

Corrected

**SB 426 A STAFF MEASURE SUMMARY**

Carrier: Sen. Prozanski

**Senate Committee On Judiciary****Action Date:** 03/26/25**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 4-2-0-0**Yeas:** 4 - Broadman, Gelser Blouin, Manning Jr, Prozanski**Nays:** 2 - McLane, Thatcher**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** Kris Kolta, LPRO Analyst**Meeting Dates:** 2/26, 3/26**WHAT THE MEASURE DOES:**

This measure makes a property owner and their general or direct contractor jointly and severally liable for designated construction workers' unpaid wages, and it authorizes those workers to file a civil action to recover the wages.

Detailed Summary:**Defines key terms and parties****NOTE: 5/13/25 - SMS corrected as to the definition of "owner" and "direct contractor."**

- "Owner" – a person or entity with an ownership interest in land or real estate that is being developed or constructed. An owner is not a financial institution or public agency as defined by ORS 279C.800.
- "Direct contractor" –
  - A person, construction manager, or joint venture - such as a general contractor - that enters into a construction contract with an owner, or
  - An owner that enters into a construction contract with more than one contractor or subcontractor, if the contract relates to real property other than property for which the owner could claim the homestead exemption or is otherwise used as the owner's principal dwelling.
- "Subcontractor" – a person with an implied or express contract to perform work within the scope of a direct contractor's contract with an owner.
- "Unrepresented employee" – a direct contractor's or subcontractor's employee who is not represented by a labor union and nor subject to a collective bargaining agreement.

**Authorizes unpaid workers to file civil action against owner and direct contractor**

- Renders the owner and direct contractor jointly and severally liable for the unrepresented employee's unpaid wages, benefits, and penalty wages.
- Authorizes an unrepresented employee, their representative, or the Attorney General via assignment to file a civil action against a project owner, the direct contractor, and any subcontractors to recover unpaid wages and resulting damages, including interest, penalty wages, attorney fees, and costs.
- Requires notice of an alleged violation via certified mail and provides the owner or direct contractor with a 21-day right to cure.
- Sets a two-year statute of limitations from the time such unpaid wages became due.
- Invalidates any agreement to waive, release, or indemnify an owner or direct contractor.

**Sets out rights and defenses of an owner and direct contractor**

- Places the burden on an owner or direct contractor to establish the defense against liability that a construction worker is an independent contractor as opposed to an employee.

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- Reserves for the owner all rights against direct contractors and subcontractors, and reserves the direct contractors' rights against subcontractors.
- Allows an owner or direct contractor to withhold subcontractor payment to the extent the owner or direct contractor has directly paid the subcontractors' employees.

### **Creates subcontractor disclosure requirements.**

- Requires subcontractors to disclose to an owner or direct contractor, upon request, certified payroll records, relevant contact information, a list of worker names and status as an employee or independent contractor, the start and end date of the construction contract, and an affidavit as to any legal violations for unpaid wages over the prior five-year period.
- Authorizes an owner and direct contractor to withhold payment to a subcontractor only if the subcontractor, upon receiving a request, fails to make the above-listed disclosures, or to the extent the owner or director contractor has paid wages owed by the subcontractor to the subcontractor's employees.

### **Protects workers' personal information**

- Prohibits contractors from disclosing personally identifying information except as necessary to comply with federal or state law.

### **Applicability clause**

- Applies law to labor performed on or after the measure's effective date.

## **ISSUES DISCUSSED:**

- Discrimination against marginalized workers
- Lack of recourse to recover unpaid wages
- Resulting increase in construction and insurance costs
- Undocumented workers
- Housing shortage
- Banks and lenders as potential "owners"

## **EFFECT OF AMENDMENT:**

The amendment clarifies various provisions of the measure.

### Detailed Summary:

- Exempts financial institutions from the definition of "owner" and properties used as the owner's primary home.
- Defines the term "fringe benefit contributions."
- Clarifies the Attorney General may bring a civil action via assignment rather than directly on behalf of an unrepresented employee.
- Requires notices to be sent by certified mail and provides the owner or direct contractor with a three-week right to cure alleged violations.
- Sets a two-year statute of limitations.
- Clarifies that an owner or direct contractor, as a defense against liability, bears the burden of establishing a construction worker is an independent contractor as opposed to an employee.
- Clarifies that the owner retains all rights against direct contractors and subcontractors and that a direct contractor retains all rights against subcontractors.
- Tailors subcontractors' disclosure requirement.
- Clarifies that an owner or direct contractor may only withhold subcontractor payment to the extent they have directly paid the subcontractors' employees.

## **BACKGROUND:**

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Construction workers have no private right of action to collect unpaid wages, but they can file a claim with the Bureau of Labor and Industry (BOLI). BOLI may pursue an investigation, lawsuit, or administrative claim on behalf of the construction worker. ORS 652.330. BOLI may also pay the unpaid wages through the Wage Security Fund and pursue reimbursement from the associated employer. ORS 652.414. However, BOLI has a significant [backlog](#) for wage claims, and has implemented triage criteria, including limiting its investigations to persons making under \$25.34 per hour. (<https://www.oregon.gov/boli/about/Pages/Claim-and-Complaint-Triage.aspx>)

Pursuant to ORS 652.150, construction workers are entitled to recover what are known as penalty wages when an employer willfully fails to pay wages. Penalty wages are assessed at a worker's standard hourly rate, eight hours per day for up to 30 days.

California has enacted legislation similar to this bill. Ca. Code LAB 218.7, 218.8.