**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON**

PUBLIC RULEMAKING HEARING

In the Matter of the Amendment of OAR: 436-050, Employer/Insurer Coverage Responsibility 436-180, Worker Leasing	))))	TRANSCRIPT OF TESTIMONY

The proposed amendment to the rules was announced in the Secretary of State's Oregon Bulletin dated April 1, 2018. On April 24, 2018, a public rulemaking hearing was held as announced at 9 a.m. in Room B of the Labor and Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, from the Workers' Compensation Division, acted as hearing officer. The record was scheduled to be held open for written comment through April 30, 2018, but the due date for comment was extended through May 21, 2018.

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TRANSCRIPT OF PROCEEDINGS

Hearing officer: Good morning and welcome. This is a public rulemaking hearing. My name is Fred Bruyns , and I'll be the presiding officer for the hearing.

The time is 9 .a.m. on Tuesday, April 24, 2018. We are in Room B of the Labor & Industries Building, 350 Winter St. NE, in Salem, Oregon.

We are making an audio recording of today's hearing.

With me this morning is Chris Clark, policy analyst, with the Workers' Compensation Division.

If you wish to present oral testimony today, please sign in on the "Testimony Sign-In Sheet" on the table by the entrance. If there is anyone who has joined us by telephone, I can sign in for you and you are welcome to testify this morning as well.

The Department of Consumer and Business Services, Workers' Compensation Division proposes to amend chapter 436 of the Oregon Administrative Rules, specifically: division 050, Employer/Insurer Coverage Responsibility, and division 180, Worker Leasing.

The department has summarized the proposed rule changes and prepared an estimate of fiscal and economic impacts in the notice of proposed rulemaking. This notice and proposed rules with marked changes are on the table by the entrance. And again, I apologize if we have run out of copies, but all of the information is available on our website. Rulemaking testimony received to date is also available, if we haven't run out of that as well, including testimony from the Workers' Compensation Division regarding a drafting error.

The Workers' Compensation Division: filed the *notice of proposed rulemaking* with the Oregon Secretary of State on March 29, 2018, mailed the *notice* to its postal and electronic mailing lists; notified Oregon legislators as required by ORS chapter 183; and posted public notice and the proposed rules to its website.

The Oregon Secretary of State published the hearing notice in its Oregon Bulletin dated April 1, 2018.

This hearing gives the public the opportunity to provide comment about the proposed rules. In addition, the division will accept written comment through and including April 30, 2018, and will make no decisions until all of the testimony is considered. We are ready to receive testimony. If you are reading from written testimony and give the agency a copy of that testimony, we will add it to the rulemaking record.

Could someone bring me a copy of the roster, in the back? Thanks, Roger. Thanks. I'll leave you a blank one to take back with you, Roger, just in case anybody arrives late. Could Andrea McHenry come up and testify – over at the table here? Good morning.

Andrea McHenry: Good morning. For the record, my name's Andrea McHenry, and I'm associate general counsel for government affairs for Insperity. Insperity is a professional employer organization based in Kingwood, Texas, and we are licensed as a worker leasing company in Oregon.

First of all, I'd like to thank you for allowing me to make these comments today. We do express our support of the rules as they are proposed, but we would request some minor revision of the language in the following areas to provide more clarity to worker leasing companies that are operating under these provisions.

First, we think the statutory definition of worker leasing – of the worker leasing relationship – well, we understand the definition; however, we know that there are some statutory limitations. But we do think that the definition should more closely align with how the PEO relationship works. A PEO does not provide workers to its clients, but we are comfortable with the department's interpretation of the language, but we just wanted to state that for the record.

Secondly, with regard to section 436-180-0110, subsection (3), regarding termination of client coverage, we think this provision basically requires the PEO to provide prior written notice of the termination of coverage. We think this provision is understandable if the purpose is to enforce the PEO's obligation to provide notice if the PEO decides to terminate a policy, or, you know, go with a different carrier. However, the language as it's written is unreasonable when the termination of coverage is due to client action, or due to a request by a client. For example, if the client decides to fire an employee, or they decide that they want to move the employee from state, the PEO often does not have prior notice of that action. The first time a PEO may become aware that that has occurred may be when the payroll has been run, and the client notifies the PEO that payroll will no longer be submitted for a particular employee. So, we think that a more reasonable time requirement to report termination of coverage would be at least 14 days from the time the PEO finds out from the client that they would like to terminate coverage. And we also would just like to mention there are other many – about 15 other states that have termination requirements, and none of them require prior notification. Most of them require somewhere between 15 and 30 days from the time that the PEO becomes aware, so we wanted to make that point.

And finally our last point is that the language in section 436-180-0140(9), (h) through (i), provides the reasons for denial of application. We understand that the department has discretion in denying of application, but we do have some concerns that some minor infraction, such as payment of taxes or – it could be a business license – it could be $20. – and that could allow for denial of application. So we would just request that there be more clarification as to what the department is looking for when they are reviewing applications so we can make sure that if there are business taxes or licenses that are more of a concern, that we would make sure that those areas are cleared up prior to submittal of the application.

So, that concludes my comments, and once again I appreciate the opportunity to make these comments and look forward to working with you on the finalization of the rules. Thank you.

Hearing officer: Thanks Andrea. Ah, Will Rasmussen?

Will Rasmussen: Good morning. Will Rasmussen from Miller Nash Graham and Dunn on behalf of Barrett Business Services and BBSI. Thank you for the opportunity to come and testify today, and for the open process that Workers' Compensation Division has engaged the public in in this rulemaking. I submitted a written letter into the record with two narrow requested revisions for the proposed rules. The first relates to proposed rule OAR 436-180-0155. This is the reporting requirement of a self-insured worker leasing company. The specific and narrow request was to delete the words from section (1) of, "and report to the National Council on Compensation Insurance, NCCI, separate statistical data on each client. " The purpose for this requested revision is that it's not particularly clear with what frequency that report is required, and we purely request this revision to avoid any appearance that these is an ongoing requirement to report to NCCI.

Section (2) of this rule allows NCCI to request the same exact information upon request, and the worker leasing company that is self-insured would have to provide that data. We have no qualms with providing the data. It's two-fold for asking this request. One is to avoid the administrative

and time and staff burden to put together some information periodically and ship it off to somebody. And the second thing is to avoid potential misuse of this data for anticompetitive purposes, not that we think NCCI has any nefarious purpose, but BBSI is the only self-insured employer in the state of Oregon. When we report this data competitors can grab it and see exactly what BBSI has going on in Oregon. It's not a problem I believe BBSI has had in this state, but it is something that potentially has become an issue in other states.

Second requested revision is regarding proposed rule OAR 436-180-0160. This is the rule regarding suspension and revocation of licenses, and specifically, we request that the proposed subsection (g) be deleted. This provision provides that any of the reasons for denial of an application for initial license or renewal in OAR 436-180-0140, sub (9) be a basis for termination. If you compare the reasons for denying an application to the existing reasons for revocation, they are largely the same and what you imagine. If a company is violating the worker leasing rules of this state or the company is violating the worker leasing rules of another state, a company is found to have lied or misrepresented things, they can be terminated. There is one and a half, depending on how you want to count it, additional reasons in the reasons for denial of an application. One is failure to establish a minimum experience, training, or education that demonstrates competence in providing worker leasing services. And, the second is, having been found by any governmental agency, whether Oregon or elsewhere, to have failed to disclose material facts. Both of those are relatively subjective standards, ones that reasonable minds can disagree on, on what's a reasonable amount of training, or what education is sufficient. And we propose striking this rule just to avoid the potential for subjective terminations, or terminations based on very minor, quasi infractions that aren't related to a worker leasing rule or and aren't related to the state of Oregon. Some agencies in Oregon, such as OLCC and others, have a schedule to say what minor infractions can become enough to culminate into a termination or suspension. Obviously, workers' compensation doesn't have such a schedule, and we think it would just be easier, clearer, and more objective to just keep the existing listed reasons for revocation or termination that show up in that rule.

That is all I have to say. Thank you very much for the opportunity to testify today.

Hearing officer: Thanks Will. Arin Carmack?

Arin Carmack: Fred, Chris – quite the turn out for worker leasing rules. Hi. Arin Carmack, Cardinal Services. I drove up here today to testify in favor of the proposed rules. I think it's a good compromise between the need to regulate our industry, which is necessary, because there have been bad actors in the past, but not to have too many barriers to have an artificial competition there. So, just wanted to voice support for the rules. Thank you.

Hearing officer: Thank you Arin. Matthew Stopher?

Matthew Stopher: Good morning.

Hearing officer: Good morning.

Matthew Stopher: Matthew Stopher. I work with KPD Insurance out of Springfield, Oregon. I've been a broker in workers' comp for 25 years and represent a number of employers that do business in this sector. I generally support the changes that are being suggested here, and I generally get that feedback from my clients on this issue. The one issue I want to point out is – a great area of support that I have is regarding the requirement for reporting to NCCI. This is a wheelhouse that I live in. I deal with clients that are out there trying to manage there workers' compensation, and improve their programs to create access, so that they can get to do business with whomever they choose do, whether it's an employee leasing firm or whether they are out in the market trying to procure insurance. The notion that somehow providing this information to NCCI creates some anti-competitive situation I think is actually completely impractical in its application in the real world. That's not what I see, and I think it's imperative that every employee leasing company is providing this data. If it were not the case, than if there is that anti-competitive situation occurring now, or if that could occur, than it is most certainly occurring now with regard to the benefit of those who do not have to report. So the reality from our standpoint in our experience in dealing with this, is that when there are employers that are in employee leasing that opt to go out for whatever reason, the barriers to entry to the marketplace are very real. The procurement – the request and receipt of information as needed in order to accomplish that task is exponentially more complicated and protracted, so much so to the extent that many employers, once in a leasing situation are apprehensive to pull out because of the administrative burden, so much more severe than when I'm just going in and working and quoting on a piece of business, to look at competitive options for them. So, the ready access to that information, the ratemaking necessity of it for the insurance carriers to make a logical decision about how they're going to price an account have to be part of that mix. And, to have a one-off, I don't think is appropriate, nor is it fair to the competitive marketplace for the clients that we serve. So, that's my testimony. Thank you.

Hearing officer: Thank you Matthew. Daniel Harris?

Daniel Harris: Good morning.

Hearing officer: Good morning Daniel.

Daniel Harris: My name is Daniel Harris, and I'm with the National Association of Professional Employer Organizations, or NAPEO. NAPEO is a trade association located in Alexandria, Virginia, that represents the interests of the PEO industry. So, on behalf of NAPEO, and its Oregon – Washington – Alaska leadership council, I would like to thank you for giving us the opportunity to address you this morning. Just as an aside for those of you who do not know, PEOs provide payroll, benefit, regulatory compliance, and other HR services to small and medium sized businesses. Studies have shown that those businesses and their worksite employees thrive when they partner with a PEO. Secondly, I would like to – in addition to thanking you for actually letting me testify today, I want to thank you for the open process and the fact that you reached out to the industry early on when you were contemplating making amendments to your rule. Not only that but the hosting of the two events late last year and also these rules.

The stated need for this rule is to streamline the worker leasing rules so that it matches the standards in other states. I think these rules have gone a long way in doing that. For instance, the addition of a limited license, which is found in the vast majority of states that are regulated goes a long way and will make life easier for those PEOs that are not domiciled in Oregon or looking to really become a part of Oregon, but their clients have come into Oregon on a very small basis. Also, the removal of the requirement to have records physically located in the state of Oregon really goes a long way. We do share – we do have some concerns with the rules that we will of course address a little bit now, but we will also follow up with our written comments. We share the concerns of our NAPEO member, Insperity, with section 436-180-0110, subsection (3), termination of client coverage. We obviously understand the department's intent in wanting to make sure that worksite employees always have some sort of workers' comp coverage. The industry shares that concern. I think the rule contemplates a situation where the PEO might terminate coverage, so it would make sense that they would have to give notice before they do that. We would like this part of the rule to be amended to recognize instances where the client is responsible for that termination on its own, where they may fire an employee or terminate the coverage on their own without letting the PEO know.

I also have a concern with section 436-180-0160, subsection (2)(b), the show cause hearing, which states that a show cause hearing may be held at any time the director finds a PEO has failed to comply with its obligations under a leasing contract. Our concern here is that this could circumvent the dispute resolution process, which is found in I think a vast majority of PEO service agreements. We think that the rule should be limited to findings that the PEO has violated the statutes or the regulations that support the statute.

So, again, we look forward to working with you throughout this process, and we are happy to answer any questions you may have. Thanks.

Hearing officer: Thanks Daniel, and we look forward to your written testimony.

Daniel Harris: Thanks.

Hearing officer: Sam Lambert?

Sam Lambert: Good morning. Thank you. My name is Sam Lambert. I'm with Mid Oregon Personnel Services, and again, thank you for handling this the way that you have, transparently and very open with us. I'd really just like to second pretty much everything that NAPEO and Insperity said, in terms of how a leasing organization could potentially lose its license, having that be a little bit more streamlined and straightforward, less subjective and more by the book would make I think everyone feel a little bit better. And, I'd also like to second what Mr. Stopher had to say about reporting, because as far as the, I guess fairness of play goes, everybody else it's pretty easy to see what the numbers look like. With a self-insured those numbers are bundled and pretty hard to disseminate, so giving a competitive quote at this point is very difficult. So, as far as the anti-competition goes, I would agree with Mr. Stopher that right now, your suggested rule would be welcome (*inaudible*). Thank you.

Hearing officer: Thanks. Morgan Bobadilla? Oh, you just signed in and you don't need to testify. Okay. And, I don't have anyone else. Did anyone else sign up in the back? Okay. Come on up and testify.

Andrea Olson: Okay. I apologize for being late.

Hearing officer: That's alright. That's quite alright.

Andrea Olson: I'm just going to plug in my laptop so that I can see better.

Hearing officer: Okay. And for the record, your name is Andrea Olson?

Andrea Olson: Yes. And, is Lorrie Baker here?

Chris Clark: She's not here.

Andrea Olson: Oh she's not here. Okay.

So, I'm going to read this, and I appreciate everybody's patience. My name is Andrea Olson. I have a master's degree in rehabilitation counseling. I have worked in the workers' compensation industry as a vocational case manager, and I've also worked as Bonneville Power Administration's reasonable accommodation coordinator. I wanted to thank you for the opportunity to offer public comment about the proposed changes to the worker leasing rules. As I have PTSD, and I am still in trauma, I ask listeners for patience while I speak.

The mission of the Oregon Workers' Compensation Division is to advance a leading workers' compensation system that represents integrity and fairness for Oregonians. I am addressing both of those in what I have to say this morning, with regard to changes in the worker leasing rules. Oregon currently has clear distinctions between leased workers and temporary workers. The state – online, the website – and I apologize for the redundancy, I know I'm speaking to the choir, and I am also part of the choir, but for the purpose of leading a background, I'm going to state some information from the website. So, the state describes employee leasing as an alternative for employers to manage the administrative functions of their workforce. Employers, such as Bonneville Power Administration, enter into a contract for a fee with a worker leasing company such as MBO Partners. Often, the client employer terminates and then leases back the same workers at its worksite. So what an entity is supposed to do, the client organization, is they're supposed to, when they negotiate those contracts with the likes of you in the PEO world, the client makes sure that the employer portions all of the employer obligations, such as workers' compensation, is included in their agreement with the PEO, such as the ones you guys are representing. So, in my case, it was not that way. So in my case, Bonneville Power paid about four percent plus for me, and then MBO partners deducted all of the employer and employee obligations from my earnings, which is flat out not legal. So, I'm going to keep reading to stay on task.

So, often the client employer terminates and then leases back the same workers at its worksite. The leasing company becomes the employer of record and takes on the responsibilities for

payroll, employment taxes, Workers' Benefit Fund assessments, and also other services, such as workers' comp insurance, retirement plan options, and medical benefits. This was not the case with BPA and MBO, and I'm not going to get into those details at this time. The current Oregon rules state worker leasing differs from temporary staffing because the employees are permanent, and I'm just a little tiny bit triggered, because I worked at Bonneville Power for four years, so there was no temporariness to my employment, and there was – and the implication is that I was a permanent worker at BPA, but as I described a few moments ago what was going on is not legal. So, the current Oregon rules state worker leasing differs from temporary staffing because the employees are permanent – emphasis is on the word permanent. Temporary staffing does not require a license from the department. Temporary companies must maintain records – ah, I apologize for this – temporary companies must maintain written records and are subject to audit by the Workers' Compensation Division to ensure that they are not leasing workers. The records must document the duration of the work assignment and provide sufficient detail to establish that they are providing workers on a temporary basis, as defined by Oregon law and rule. So, what was interesting is the documentation from BPA and MBO shows that I was being provided to BPA by MBO as a temporary worker. So, while MBO presented itself as being a payroll entity to benefit me, presumably as an independent contractor, I was receiving W-2s. So, is there anyone in the room that would disagree with me that a W-2 is the traditional definition of what a bona fide, traditional employee is? Does anyone disagree with me? Show of hands. So a W-2 defines employee, and that is what I received from MBO Partners, and what I alleged and I can prove, is that BPA and MBO colluded, just like we've been hearing in the news politically, colluded to exploit me. I have a masters degree and I went from having provided expertise and BPA wanting me to continue the relationship I had with them, I am now completely disabled, and I receive SSDI, because I cannot trust anyone, because of all this deception and lies I've been through over the past four years.

So, a client such as BPA, using temporary staffing, such as MBO, will have its own workers' compensation insurance policy or be self-insured to cover its regular workforce. A temporary staffing provider covers the workers' compensation insurance for the temporary worker. The client of a temporary staffing provider covers the workers' compensation insurance for its own workers. What's interesting is, the worker in the state of Oregon, if I was truly an independent contractor, like BPA and MBO allege, then I wouldn't have to pay workers' compensation insurance, but through the nefarious relationship between BPA and MBO, I was the workers' compensation employer – the workers' compensation premiums, which are the responsibility and obligation of a W-2 employer, such as MBO, or even BPA, they paid nothing. I paid it all, and not only that, but my pay stub – because we were talking about the fact that I was presented as a bona fide employee of MBO, my pay stub didn't show what my hourly wage was. I have no idea what I was making. And, not only that, as I have a background as, in the workers' compensation field, having worked briefly in the industry, I knew that the Worker Benefit Fund is a responsibility and obligation of employees and employers, and it's a very small fee, and that was nowhere to be found in any of my documents, paychecks or otherwise, which is in violation of rule.

So, according to the state website, why proper classification is important, Oregon considers – I'm almost done – Oregon considers all staffing arrangements to be leasing unless the staffing company can provide written documentation that each worker is provided on a temporary basis.

There are legal consequences, and this is on the state website currently. There are legal consequences for misclassifying workers, such as what BPA did to me, with both BPA and MBO admitting that I was misclassified as temporary rather than leased, including civil penalties for leasing without a license. Another important reason to ensure proper classification, according to the state website, is the difference in workers' compensation coverage. When a leased worker is misclassified as temporary, the workers' compensation policy is likely inadequate to cover all claims at a worksite. This will expose the temporary company, like an MBO, to liability for claims without coverage. Policies for temporary staffing agencies like MBO generally cover only their own provided workers. In a worker leasing arrangement, the leasing company's policy must cover both the provided workers and any non-leased workers the client may have at the worksite, unless the client has its own coverage. If the client, such as the BPA, carries the coverage, the client's insurance must cover all employees at the worksite, both leased and non-leased. Go ahead and fall asleep during all of this, because you guys all know that these are the rules and these are the processes, but this is not what happened to me.

In my case, BPA was the client, and MBO represented itself as a leasing company, temporary staffing agency, and as a payroll service to various entities, depending on the situation. In other words, they lied. The truth was not easy to find. BPA is part of the Department of Energy, a federal government agency. MBO is a large federal contractor, which just received a significant injection of funding from Primus Capital in 2017, so now MBO has a lobbyist to lobby government to change rules, such as what we're seeing. So, MBO is a large federal contractor, but at the time I was directed by BPA to be MBO's employee of record, MBO was not licensed to lease workers in the state of Oregon, between the years 2012 and 2014. In 2014, I learned what BPA and MBO were doing. I described it in great detail to multiple government enforcement agencies, including the Oregon Employment Department, the Workers' Compensation Division, the Bureau of Labor and Industries or BOLI, the City of Portland, which deferred to BOLI for enforcement of local sick time rule, the EEOC, EBSA which enforces ERISA, and the Department of Labor OFCCP and wage and hour divisions. After multiple questions to workers' compensation staff, and this might have been before your day. I don't know how long you've been with workers' compensation.

Hearing officer: Oh, it wouldn't be before my day, but go ahead.

Andrea Olson: Okay. So after multiple questions to your staff, in the hallway, because they come out to answer questions, I came down here in person to get someone to do something about my situation, one nervous worker came out and told me I was not allowed to ask any more questions, because apparently I was pushing – this is my opinion – I was pushing for the truth. And, this person told me I would have to get an attorney in order for any more questions to be answered by the Workers' Compensation Division. So, what this is called, when this person is telling me that she can't answer any more questions, there's a concept called obedience to authority, and that is that human beings will do as they're told, and what they don't realize is that while they're following orders to carry out the missives of the higher power within an organization, what they're also doing at the same time is they are justifying harm to other human beings through this omission of truth, so it's an indication that people are naively hurting other human beings when they simply follow orders without realizing the harm that they're doing through their actions, because the rationale is that they had to do XYZ or else they would risk

getting in trouble or getting fired. People like this person who told me that she couldn't answer any more questions are afraid to lose their job, but they are condoning harm to their fellow man.

Instead of enforcement, I am still facing retaliation from multiple government agencies. What's interesting, is that despite violations of multiple rules and laws, MBO Partners became licensed to lease workers in December of 2015. So while MBO was openly violating multiple rules, not only within workers' comp, but within multiple other government agencies, there was no enforcement. There was no consequences for them. There was no investigation of my concerns. I provided significant detail to the department showing where the money was going and how it was flowing, and I was basically brushed off. And, as a citizen of the state, my tax dollars go into paying for your salaries and salaries of your staff. And, when you display the rules and laws on the website, and the laws are clearly defined, and you also claim to operate a division that upholds integrity and fairness to all Oregonians, I also understood that you were very honest about seeking public comment on the proposed changes to workers' compensation rules, and you plainly state that you don't want to – you want to support the business in the state. Of course you want them to succeed in the state, but at the same time, morally and ethically, you have to adhere to the impact of these tight relationships with business. You have to realize who you're serving, because most – you're being supported by mostly, largely by white and blue collar workers in the state, and the gig economy, which is what I believe these rules are being adjusted to accommodate – the gig economy exploits both blue and white collar workers, which is the majority of the taxpayers.

The proposed rules alter temporary worker distinctions from leased workers, permit the director to waive procedural rules as justice requires, and based on my personal experience, it would seem to be, and I have a distorted brain right now because of the trauma, it seems to be that justice would be in favor of the employer, because it certainly hasn't proven to be true with the workers. And, the additional proposed changes permit limited licensing among other things. It's unclear why changes are needed to streamline worker leasing requirements, and why Oregon would want to follow the lead of other states making changes. What Oregon needs to do, and I suspect that the motivation for change is being – is occurring because the gig economy has been hyped up by multiple sources, and so lobbying by business experts, etc., on behalf of their representation and the testimonies we've been hearing from other PEO organizations, especially those who have indicated that there's a significant barrier to competition in the industry, it's really – I'm losing my train of thought, but I'm going to stop on that one. It's really unfortunate that massive control and influence by money, which is what people are not realizing is that when you are influenced by a dollar bill being waved in your face, what you're also risking is harm to human beings.

So I'm almost done. What Oregon needs to do before making any changes, is to enforce the rules currently in place and audit why it was that MBO was in violation of worker leasing rules, as well as temporary staffing rules, and why – what lead to MBO becoming licensed in December of 2015, long after I had been destroyed by the joint work of BPA and MBO. And, it's wonderful to see Miller Nash in the room today. They're involved in this too, but they helped me in certain ways, and I am grateful for that. However, it's really disheartening to see the degree of how money, money buys a hell of a lot of shit. So, what Oregon needs to do is to do an audit, to involve human beings like me at the table, and I will make myself available, because what

happened is the stakeholders that are all involved are all people who stand to gain from the changes being made, and that's normal human behavior, is to advocate for what is going to help someone get more, but when you don't have the actual workers at the table, what you're doing is you're appeasing a select group of people that establish rules that affect a large population, which is workers. And so changing – it makes logical sense that you do need to have workers at the table, but because more and more we are seeing human beings on a steady treadmill of work, where they can't get full time work anymore as a traditional employee, so they are piecing together bits and pieces, which is supposedly a great thing according to the gig economy, but what it also does is it limits the participation of workers that should be at the table. So, I would like to avail myself that before any changes take place, and this is true to help benefit the smaller leasing companies that don't have as much power and influence as MBO – it's in their favor as well, even if they support parts of the changes that is being proposed.

So I believe that you need to go back, and you need to be more transparent as to what transpired, even if only looking at my case, because I know that I'm not the only one. If you were to read my LinkedIn posts or to even simply look on Yelp and Glassdoor and other social media sites to look at BPA, Bonneville Power Administration, as well as MBO Partners, you can see how they do what they've been doing. It's not a secret. It's out there.

So, what Oregon needs to do before making any changes is to enforce the rules currently in place and be accountable to its taxpaying citizens before jumping off the conformity bridge to be like the other states throughout the country. And I believe that this is the movement in order to – a movement is taking place to validate the gig economy. And, the gig economy again, in my opinion, only serves to exploit human beings. Working Oregonians are already on an endless treadmill of working to survive, and deserve to know that laws on the books do not necessarily mean that they're enforced. Again, I'm going to state, working Oregonians are already on an endless treadmill of work to survive and deserve to know that laws on the books do not necessarily mean that they're enforced.

Additionally, we deserve to know why laws and rules are not consistently followed before we utilize more tax dollars to make changes. Contrary to what was stated in the proposed changes, and the impact of those proposed changes, taxpayers have been footing the paychecks – and I don't mean to sound like I'm against government workers, because there is a purpose for government, but I don't understand why there was even – it goes without saying that there's been significant expense already, even having the dialog to ponder changes. I've got stacks of documents which shows evidence of considerable work and labor to change the workers' comp leasing rules already. I, along with many other Oregonians, need to be included as stakeholders for proposed changes, and we need government staff accountable to our questions and to upholding the rules and the laws. It seems the state is beholding only to businesses, and while the proposed changes state that most of the worker leasing companies are small businesses, the definition of what the state considers as, quote, small, needs to be clarified. Exploitation of workers should not be the goal for reducing the negative economic impact of the rule on business.

Every state, directly or indirectly, prohibits bribery in obtaining government contracts. We need enforcement of current laws that stop this pay to play abuse. Government contracts should go to

companies that do the best work for the lowest prices. It is unclear who is responsible for enforcing laws, because I've yet to see any state or federal agency enforce the multiple laws that have been broken, given the facts of how BPA and MBO have been managing BPA's workforce. Penalties for violating laws are unclear. Oregon needs to eliminate corruption, as well as the appearance of corruption. Based on my personal experience, the changes in the rules appear to give validation to the so-called gig economy, which serves to exploit both white and blue collar workers, not only in the state but across the country. Following the lead of what other states are doing to validate the gig economy is not progressive, ethical, or fair.

I was BPA's reasonable accommodation coordinator, and my contract work with them, starting in 2010 was my sole source of income. As a person with an obvious disability of hearing loss, as well as an educated person, having a masters degree in my field, I am well aware in the arena of disability that it's very, very rare to be on par with non-disabled peers. So, the fact that I was, even at a time self-employed was a matter of survival, because it – statistically it takes 10 times longer for a disabled person to achieve the equivalent of what a non-disabled person achieves. And, the higher in education one goes, the worse it gets, because the society generally feels that disabled people are more logically in entry-level positions. So, it's a very, very tough barrier – talk about barriers to competition, the competition to be considered a normal human being is fierce for someone who happens to have a disability, and happens to be educated as well.

Hearing officer: Andrea, we only have the conference room for an hour, and I do have some closing remarks I have to make before we conclude, so I'll ask you to wrap up.

Andrea Olson: I'm right there. In December 2011, I was directed by BPA under threat of contract termination to become a W-2 employee of MBO, to quote payroll my contract payments. As BPA's 1099 matched my invoices to the penny, I trusted that what BPA was telling me was true, that MBO would payroll my contract payments, which would be increased by the amount of the MBO service fee that BPA would cover. I respect your limitations of time.

Hearing officer: If you could perhaps leave out anything that's case specific, because we want to address what we can by rule. We can't address your specific case through the rules.

Andrea Olson: So, I was charged by MBO for everything that was reportedly paid by my employer, including all employer taxes, employer-paid insurance premiums, and employer-paid contributions to retirement. In addition, MBO processed everything under its own FEIN. You've referenced that in your rule changes. If I were self-employed in the state of Oregon – I've already gone over that. Both MBO and BPA knew that they were exploiting me. Multiple federal, state, and local laws have been violated as a result of my relationship with both BPA and MBO.

I want to conclude that, first of all I'm really grateful for the extended time and I appreciate everyone allowing me extended time. I sincerely desire that the Workers' Compensation Division audit its practices, and while I am an individual, as I mentioned earlier, people can look at Yelp reviews and Glassdoor and other social media sites to see in plain language what the business practices were, which are in direct violation to current rule in the state, not only in workers' compensation, but in Employment Department rules, etc. So, I respectfully ask that you

put a pause on implementing the changes unless/until you have input from individual workers like me, as well as organizations that advocate on behalf of workers in the state or Oregon.

And, thank you again.

Hearing officer: Thank you Andrea.

Is there anyone else here present or on the telephone who'd like to testify this morning? Hearing no one, just a reminder that we're accepting written testimony through and including April 30, and we will consider of that testimony before we make any final decisions. All of my contact information is on business cards that you can pick up on your way out, and I encourage anybody to pick up one of those cards if you'd like to get in touch with me. I will acknowledge any testimony that you submit.

And, the time is now, call it 9:55, and this hearing is adjourned. Thank you for coming.

Transcribed from a digital audio recording by Fred Bruyns, May 3, 2018.