

Responses on HB 4059: Labor requirements: Sub-Contracting

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Q: Do labor requirements apply to subcontracts?

A: Short answer: yes labor requirements would apply to subcontracts.

Currently in statute (ORS 757.306) as adopted in the passage of HB 2021 for projects 10MW and above:

“A person who constructs or repowers a large-scale project sited in this state shall, at the time of contract finalization for development of the project or execution of a contract for delivery of energy from the project, provide a signed attestation or declaration stating to the best of their knowledge and belief, subject to penalty of perjury as described in ORS 162.065, that during all periods of construction all contractors and subcontractors working on the construction or repowering project will:”

Additionally, the -3 amendment add the apprenticeship requirement and good faith offramp would apply for 2MW (and above 3MW for community solar).

Q: For a 2MW to <10MW apprenticeship requirement and “good faith effort” off-ramp: Will a local contractor, who utilizes local workers, be able to construct a 9.9MW project who cannot meet the apprenticeship goal?

A: Short answer yes.

So long as a contractor becomes a registered training agent, all “good faith effort” off ramps apply whether they are successful in employing apprentices on the project. But, again the responsibility lies on the “person” in this case the project developer, owner, or entity submitting the declaration or attestation.

Additionally, it should be noted that current language in the -3 amendment states “*that 15 percent of the total work hours on a given covered project is performed by apprentices in apprenticeable occupations*”, which provides flexibility and equitable distribution for each sub-contractor to meet the overall project goal of 15% workforce hours.

Example A:

- Contractor A: Employs 100* workers with 20% apprenticeship hours
- Contractor B**: Employs 10* workers with 1% apprenticeship hours
- Contractor C**: Employs 10* workers with 1% apprenticeship hours
- Overall project outcome: **All contractors are compliant due to good faith off-ramp!**

*Assumption each worker worked 10hrs

**Contractor B and C submitted good faith documentation

Q: What happens if there is no apprenticeship program in a specific county (i.e Harney County)?

Short Answer: So long as a contractor or subcontractor is a registered training agent and makes a good faith effort outreach (see below for what documentation is required), the off-ramp applies.

A [quick search for Joint apprenticeship training councils](#) for electrical demonstrates a program covering most regions in Eastern and rural Oregon:

- Klamath Basin Inside Electrician JATC (Klamath Falls)
- Area VII Inside Electrical JATC (Bend)
- SW Idaho-Malheur County JATC
- Area IV Inside JATC (Pendleton)
- Ontario JATC (Fruitland)
- Area V Inside Electrical JATC (White City)
- Baker Technical Institute JATC (Baker City)
- NECA-IBEW JATC

We're happy to discuss how rural counties can partner with labor in promoting apprenticeship opportunities in remote parts of the state.

Q: Is there a form to submit a good faith effort to Oregon Department of Energy?

Yes, there is a form. Oregon Department of Energy created a form ([online portal](#)) to assist contractors in submitting their good faith effort documentation that is based on current statute (ORS 757.305) which includes:

(A) Internet addresses of employment advertisements or job announcements;

(B) Dates, times, Internet addresses and attendance lists of a prejob conference with apprenticeship, preapprenticeship and workforce providers in construction;

(C) Contacts requesting workers with an apprenticeship program approved by the Bureau of Labor and Industries including the date, time, telephone contact, email contact and whether a response was provided within 48 hours of the request; and

(D) Contacts requesting workers from a union hall including the date, time, telephone contact, email contact and whether a response was provided within 48 hours of the request;

*Note: -3 amendment adds additional information for contractors submit: "Documentation of job offers and number of job offers made to apprentices"

Is there a risk of a lawsuit from an organization towards a contractor utilizing a good faith effort off-ramp who filled out the form incorrectly?

A: Short answer is no, a person would not be in good legal standing against a contractor.

Again, the person (in this case the project owner or developer) is submitting the signed attestation or declaration and is assuming responsibility in the submission. A claimant would have to prove that a owner or developer knowingly lied in their signed attestation or declaration at time of their submission.

Q: Would a sub-contractor, specifically a sub-hauler, be responsible for prevailing wages or be subject to a Project Labor Agreement?

A: Short answer: It depends. (note: the prevailing wage requirement is currently in statute, and even with the -3amendment, would only apply to 10MW projects and above)

Many in the hauling industry are classified as owners or independent contractors and would not be subject to the prevailing wage requirement. Those who are not owners may also be exempted as suppliers or delivery personnel.

In the event that a hauler– with classified employees, is performing work on the project– it is possible that employees could be subject to the prevailing wage requirement* currently referenced in statute (ORS 757.306) while materials are being hauled at an on-site location.

Here is a [link to the rates](#), however it should be noted that BOLI plays no technical or referee role in providing guidance on implementation.

With respect to the applicability of a project labor agreement, haulers may or may not be subject depending on the terms agreed between the developer and the building trades. For example, the terms of a project labor agreement *could* exempt certain classifications such as haulers, pile drivers, ironworkers, or any other classification.

Additionally, other exemptions could be created related to certain contract sizes, compensation, benefits, etc.

The definition for a project labor agreement in statute (ORS 757.306) again is:

As used in this subsection, “project labor agreement” means a prehire collective bargaining agreement as described in [29 U.S.C. 158 \(f\)](#) that establishes the terms and conditions of employment for a specific construction project or contract. (c) A project labor agreement may include additional provisions that:

(A) Prohibit discrimination based on race, national origin, religion, gender, sexual orientation, political affiliation or membership in a labor organization in hiring and dispatching workers for the project.

(B) Permit qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to a collective bargaining agreement.

(C) Permit and promote qualified business enterprises owned by women, minorities, veterans and disadvantaged individuals without regard to whether the individuals are otherwise parties to a collective bargaining agreement.

(D) Guarantee against work stoppages, strikes, lockouts and similar disruptions of the project

*OAR definition-

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(5) Persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the applicable prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of the public works project.