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**Via E-Mail [theresa.a.vanwinkle@oregon.gov]**

Management-Labor Advisory  
Committee (MLAC)  
c/o Theresa Van Winkle

Re: LC 146  
Our File No.: WES 158-1

Dear MLAC:

I apologize for not being able to meet with you in person during your January 26, 2018 meeting to discuss LC 146. You will notice that the provisions in LC 146 are very similar to those contained in SB 901A that was considered during the 2017 Legislative Session. Hopefully this letter will address why my clients, the Western Hockey League (WHL) and the Portland Winterhawks, have introduced the legislative concept. To the extent you have further questions, please do not hesitate to contact me.

As you may recall, Portland Winterhawks players are amateur athletes under rules established by USA Hockey and Hockey Canada, the governing bodies for amateur hockey (and Olympic hockey) in the United States and Canada. The Portland Winterhawks are members of the Western Hockey League (one of only five teams in the U.S.; the other 17 teams in the Western Hockey League are in Canada). The Western Hockey League is a member of the Canadian Hockey League (CHL).

As amateur athletes, Portland Winterhawks players have traditionally been exempted from Oregon's workers' compensation system. ORS 656.027(13) specifically provides that persons declared to be amateur athletes under the rules of the U.S. Olympic Committee or the Canadian Olympic Committee are exempt from workers' compensation



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coverage. Similarly, as amateur athletes, such players have not been considered employees for purposes of Oregon's employment laws.

However, class action lawsuits have commenced in Ontario and Alberta alleging that all CHL players (including Portland Winterhawks/WHL players) should be considered employees. In response, the states of Washington (2015 SB 5893 - Senate vote 47-1 and House vote 91-7) and Michigan, and Canadian provinces of British Columbia, Saskatchewan, Prince Edward Island, New Brunswick, Manitoba, and Nova Scotia have clarified that their respective employment laws/employment standards do not apply to such players. LC 146 would do the same in Oregon.

Last session, the Legislature considered SB 901A which would have taken existing exemption for amateur athletes in ORS 656.027(13) and applied the exemption to other Oregon employment statutes. Although SB 901A received unanimous support in the Senate, Representative Holvey, Chair of the House Business and Labor Committee indicated that he thought the Legislature should take a closer look at how best to deal with the amateur athlete exemption generally. The bill did not make it out of committee on the House side.

During the interim, I met several times with Representative Holvey and his staff. In those meetings Representative Holvey expressed that while he is not concerned about the amateur status of Portland Winterhawks players, he believes the Legislature should add some specific provisions concerning the definition of amateur athletes generally. While I have been working with his office on this, no specific proposal is ready at this time.

Given the need to address this issue specifically for the Portland Winterhawks immediately given the uncertainty that has been created by the litigation in Canada, the plan for the short 2018 Session is for the legislature to consider a "Winterhawks Only" exemption. The language in LC 146 is almost identical to the language adopted by the Washington Legislature in 2015.

Again, as discussed above, the applicable Worker's Compensation statute already has an exemption in ORS 657.027(13) that covers amateur athletes like the Portland Winterhawks. LC 146 proposes to add an express exemption for amateur junior ice hockey players between the ages of 16 and 21 to the Worker's Compensation statute as well as other employment statutes. In practice, this addition will change nothing as far as how the Worker's Compensation statute and other employment statutes are applied.



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I appreciate your consideration of this issue again. Please let me know if you have any questions or concerns.

Very truly yours,

Timothy J. Bernasek

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cc: Cara Filsinger, via email

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