

B-Engrossed

Senate Bill 426

Ordered by the House May 23
Including Senate Amendments dated April 2 and House Amendments
dated May 23

Sponsored by Senator PROZANSKI, Representative FRAGALA, Senator MANNING JR, Representative VALDERRAMA; Senators GOLDEN, MEEK, PATTERSON, PHAM K, REYNOLDS, Representatives ANDERSEN, CHAICHI, CHOTZEN, GRAYBER, HUDSON, MUNOZ, NELSON, RUIZ, SMITH G (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act makes laws about unpaid wages for workers who work on construction projects. (Flesch Readability Score: 65.7).

Makes an owner and a direct contractor jointly and severally liable in a civil action for any unpaid wages owed to the unrepresented employees of the direct contractor and subcontractors at any tier. Provides the statute of limitations for actions regarding recovery for unpaid wages. **Specifies that the joint and several liability provisions for unpaid wages do not apply to construction work relating to real property that is used as the owner's principal residence or real property with five or fewer residential or commercial units on a single tract.**

Clarifies that the Attorney General may accept the assignment of claims and bring civil actions in the name of the State of Oregon on such claims. Permits the Attorney General to adopt rules regarding the assignment of claims.

Requires notice to be sent by certified mail that informs the owner and the direct contractor of the alleged violation and specifies the time period within which the owner and the direct contractor may correct the alleged violation.

Creates a rebuttable presumption that, in any action for unpaid wages, the person performing labor on a construction project is an employee. Provides that the party claiming otherwise may rebut the presumption by establishing that the person qualifies as an independent contractor.

Provides that an owner may bring an action against a direct contractor to recover damages for amounts paid by the owner.

Requires subcontractors to provide certain payroll records and other information to the owner or the direct contractor, upon request. Provides that subcontractors shall provide certain payroll records to an authorized third party representative in certain circumstances. Permits the owner and the direct contractor to withhold payment to a subcontractor in certain circumstances. Clarifies that the owner or direct contractor may withhold payment in an amount and to the extent that the owner or direct contractor paid, on behalf of the subcontractor, wages owed to the subcontractor's employees.

A BILL FOR AN ACT

Relating to wages.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2025 Act are added to and made a part of ORS chapter 652.

SECTION 2. (1) As used in this section and section 3 of this 2025 Act:

(a) "Authorized third party representative" means a third party that is authorized by an unrepresented employee to assert the rights of the unrepresented employee.

(b) "Construction contract" means an express or implied agreement:

(A) For the construction, reconstruction, alteration, maintenance, moving or demolition of any building, structure or improvement.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **(B) Relating to the excavation of or other development of or improvement to land.**

2 **(c) “Construction trade labor organization” means a bona fide labor organization that**
3 **represents employees in the building and construction trades.**

4 **(d) “Direct contractor” means any person, including a construction manager, joint ven-**
5 **ture or any combination thereof, the person’s successors, heirs or assigns, that enters into**
6 **a construction contract with an owner.**

7 **(e) “Fringe benefit contributions” means the amount of compensation that accompanies**
8 **or is in addition to an employee’s regular salary or wages, including, but not limited to,**
9 **payments made to profit-sharing plans, retirement or pension plans, medical insurance,**
10 **severance pay or holiday, vacation or sick leave plans, but does not include the benefit pay-**
11 **ments from such plans.**

12 **(f) “Labor organization” means an organization, agency or an employee representation**
13 **committee or plan, in which employees participate and which exists, in whole or in part, for**
14 **the purpose of dealing with employers concerning grievances, labor disputes, wages, rates**
15 **of pay, hours of employment or work conditions.**

16 **(g)(A) “Owner” means any person, firm, partnership, corporation, association, company,**
17 **organization or other entity, or any combination thereof, with an ownership interest,**
18 **whether the interest or estate is in fee, as vendee under a contract to purchase, as lessee**
19 **or another interest or estate less than fee that causes:**

20 **(i) A building, structure or improvement, new or existing, to be constructed, recon-**
21 **structed, erected, altered, remodeled, repaired, maintained, moved or demolished; or**

22 **(ii) Land to be excavated or otherwise developed or improved.**

23 **(B) “Owner” does not mean:**

24 **(i) A public agency, as defined in ORS 279C.800; or**

25 **(ii) A financial institution that acquires ownership of a property through foreclosure or**
26 **a deed in lieu of foreclosure, provided that the financial institution does not undertake,**
27 **contract for or direct construction work beyond activities necessary to preserve or secure**
28 **the property.**

29 **(h) “Subcontractor” means any person that may or may not have direct privity with a**
30 **direct contractor but that is a party to an express or implied contract with a direct con-**
31 **tractor or with a direct contractor’s subcontractors at any tier to perform any portion of**
32 **work within the scope of the direct contractor’s construction contract with an owner.**

33 **(i) “Unrepresented employee” means an employee of a direct contractor or subcontractor**
34 **who is:**

35 **(A) Not represented by a construction trade labor organization that has established itself**
36 **or its affiliates as the collective bargaining representative for persons performing work on**
37 **a project; or**

38 **(B) Not covered by a collective bargaining agreement that:**

39 **(i) Contains a grievance procedure that results in a final and binding decision; and**

40 **(ii) Provides a mechanism for recovering unpaid wages and fringe benefit contributions**
41 **on behalf of the employees covered by the agreement.**

42 **(2) An owner that enters into a construction contract with a direct contractor shall be**
43 **jointly and severally liable with the direct contractor for any unpaid wages, including fringe**
44 **benefit contributions and penalties, owed to any unrepresented employee of the direct con-**
45 **tractor and any unrepresented employee of a subcontractor at any tier for labor performed**

on a project within the scope of the construction contract.

(3)(a) Any of the following persons may bring a civil action against an owner, a direct contractor or a subcontractor in any court of competent jurisdiction to recover unpaid wages, including fringe benefit contributions, interest and penalty wages, damages, attorney fees and costs incurred in connection with the action:

(A) An unrepresented employee.

(B) An authorized third party representative.

(b) Notwithstanding ORS chapter 180, the Attorney General may accept the assignment of claims under this subsection, bring civil actions in the name of the State of Oregon on assigned claims and recover costs as provided in this section. The Attorney General may adopt rules to implement this paragraph.

(c)(A) Prior to commencing a civil action against an owner or a direct contractor under this subsection, a person must send written notice of the alleged violation by first-class certified mail to the owner and direct contractor that sets forth the alleged violation and the nature of the claim and states that the owner and the direct contractor have 21 calendar days from the certified delivery date to correct the alleged violation. Such notice does not operate to limit the liability of the owner or direct contractor or preclude a person from subsequently amending a complaint after the action is commenced to include additional parties to the action.

(B) A civil action may not be:

(i) Initiated until after the time period under subparagraph (A) of this paragraph has expired.

(ii) Brought against an owner or a direct contractor if the owner or direct contractor has corrected the alleged violation within the specified time period under subparagraph (A) of this paragraph.

(d) A civil action under this subsection to recover unpaid wages must be commenced within two years from the date on which the wages and fringe benefit contributions became due.

(4) Any agreement to waive or release an owner or direct contractor or to indemnify an owner or direct contractor for liability assigned under this section is invalid.

(5)(a) An owner or direct contractor may not avoid liability under this section by claiming that a person performing labor on a project within the scope of a construction contract is an independent contractor rather than an employee of a direct contractor or subcontractor unless the person qualifies as an independent contractor under ORS 670.600.

(b) In any action brought under this section, there shall be a rebuttable presumption that a person performing labor on a project within the scope of a construction contract is an employee. The party claiming otherwise may rebut the presumption by establishing that the person qualifies as an independent contractor under ORS 670.600.

(6) Nothing in this section impairs:

(a) The right of an owner or direct contractor to bring an action against a subcontractor to seek recovery of actual and liquidated damages for the amounts paid by the owner or direct contractor for unpaid wages, including fringe benefit contributions, interest and penalty wages, damages, attorney fees and incurred costs associated with an action brought under this section.

(b) The right of an owner to bring an action against a direct contractor to seek recovery

of actual and liquidated damages for the amounts paid by the owner for unpaid wages, including fringe benefit contributions, interest and penalty wages, damages, attorney fees and incurred costs associated with an action brought under this section.

(7) This section does 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 that is 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.

(8) Nothing in this section is intended to diminish the rights, privileges or remedies of an employee under a collective bargaining agreement.

(9) The Commissioner of the Bureau of Labor and Industries may adopt any rules necessary to implement the provisions of this section.

SECTION 3. (1) Any subcontractor with which a direct contractor has entered into a contract to perform a portion of a construction project within the scope of a construction contract between the direct contractor and an owner shall provide the following records to the direct contractor and the owner, upon the request, respectively, of the direct contractor or the owner:

(a) Certified payroll reports, that, at a minimum, include sufficient information for the direct contractor to determine whether a subcontractor has paid in full all wages earned by unrepresented employees who performed work on the project as part of the employees' total compensation.

(b) The name, address and phone number of a contact for the subcontractor.

(c) The names of all workers who performed work on the construction project and notation of whether each worker is paid or classified as an employee or independent contractor.

(d) The name of any subcontractor with which the first-tier subcontractor contracts.

(e) The anticipated contract start date and scheduled duration of work.

(f) An affidavit that attests to whether the subcontractor or any of the subcontractor's current principals have, within the preceding five years, participated in any civil, administrative or criminal proceeding involving a violation of any law providing for payment of wages or imposing a criminal penalty for the violation and the outcome of the proceeding, including damages, fees or penalty amounts paid to workers or a government agency, if any.

(2) A subcontractor shall provide the records described in subsection (1) of this section to an authorized third party representative only to the extent that the information contained in the records pertains specifically to the employee on whose behalf the authorized third party representative is acting and to whatever extent that the subcontractor would be lawfully required to disclose such records to the employee if the employee was acting on the employee's own behalf under ORS 652.750.

(3) A subcontractor's failure to comply with subsection (1) of this section does not relieve an owner or a direct contractor of the liability prescribed by section 2 of this 2025 Act.

(4) Nothing in this section shall alter an owner's or a direct contractor's obligation to timely pay a subcontractor under ORS chapter 701, except that an owner and a direct contractor may withhold payment to a subcontractor:

(a)(A) Because of the subcontractor's failure to comply with the request for records under subsection (1) of this section; and

(B) In an amount and to the extent that the owner or direct contractor has paid, on be-

1 half of the subcontractor, wages owed to the employees of the subcontractor; or

2 (b) In an amount and to the extent that the owner or direct contractor has paid, on be-
3 half of the subcontractor, wages owed to the employees of the subcontractor.

4 (5) A direct contractor or subcontractor may not disclose personally identifying infor-
5 mation about workers who perform work on a construction project except to the extent
6 necessary to comply with federal or state laws.

7 (6) As used in this section, “principal” means a person, including an owner or a direct
8 contractor, that commissions a construction project and that is responsible for the project’s
9 scope, standards and objectives.

10 SECTION 4. Sections 2 and 3 of this 2025 Act apply to labor performed by workers on a
11 project for a direct contractor or subcontractor on or after the effective date of this 2025
12 Act.