

SB 426 A STAFF MEASURE SUMMARY

House Committee On Labor and Workplace Standards

Prepared By: Erin Seiler, LPRO Analyst

Meeting Dates: 5/7

WHAT THE MEASURE DOES:

The measure establishes that an owner and the direct contractor that enter into a construction contract are jointly and severally liable in a civil action for unpaid wages to an unrepresented employee of the direct contractor and subcontractor at tier.

Detailed Summary:

Section 2:

Defines terms.

Establishes that an owner and the direct contractor that enter into a construction contract are jointly and severally liable in a civil action for unpaid wages. Including fringe benefit contributions, and penalties, to an unrepresented employee of the direct contractor and subcontractor at tier.

Permits an unrepresented employee, authorized third party representative, or Attorney General to bring a civil action against an owner, direct contractor, or subcontractor for unpaid wages, including fringe benefits, interest and penalty wages, damages, attorney fees and costs.

Requires a person to send written notice of alleged violation by first-class certified mail to the owner or direct contractor prior to commencing to a civil action. Notice must identify the alleged violation and nature of the claim and state that the owner or direct contractor has 21 calendar days from delivery date to cure violations.

Establishes 2-year statute of limitations for commencing civil action for unpaid wages or fringe benefits.

Invalidates any agreement to waive, release, or indemnify an owner or direct contractor from liability.

Prohibits an owner or direct contractor from claiming that a person is an independent contractor unless the person qualifies as an independent contractor under ORS 670.600. Establishes a rebuttable presumption that person performing work within the scope of the construction contract is an employee.

Permits owner or direct contractor to bring a civil action against a subcontractor for recovery of actual and liquidated damages for amount paid for unpaid wages, including fringe benefits, interest and penalty wages, damages, attorney fees and costs.

Permits owner to bring a civil action against a direct contractor for recovery of actual and liquidated damages for amount paid for unpaid wages, including fringe benefits, interest and penalty wages, damages, attorney fees and costs.

Section 3:

Requires subcontractor to provide the following records and information to the owner and direct contractor, upon request.:

SB 426 A STAFF MEASURE SUMMARY

- Certified payroll records, with minimum information to determine whether subcontractor has paid wages in full;
- Name, address, and phone number of subcontractor;
- Names and worker classification of all workers on a construction project;
- Name of subcontractor that the first tier subcontractors contracts;
- Anticipated contract start date and duration; and
- Affidavit that attests to whether the subcontractor or its current principals have participated in any civil, administrative, or criminal proceeding related to payment of wages.

Requires a subcontractor provide the information to an authorized third-party representative acting on behalf of an employee including the disclosure of an employees personnel records.

Permits owner or direct contractor to withhold payment to subcontractor for failure to comply with request for records or if contractor has paid wages on behalf of subcontractor.

Applies to labor performed by workers on projects on or after January 1, 2026.

Fiscal impact: Fiscal impact issued

Revenue impact: No revenue impact

Senate vote: 18-11-1

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Wage theft is term used to describe a range of situations in which an employer fails to pay an employee, and it can take many forms – from employers paying employees less than the minimum wage or failing to pay overtime to withholding tips, not providing employees with their final paycheck, or requiring employees to work off the clock.

Any worker who has experienced wage theft may take civil action against an employer or file a wage claim with the Bureau of Labor and Industries (BOLI) alleging their employer has not fully paid wages due the worker. When a wage claim is filed by a worker, the wages owed are assigned to that worker, then BOLI can investigate, act to resolve the dispute, or take action through administrative proceedings or through court proceedings. Even when a judgment is made against the employer, the worker is not always successful in collecting the unpaid wages from the employer. Beginning June 23, 2021, a worker who had obtained a judgment or final order against an employer for unpaid wages from BOLI could be paid the wages due from the Wage Security Fund. BOLI would then pursue collection of the wages from the employer.