

SB 426 B STAFF MEASURE SUMMARY**Carrier:** Rep. Fragala**House Committee On Labor and Workplace Standards****Action Date:** 05/19/25**Action:** Do pass with amendments. (Printed B-Eng.)**Vote:** 4-3-0-0**Yeas:** 4 - Fragala, Grayber, Munoz, Nelson**Nays:** 3 - Boshart Davis, Elmer, Scharf**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Erin Seiler, LPRO Analyst**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. Amends definition of "direct contractor." Clarifies definition of "unrepresented employee."

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.

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

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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.

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 and in the amount that the owner or direct contractor has paid, on behalf of the subcontractor, in wages owed to the employees of the subcontractor.

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

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
- Construction labor contractors
- Reduction in opportunities for new and emerging contracting businesses
- Ability of a general contractor to regulate a subcontractor
- Illegal activities in the construction sector that contribute to the occurrences of unpaid wages
- Ability to "cure" unpaid wages by owner or direct contractor
- Application to nonprofits
- Indemnification provisions
- Arbitration as a tool to resolve unpaid wage claim

EFFECT OF AMENDMENT:

The amendment modifies the definition of "direct contractor".

The amendment 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

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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.

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.