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One of the most significant changes caused by globalization of the economy is the degree to which workers have been moved from regular, long-time employment into part-time, temporary contracted work. The result has been low wages, few, if any, benefits and great job insecurity. This package of bills strengthens the protections in Oregon law for workers in precarious employment situations like day labor, employment for temporary agencies, working for labor brokers—so called “contingent” workers.

Protecting Day Laborers

Statement of the Problem:

As day labor has grown to be a larger part of the pattern of work in certain industries, day laborers are encountering problems such as being recruited without knowing the terms of work being offered, or the employer’s name and contact information, being charged for transportation, tools, uniforms or equipment, being transported to the job site and abandoned there at the end of the day, not being paid minimum wages or any wages at all.

Solution:

HB 3392 This bill creates a system of protection for day laborers.

- Day labor services agencies would be required to register with BOLI, unless already registered as a farm labor contractor or a temporary employment agency.
- Day labor services agencies and employers would be required to make certain disclosures about wages and working conditions, and provide a pay stub detailing the way pay was calculated.
- Day laborers could not be charged for necessary tools, equipment or transportation or to cash a pay check.
- Day laborers transported away from the point of hire must be transported back at the end of the day.
- Day laborers are required to receive the same rate of pay as is paid to permanent workers of the employer doing substantially equivalent work, with due consideration given to seniority, experience and skills.
- Contract rights of day laborers are protected.
- Day labor services agencies could not prohibit the day laborer from being hired permanently by a referral employer.
- Enforcement would be by the Commissioner of Labor and Industries and by a private right of action.
- Retaliation for asserting a claim is prohibited.

Fixing Unemployment Insurance for Contingent Workers

Problem:

Contingent workers, i.e. workers who work part time, in day labor, temp agencies, or for labor contractors, etc., are among the most vulnerable workers in the our economy—in large part due to their precarious hold on employment. Yet the current structure of the unemployment system often frustrates the efforts of contingent workers to obtain stable employment and maintain viable work lives.

Some workers, such as agricultural workers on all but very large farms, are excluded altogether.

Workers whose family circumstance only allows part time employment cannot obtain unemployment insurance when they lose their job unless they look for full time work.

Workers who seek temporary work which then ends may be disqualified unless they continue looking for temp job. Normally, an unemployed worker receiving UI benefits must accept any suitable job that becomes available or lose benefits. Whether a job is “suitable” depends upon work history, education and experience, and length of unemployment. See ORS 657.190. An RN would not be required to accept a job working as a receptionist, for example. She would be allowed to continue looking for a reasonable period of time for a job commensurate with her training and experience. However, if a worker become unemployed, and, thinking quite reasonably that any job is better than none, takes on a temporary job, at the termination of the temp job, it is quite likely that temp work has now become “suitable” work for that worker. To remain eligible for unemployment benefits, the worker will now need to continue reporting to the temp agency and accepting job referrals and assignments for more temporary work. The need to do so may interfere with the worker’s effective job search for steady work. Since many temp agencies prohibit or penalize clients from offering permanent work to referred temporary employees, the worker becomes trapped in continuing temp work.

Efforts to obtain skills that would allow a better job must be abandoned if even a temporary job opens up.

Solution:

A package of bills amending ORS Chapter 657 to strengthen the availability of unemployment insurance benefits for nontraditional (temporary, part-time, contingent, etc.) workers to include:

HB 3394 would treat agricultural employers the same as every other employer in the economy by eliminating the exclusion for all but very large farms.

HB 3395 would allow a worker who worked enough in the base period to qualify for benefits to draw unemployment so long as he or she was available for work on at least the same schedule as the worker followed while earning the entitlement to benefits. If an employment agency does

not extend an offer of continued employment, workers would not be disqualified at the end of a temporary agency job assignment if they did not continue reporting to the agency, and the Employment Department would be instructed to consider the likelihood of gaining permanent, full-time employment in deciding whether a referral to a temporary job is “suitable” work that the worker must accept or lose benefits.

HB 3396 would allow workers who have been trapped long term in temporary employment or work that pays less than 110 per cent of the minimum wage to attend job skills training without losing unemployment benefits.

Agricultural transportation safety

Problem:

Each year farm and reforestation workers lose their lives and suffer serious injury in automobile accidents during work, or being transported to and from work.

Solution

HB 3391 would require that registered farm labor contractors provide proof that vehicles used to transport workers are safe. The Commissioner of Labor would be directed to consult with ODOT and OR-OSHA and develop rules for safe transportation of agricultural workers by farm and reforestation contractors.

Resolving problems with Subcontracting Employees

The increased use of subcontracted workers has, as noted above, undercut the wages and working conditions of Oregon’s work force. The core idea of these bills is to strengthen the protection of contingent (i.e., contract, day labor, temp agency, etc.) workers, hold end employers accountable for meeting wage and working condition standards and to remove incentives to sub-contract out permanent jobs to abusive labor brokers who cut corners to cut costs.

Solutions:

HB 3397 would:

- Require that contingent workers be paid the same as regular workers doing the same work, allowing for differences in skill.
- Re-regulate temporary employment agencies by extending coverage to agencies that provide temp workers, but do not charge a fee directly to the worker, and create a “bill of rights” for temp workers.
- Provide that a person or entity that sub-contracts to obtain contingent workers under terms that any reasonable business person knows or should know does not provide

sufficient compensation for the sub-contractor to meet minimum lawful conditions of employment is jointly and severally liable with the sub-contractor for claims by the workers of the sub.

HB 3398 would standardize the definitions for “employ,” “employer,” “employee” and “wages” throughout Chapters 652, 653, and 658 using the “suffer or permit to work” language used in Oregon’s minimum wage law and the Fair Labor Standards Act.

Regulating Construction Labor Brokers

Statement of the Problem:

Currently, all construction contractors are supposed to be licensed under the Construction Contractors Board. While some wage protection is provided under that law, regulation of recruiting practices is minimal. In recent years some legitimate building contractors have begun to turn to labor brokers to supply workers to construction sites. Often these labor intermediaries are undercapitalized, do not have professional business practices, and are exploitive of workers. Many of the abusive practices that have grown up in the industry over the last few years are very similar to what has traditionally occurred in agriculture and reforestation.

Solution:

HB 3393 would make pure labor contractors in construction (that is, individuals whose primary function is just recruiting workers, as opposed to carrying out the traditional functions of a construction contractor) subject to the provisions of the farm/forest labor contracting licensing provisions of ORS 658.405, et seq. It is not the intent to regulate “regular” construction contractors, even those who operate on a small scale. Rather the intent is to apply the existing labor contracting regulatory system used in agriculture and reforestation to construction labor brokers, i.e., persons engaged primarily in recruiting and supplying workers to construction sites.

This would be accomplished by including construction in the scope of covered work under ORS 658.405, et seq., and providing an exemption for construction contractors who directly contract with the owner of the construction site, who secure building permits, or who supply building materials or machinery other than manual or hand power tools.

The effect of this would be to require labor brokers in construction to be licensed by BOLI, post a bond to secure payment of wages, provide written disclosure of wages and working conditions, and comply with contracts entered into in the capacity of a labor contractor. Entities that knowingly use an unlicensed contractor would be jointly liable to the workers.