

Minority Report

B-Engrossed

Senate Bill 426

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

Sponsored by nonconcurring members of the House Committee on Labor and Workplace Standards: Representatives
BOSHART DAVIS, ELMER

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.

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.

Provides that a civil action may not be brought against a direct contractor if the person claiming unpaid wages and their employer have entered into a written agreement that requires timely arbitration for the recovery of unpaid wages.

Provides that agreements under which an unrepresented employee or an authorized third party representative of the employee waives, releases or indemnifies a director contractor from liability are invalid.

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*] a **direct contractor** may bring an action against a [*direct contractor*] **subcontractor** to recover damages for amounts paid by the [*owner*] **direct contractor**.

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.

Requires the Construction Contractors Board and the Bureau of Labor and Industries to enter into an interagency agreement to assist with enforcement activities relating to licensed construction labor contractors who fail to pay wages to workers.

Directs the Department of Justice, in conjunction with an advisory committee of the Department of Justice Crime Victim and Survivor Services Division, to study the extent to which unpaid wages may be connected to human trafficking in this state. Requires the department to report the findings of the study to the Legislative Assembly no later than September 15, 2026.

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

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.

chapter 652.

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

(a)(A) “Authorized third party representative” means a third party, other than a labor organization, that is authorized by an unrepresented employee to assert the rights of the unrepresented employee.

(B) “Authorized third party representative” includes a person, such as an attorney, family member or designated representative, with whom the unrepresented employee has entered into an agreement to assist the unrepresented employee in recovering unpaid wages.

(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.

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

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

(d) “Direct contractor” means any person, including a construction manager, joint venture or any combination thereof, the person’s successors, heirs or assigns, that enters into a construction contract with one or more contractors or subcontractors.

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

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

(g) “Subcontractor” means any person that may or may not have direct privity with a direct contractor but that is a party to an express or implied contract with a direct contractor or with a direct contractor’s subcontractors at any tier to perform any portion of work within the scope of the direct contractor’s construction contract.

(h) “Unrepresented employee” means an employee of a direct contractor or subcontractor who is:

(A) 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; and

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

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

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

(2) A direct contractor that enters into a construction contract with a subcontractor shall be jointly and severally liable with the subcontractor for any unpaid wages, including fringe benefit contributions, owed to any unrepresented employee of the 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 a direct contractor or a subcontractor in any court of competent jurisdiction to recover unpaid wages, including

1 fringe benefit contributions, interest, damages, attorney fees and costs incurred in con-
 2 nection with the action:

3 (A) An unrepresented employee.

4 (B) An authorized third party representative.

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

9 (c)(A) Prior to commencing a civil action against a direct contractor under this sub-
 10 section, a person must send written notice of the alleged violation by first-class certified
 11 mail to the direct contractor that sets forth the alleged violation and the nature of the claim
 12 and states that the direct contractor has 21 calendar days from the certified delivery date
 13 to correct the alleged violation. Such notice does not operate to limit the liability of the di-
 14 rect contractor or preclude a person from subsequently amending a complaint after the
 15 action is commenced to include additional parties to the action.

16 (B) A civil action may not be:

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

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

21 (iii) Brought against a direct contractor if the person claiming unpaid wages and the
 22 person's employer have entered into a written agreement that:

23 (I) Provides for arbitration of claims to recover unpaid wages;

24 (II) Provides for the prevailing party to be awarded attorney fees and costs in the arbi-
 25 tration proceeding;

26 (III) Requires the person claiming unpaid wages to request arbitration within 15 days
 27 after the claim for unpaid wages arises;

28 (IV) Allows the employer 12 days to respond to the request for arbitration; and

29 (V) Provides for the arbitration proceeding to occur promptly after the employer re-
 30 sponds to the request for arbitration.

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

34 (4) Any agreement by an unrepresented employee or an authorized third party repre-
 35 sentative to waive or release a direct contractor or to indemnify a direct contractor for li-
 36 ability assigned under this section is invalid.

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

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

45 (6) Nothing in this section impairs the right of a direct contractor to bring an action

1 against a subcontractor to seek recovery of actual and liquidated damages for the amounts
2 paid by the direct contractor for unpaid wages, including fringe benefit contributions, inter-
3 est, damages, attorney fees and incurred costs associated with an action brought under this
4 section.

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

7 (8) The Commissioner of the Bureau of Labor and Industries may adopt any rules nec-
8 essary to implement the provisions of this section.

9 **SECTION 3.** (1) Any subcontractor with which a direct contractor has entered into a
10 contract to perform a portion of a construction project shall provide the following records
11 to the direct contractor upon the request of the direct contractor:

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

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

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

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

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

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

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

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

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

37 (a)(A) Because of the subcontractor's failure to comply with the request for records un-
38 der subsection (1) of this section; and

39 (B) In an amount and to the extent that the direct contractor has paid, on behalf of the
40 subcontractor, wages owed to the employees of the subcontractor; or

41 (b) In an amount and to the extent that the direct contractor has paid, on behalf of the
42 subcontractor, wages owed to the employees of the subcontractor.

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

1 (6) As used in this section, “principal” means a person, including a direct contractor, that
2 commissions a construction project and that is responsible for the project’s scope, standards
3 and objectives.

4 **SECTION 4.** (1) The Construction Contractors Board shall enter into an interagency
5 agreement with the Bureau of Labor and Industries for the purpose of assisting with
6 enforcement activities relating to construction labor contractors licensed under ORS 658.405
7 to 658.511 who fail to pay wages to workers.

8 (2) The interagency agreement under this section shall include, at a minimum, provisions
9 for:

10 (a) Good faith collaboration between the board and the bureau to enable the board and
11 the bureau to carry out their respective duties under the law or under the agreement; and

12 (b) The sharing of information pertaining to violations of state laws related to wages,
13 hours, terms and conditions of employment.

14 **SECTION 5.** (1) The Department of Justice, in conjunction with an advisory committee
15 of the Department of Justice Crime Victim and Survivor Services Division, shall study the
16 extent to which unpaid wages may be connected to human trafficking in this state.

17 (2) No later than September 15, 2026, the department shall report its findings from the
18 study conducted under this section, in the manner provided in ORS 192.245, to the interim
19 committees of the Legislative Assembly related to the judiciary.

20 **SECTION 6.** Section 5 of this 2025 Act is repealed on January 2, 2027.

21 **SECTION 7.** Sections 2 and 3 of this 2025 Act apply to labor performed by workers on a
22 project for a direct contractor or subcontractor on or after the effective date of this 2025
23 Act.
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