

SB 426 A -A14, -A15, -A18, -A19, -A20, -A21, -A22, -A23, -A24

STAFF MEASURE SUMMARY

House Committee On Labor and Workplace Standards

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Meeting Dates: 5/7, 5/19

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.:

- 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:

- Wage theft in the construction industry
- Limitations of wage claim process at the Bureau of Labor and Industries
- Liability of owner for unpaid wages for construction contracts on owner's principal dwelling
- Contruction labor contractors
- Reduction in opportunities for new and emerging contracting businesses
- Ability of general contractor to regulate subcontractor
- Activities in the construction sector that impact wage theft
- Ability to "cure" unpaid wages by owner or direct contractor

EFFECT OF AMENDMENT:

-A14 Replaces the measure.

Establishes that a direct contractor that enters into a construction contract is 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.

Removes provision related to ability to claim a person is an independent contractor and rebuttable presumption that person performing work within the scope of the construction contract is an employee.

-A15 Amends definition of "Authorized third party representative". It means a third party, other than a labor organization, that is authorized by the unrepresented employee to assert the rights of the unrepresented employee. It includes an attorney, family member, or designated representative, with whom the unrepresented employee has entered into an agreement to assist the employee in recovering unpaid wages.

Removes penalty wages as type of unpaid wage that an owner or direct contractor would be liable for.

-A18 Replaces the measure.

Requires the Construction Contractors Board to enter into an interagency agreement with the Bureau of Labor and Industries (BOLI) to assist in the enforcement of construction labor contractors licensed by BOLI, who fail to

pay wages. Specifies provisions of the interagency agreement

-A19 Replaces the measure.

Requires the Department of Justice (DOJ), in conjunction with an advisory committee of the DOJ Crime Victim and Survivor Services Division, to study relationship between unpaid wages and human trafficking in Oregon. Requires DOJ to submit a report by September 15, 2026 to interim committees on Judiciary.

-A20 Prohibits a civil action from being brought against an owner or direct contractor if the employee and employer have entered into a written agreement that:

- Provides for arbitration of unpaid wage claims;
- Provides for attorney fees and arbitration costs for the prevailing party;
- Requires employee request arbitration within 15 days after the claim for unpaid wages arises;
- Provides employer 12 days to respond to arbitration request; and
- Provides for prompt arbitration proceedings.

-A21 Amends the definition of “direct contractor”.

Clarifies definition of an “unrepresented employee”. An unrepresented employee can be an employee of a direct contractor or subcontractor:

- not represented by a construction trade labor organization that has established itself or its affiliates as the collective bargaining representative for persons performing work on a project; *or*
- an employee not covered by a collective bargaining agreement that contains a grievance procedure that results in a final and binding decision and provides a mechanism for recovering unpaid wages and fringe benefit contributions on behalf of the employees covered by the agreement.

The provisions regarding joint and severally liability for any unpaid wages to an unrepresented employee of any direct contractor and subcontractor for labor performed within the scope of a construction contract, do not apply to the construction, reconstruction, alteration, maintenance, moving or demolition of any building, structure or improvement, or to the excavation or other development of or improvement to land, that relates to real property used as the owner’s principal residence or to other residential property maintained primarily for the owner’s personal use, including property that the owner can claim the homestead exemption.

-A22 Amends the definition of “direct contractor”.

Clarifies definition of an “unrepresented employee”. An unrepresented employee can be an employee of a direct contractor or subcontractor:

- not represented by a construction trade labor organization that has established itself or its affiliates as the collective bargaining representative for persons performing work on a project; *or*
- an employee not covered by a collective bargaining agreement that contains a grievance procedure that results in a final and binding decision and provides a mechanism for recovering unpaid wages and fringe benefit contributions on behalf of the employees covered by the agreement.

The provisions regarding joint and severally liability for any unpaid wages to an unrepresented employee of any direct contractor and subcontractor for labor performed within the scope of a construction contract, do not apply to the construction, reconstruction, alteration, maintenance, moving or demolition of any building, structure or improvement, or to the excavation or other development of or improvement to land, that relates to real property used as the owner’s principal residence or to real property consisting of five or fewer residential or commercial units on a single tract, as defined in ORS 215.010

-A23 Invalidates any agreement by an unrepresented employee or an authorized third party representative to waive, release, or indemnify an owner or direct contractor from liability.

-A24 Replaces the measure.

Removes definition of “owner”.

Amends definition of “direct contractor” to remove reference to owner for whom a direct contractor can enter into a construction contract.

Amends definition of “subcontractor” to remove reference to owner for whom a direct contractor can enter into a construction contract.

Establishes that a direct contractor that enters into a construction contract is 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.

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.