalf to hold employers accountable and seek penalties.

### HOW IT WORKS

**1** Worker informs agency of violations



Workers can partner with trusted organizations, such as their union, to go through what would otherwise be a costly and arduous process, meaning widespread abuse can be stopped earlier.

#### EXISTING PROCESS:

**2** Agency investigates and resolves the case (if it has capacity)



**3** Employer is required to pay workers and come into compliance



#### OPTION WITH HB 2205:

**2** Worker's partner organization sues on behalf of the State and all coworkers (if approved by agency)

**3** Judge requires employer to pay fines and come into compliance



**30%** back to workers



**70%** to state agency

25%: outreach / education  
75%: staff / resources

SUPPORTED BY:



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## BACKGROUND

**The COVID-19 pandemic, wildfires, state budget cuts and an economic crisis have created a perfect storm for Oregon's working class families.** These crises have magnified the gaps in our society. Frontline workers, who are disproportionately womxn, immigrants, and BIPOC individuals - have shouldered the greatest losses.

We have seen incredible gains in worker protections and rights over the past few years: paid family leave, paid sick time, fair scheduling and better tools to fight harassment, to name a few. But our state agencies that enforce those laws are overwhelmed. As our workforce has steadily grown and reports of abuse have flooded these agencies, budget cuts have left them - and workers - with little recourse. Most at risk are workers who identify as Black, Indigenous, Latinx, or a person of color; women; immigrants; and workers earning a low-wage, all of whom are significantly more likely to experience abuse in the workplace.

- × While Oregon's workforce has doubled since 1977, BOLI staffing has been cut drastically:
  - In 1993-95, BOLI had 3.5 staff persons devoted to investigating wage claims for every 100,000 workers.
  - By the 2017-19 budget period, BOLI had just 1.8 employees devoted to investigating wage claims for every 100,000 workers.
- × In a national survey by the National Employment Law Center in 2020, Black workers were twice as likely to have experienced or witnessed retaliation for raising COVID-19 safety related concerns in their workplace, and twice as likely to have those issues remain unresolved.<sup>1</sup>
- × Some workers experience acute abuse. Some simply work at a business that continuously fails to comply with labor laws and occupational health standards, putting workers and the industry at risk.
- × When workers finally build the courage to file a complaint with BOLI or OSHA, they become at high risk of retaliation; sometimes complaints are not investigated, so the company continues breaking the law.
- × Even when penalties are imposed by BOLI, employers rarely pay them. From 2013-19, employers paid penalties in only 1% of cases where they had stiffed a worker.<sup>2</sup>
- × During the pandemic, Oregon OSHA had prior complaints in 23 of the 35 largest worksite COVID-19 outbreaks. They only investigated two.<sup>3</sup> These outbreaks took place in industries where workers are disproportionately low wage workers, womxn, immigrants, or from BIPOC communities.
- × Oregon OSHA received over 20,000 complaints in 2020 during the COVID-19 pandemic, a tenfold increase from a typical year.

## FREQUENTLY ASKED QUESTIONS

### Won't this hurt local businesses with costly lawsuits?

The Just Enforcement Act (JEA) covers serious violations of employment law and does not include minor infractions, such as misspelled paystubs. Thousands of complaints across the state are going uninvestigated - and bad actors are getting away with putting workers and industries at risk. Companies that are doing right by workers are at an economic disadvantage for choosing to follow the law. JEA would create a culture of compliance.

### How would this be funded?

The program is self-funding. 70% of the penalties collected are allocated back to state agencies for enforcement. The policy also requires a \$75 filing fee to defray administrative costs. Though there will be some start-up costs, revenue will more than cover any administrative costs to the state within a short period of time. A similar law in California brought in \$88 million in 2019.

### How is this different from a class action lawsuit?

Public enforcement actions have a unique purpose - to vindicate the state's interest in compliance with our laws. Public enforcement actions are filed on behalf of the state to recover penalties, most of which go to the state, not the workers.

### Wouldn't this take power away from BOLI or OR-OSHA and make it harder for them to do their jobs?

BOLI and OR-OSHA have the opportunity to take any and all JEA complaints they receive. When a JEA complaint is brought forward, the agency reviews the case and can be heard by the court before any settlement is made. JEA provides backup to these agencies to make sure serious violations are addressed.

### If BOLI receives funding for new staff, do we really need JEA?

JEA fills in gaps for BOLI and OR-OSHA. OR-OSHA clearly does not have capacity to investigate all the meritorious claims it gets. JEA will also help workers who are afraid to file complaints due to retaliation.

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1. National Employment Law Project, June 2020. (<https://www.nelp.org/publication/silenced-covid-19-workplace/>)

2. Oregon Center for Public Policy, January 2021. (<https://www.ocpp.org/2021/01/20/lack-true-penalties-exacerbates-wage-theft-oregon/>)

3. *The Oregonian*, November 2020. (<https://www.oregonlive.com/coronavirus/2020/11/where-oregons-top-35-workplace-outbreaks-happened-and-the-few-osha-inspected.html>)