

SB 426 B STAFF MEASURE SUMMARY**Carrier:** Rep. Elmer**House Committee On Labor and Workplace Standards****Minority Report****Action Date:** 05/19/25**Action:** Do pass with different amendments to the A-Eng bill. (Printed B-Eng.) Minority**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Report Signers:** Rep. Boshart Davis, Rep. Elmer**Prepared By:** Erin Seiler, LPRO Analyst**Meeting Dates:** 5/7, 5/19**WHAT THE MEASURE DOES:**

The measure establishes that a direct contractor that enters into a construction contract with a subcontractor is jointly and severally liable with the subcontractor in a civil action for unpaid wages, including fringe benefit contributions, owed to an unrepresented employee of the subcontractor at any tier.

Detailed SummarySection 2:

Defines terms.

Establishes that a direct contractor that enters into a construction contract with a subcontractor is jointly and severally liable with the subcontractor in a civil action for unpaid wages, including fringe benefit contributions, owed to an unrepresented employee of the subcontractor at any tier.

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

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

Prohibits a civil action from being commenced:

- Until after 21 calendar days' notice has expired.
- If direct contractor has cured the alleged violation within the 21 calendar days.
- 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 an employer 12 days to respond to arbitration request; and
 - provides for prompt arbitration proceedings.

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

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

Prohibits a 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.

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Permits a 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, damages, attorney fees, and costs.

Section 3:

Requires subcontractor to provide the following records and information to the 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 direct contractor to withhold payment to subcontractor for failure to comply with request for records and in the amount that the direct contractor has paid, on behalf of the subcontractor, in wages owed to the employees of the subcontractor.

Section 4:

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.

Section 5:

Requires the Oregon 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.

Section 6:

Repeals the study required by DOJ on January 2, 2027.

Section 7:

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:

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Replaces the measure.

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, after which 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. Currently, 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.