

Oregon

Attorney: Workers' comp retaliation lawsuits on the rise

New problems flaring up in field of farm labor, agricultural attorney says

By MATEUSZ PERKOWSKI
Capital Press

SALEM — Farmers are increasingly facing accusations of retaliating against employees who request workers' compensation after being hurt on the job, according to an agricultural attorney.

Workers' compensation — an insurance program for employees who are hurt on the job — traditionally hasn't been a source of farm labor litigation, said Tim Bernasek, an attorney who heads the Dunn Carney law firm's natural resources team.

In the past 18 months, though, Bernasek said he's encountered several lawsuits and threats of lawsuits

against Oregon farm employers for alleged retaliation against workers who file workers' compensation claims.

Retaliation is an unlawful employment practice for which employees can seek financial damages, he said during Dunn Carney's 2017 Ag Summit in Salem, Ore., on Jan. 20.

It's implausible that farmers have suddenly colluded to discriminate against these employees, but it's unclear exactly why workers' compensation has just recently caused problems, Bernasek said.

Allegations of retaliation have been made by employees who were receiving workers' compensation when they were fired for

cause or who stopped showing up for work, he said.

Even employees who have quit made retaliation claims, arguing that work conditions had grown so insufferable that they'd been "constructively discharged," he said.

Such cases aren't easy to deal with, since they involve "he said-she said" interpretations of events, Bernasek said.

"Be very careful when you terminate them, and I'd advise seeking legal advice before doing so," he said of employees receiving workers' compensation.

The U.S. Department of Labor has also been increasingly watchful for potential violations involving the transportation of workers,

Bernasek said. "It's flaring up all of the sudden."

Technically, farmworkers who charge their co-workers for rides to the job site must be licensed as labor contractors and follow other regulations under the Migrant and Seasonal Agricultural Worker Protection Act, he said.

Since the DOL isn't likely to enforce the law against farmworkers, the agency has been seeking to hold growers responsible for violations of the rules, he said.

Farmers can free themselves of liability under an exemption for workers participating in car pools, but they must not allow supervisors to act as the drivers, he said.

"Their activities are imputed onto you for Depart-



Mateusz Perkowski/Capital Press

Tim Bernasek, agricultural attorney at the Dunn Carney law firm.

ment of Labor purposes," Bernasek said.

Workers should also sign a disclosure stating that the

farm provides no transportation to or from job sites, though sufficient parking will be available, he said.

Jobs recovery lags in some rural areas of state

By MATEUSZ PERKOWSKI
Capital Press

SALEM — Oregon now has more jobs than before the "great recession" but some rural areas are still lagging behind, according to the state economist.

After the financial crisis a decade ago, Oregon lost roughly 8 percent of its jobs, said Mark McMullen, the state economist.

Since then, the state has not only regained all those lost jobs but also increased the overall number by 6.5 percent from the pre-recession peak, he said during a Feb. 6 hearing before the House Committee on Economic Development and Trade.

However, McMullen said those gains haven't been felt equally by all regions of the state.

The Portland metropolitan area has seen the strongest recovery, with the number of jobs now 9 percent higher than before the recession.

There are now 7.5 percent more jobs in the Columbia Gorge, 6.8 percent more jobs in Central Oregon and 3.3 percent more jobs in the Willamette Valley.

Jobs in Southern Oregon contracted by roughly 12 percent during the recession but the region now has 0.3 percent more jobs than before the crisis.

Northeast Oregon and the North Coast haven't yet fully recovered, but the number of



Mark McMullen

jobs is less than a half-percent lower than before the recession.

Southeast Oregon still has 4.7 percent fewer jobs than the pre-recession peak, while the South Coast has 6.1 percent fewer jobs. The regions have seen worse times, though — both have recovered roughly half the jobs they lost during the recession.

Some counties are still seriously reeling from the downturn. Gilliam County has recovered only 10 percent of the jobs it lost during the recession, while Crook and Grant counties have recovered fewer than 30 percent.

The good news is that nearly 100 percent of Oregon counties are now gaining jobs rather than losing them, McMullen said.

The lone exception —

Morrow County — is actually an economic success story, but has recently lost some jobs because of the completion of major construction projects, he said.

Oregon now has about 2 unemployed people per job opening, down from 11 people per open position in late 2009.

In terms of income, the top 20 percent of Oregon households are now making 6.7 percent more money than they were a decade ago, adjusted for inflation, he said. Inflation-adjusted incomes are about 1 percent lower among the middle 20 percent of households and 7 percent lower among the bottom 20 percent.

Oregon is the 12th most trade-dependent state in the U.S., he said. Computer and electronic equipment lead the way in exports, followed by heavy manufactured products such as metal and machinery, then agricultural goods and forestry products.

China is the major destination for Oregon exports, followed by Canada, Malaysia, Japan and South Korea.

Exports from Oregon are now facing a headwind due to the high value of the U.S. dollar compared to other currencies, which makes our products more expensive in foreign markets.

"It hasn't been this strong since 2000," McMullen said. "It's putting downward pressure on the demand for our exports."

Oregon lawmakers consider stronger invasive mussel defenses

Quagga and zebra mussels can block irrigation intakes, disrupt ecosystems

By MATEUSZ PERKOWSKI
Capital Press

SALEM — Oregon lawmakers are considering whether to strengthen the state's defenses against invasive aquatic mussels that threaten both irrigation systems and ecosystems.

The House Agriculture and Natural Resources Committee has introduced legislation creating a new penalty for people who refuse to subject their boats to inspection for quagga and zebra mussels at checkpoints, among other measures.

The mussels threaten to clog irrigation intakes and disrupt habitats for native fish species.

Currently, drivers hauling boats who don't stop at checkpoints can be ticketed for traffic violations. The stations are located at common entry points for watercraft along Oregon's borders.

Under House Bill 2321, drivers who are pulled over by police within five miles of failing to stop at a checkpoint can be charged with a misde-

Quagga mussel

This non-native freshwater mussel poses a major threat to U.S. waterways as an invasive species. It's similar in appearance to its more infamous cousin, the zebra mussel.



0.8 inches (Actual size)

Binomial name: Dreissena rostriformis

Appearance: Shell is striped, being more pale toward the end of the hinge

Diet: Filter feeder

Life span: 3-5 years

Origin: Dnieper River drainage of Ukraine

First observed: 1989 in Lake Erie near Port Colborne, Ontario

Sources: www.wikipedia.org; USGS

Capital Press graphic

meanor if they refuse to return for inspection.

ing such permits is used to control invasive aquatic species.

Under HB 2321, boats would have to be drained of all water before leaving a river or lake, with operators facing a penalty of \$30 for non-motorized watercraft and \$50 for motorized watercraft if they don't comply with the requirement.

Between 2010 and 2016, the number of boats inspected for invasive mussels has grown from fewer than 3,000 to more than 16,000 per year, said Scott Brewen, director of the Oregon Marine Board, during a Feb. 2 committee hearing.

While compliance with the check points has improved in recent years, about 18 percent of boaters still didn't stop for inspections in 2016, spurring the idea for HB 2321, he said.

Rep. Sherrie Sprenger,

R-Scio, said she sympathized with the intent of the bill but was concerned about the potential for boaters to be charged with a misdemeanor, the same class of crime as some thefts and assaults.

Rep. Brian Clem, D-Salem, said he wasn't thrilled about eliminating the permit exemption for non-motorized watercraft under 10 feet in length, but he said the points would be further debated in the future.

meanor if they refuse to return for inspection.

If convicted, the crime would be punishable by up to 30 days in jail and a fine of \$1,250.

The legislation would also eliminate a current exemption under which operators of non-motorized watercraft under 10 feet in length, such as kayaks, don't have to buy Aquatic Invasive Species Permits, which cost \$5 a year.

Money collected from sell-

Rancher 'harvests' rainwater for use when needed

By BRETT TALLMAN
For the Capital Press

SHERIDAN, Ore. — When Leo Krick built a rainwater harvest system in 2009, he had little to go on.

"It was hard to figure out," Krick said. "When we did it there wasn't a lot out there."

Krick and his wife run a 36-head cow-calf operation on their 209-acre Cherryhill

Ranch near Sheridan, Ore.

The retired Portland firefighter did most of the plumbing himself. All told, the system cost about \$3,500, 75 percent of which was covered by a grant from the Oregon Watershed Enhancement Board and secured through the Yamhill Soil and Water Conservation District. Now, rainwater provides all the winter water needs for their animals.

Theoretically, the roof of Krick's barn, at 84-by-84 feet, could generate 187,000 gallons of water in a typical year in Western Oregon.

"Obviously, we don't capture all that," he said, "but we catch what we can use and it's been great."

Krick's system, set at the northeast corner of his barn, is made up of four 2,500-gallon tanks plumbed to stock tanks

inside the barn. Thanks to a little summer rain, those tanks have had water in them year-round for the last two years.

"It doesn't take that long to fill it," Krick said. "Most years all four tanks are full by the end of October. If it's a wet fall, it's full by the end of September."

Though they've never had well problems at Cherryhill Ranch, Krick said a rainwater

collection system made sense for their operation.

"We're off the grid that way," he said, "and by not putting any additional strain on groundwater we're doing right by the environment."

Though rainwater harvest is nothing new, it's getting a lot of attention in Oregon because landowners don't need a water right to collect it.

"Once it hits the ground it's

the belongs to the state of Oregon," Michael Crabtree said. "But it is legal to collect it off an impervious surface like a roof."

Crabtree, a senior conservation technician with the Yamhill Soil and Water Conservation District, helps interested landowners find grants for rainwater collection systems and even helps design and install them.

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