

SB 426-A24  
(LC 2023)  
5/19/25 (JAS/ps)

Requested by Representative ELMER

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 426**

On page 1 of the printed A-engrossed bill, delete lines 6 through 14 and delete pages 2 through 5 and insert:

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

**“(a) ‘Authorized third party representative’ means a third party with which an unrepresented employee has initiated contact and which has been authorized 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.**

**“(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.**

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

7       “(f) ‘Labor organization’ means an organization, agency or an em-  
8       ployee representation committee or plan, in which employees partic-  
9       ipate and which exists, in whole or in part, for the purpose of dealing  
10      with employers concerning grievances, labor disputes, wages, rates of  
11      pay, hours of employment or work conditions.

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

17      “(h) ‘Unrepresented employee’ means an employee of a direct con-  
18      tractor or subcontractor who is:

19      “(A) Not represented by a construction trade labor organization  
20      that has established itself or its affiliates as the collective bargaining  
21      representative for persons performing work on a project; and

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

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

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

28      “(2) A direct contractor that enters into a construction contract  
29      with a subcontractor shall be jointly and severally liable with the  
30      subcontractor for any unpaid wages, including fringe benefit contri-

1 butions and penalties, owed to any unrepresented employee of the  
2 subcontractor at any tier for labor performed on a project within the  
3 scope of the construction contract.

4 “(3)(a) Any of the following persons may bring a civil action against  
5 a direct contractor or a subcontractor in any court of competent ju-  
6 risdiction to recover unpaid wages, including fringe benefit contribu-  
7 tions, interest and penalty wages, damages, attorney fees and costs  
8 incurred in connection with the action:

9 “(A) An unrepresented employee.

10 “(B) An authorized third party representative.

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

16 “(c)(A) Prior to commencing a civil action against a direct con-  
17 tractor under this subsection, a person must send written notice of the  
18 alleged violation by first-class certified mail to the direct contractor  
19 that sets forth the alleged violation and the nature of the claim and  
20 states that the direct contractor has 21 calendar days from the certi-  
21 fied delivery date to correct the alleged violation. Such notice does not  
22 operate to limit the liability of the direct contractor or preclude a  
23 person from subsequently amending a complaint after the action is  
24 commenced to include additional parties to the action.

25 “(B) A civil action may not be:

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

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

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

4       “(4) Any agreement to waive or release a direct contractor or to  
5 indemnify a direct contractor for liability assigned under this section  
6 is invalid.

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

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

17       “(6) Nothing in this section impairs the right of a direct contractor  
18 to bring an action against a subcontractor to seek recovery of actual  
19 and liquidated damages for the amounts paid by the direct contractor  
20 for unpaid wages, including fringe benefit contributions, interest and  
21 penalty wages, damages, attorney fees and incurred costs associated  
22 with an action brought under this section.

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

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

28       “SECTION 3. (1) Any subcontractor with which a direct contractor  
29 has entered into a contract to perform a portion of a construction  
30 project shall provide the following records to the direct contractor

1 upon the request of the direct contractor:

2 “(a) Certified payroll reports, that, at a minimum, include sufficient  
3 information for the direct contractor to determine whether a subcon-  
4 tractor has paid in full all wages earned by unrepresented employees  
5 who performed work on the project as part of the employees’ total  
6 compensation.

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

9 “(c) The names of all workers who performed work on the con-  
10 struction project and notation of whether each worker is paid or  
11 classified as an employee or independent contractor.

12 “(d) The name of any subcontractor with which the first-tier sub-  
13 contractor contracts.

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

16 “(f) An affidavit that attests to whether the subcontractor or any  
17 of the subcontractor’s current principals have, within the preceding  
18 five years, participated in any civil, administrative or criminal pro-  
19 ceeding involving a violation of any law providing for payment of  
20 wages or imposing a criminal penalty for the violation and the out-  
21 come of the proceeding, including damages, fees or penalty amounts  
22 paid to workers or a government agency, if any.

23 “(2) A subcontractor shall provide the records described in sub-  
24 section (1) of this section to an authorized third party representative  
25 only to the extent that the information contained in the records per-  
26 tains specifically to the employee on whose behalf the authorized third  
27 party representative is acting and to whatever extent that the sub-  
28 contractor would be lawfully required to disclose such records to the  
29 employee if the employee was acting on the employee’s own behalf  
30 under ORS 652.750.

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

4       “(4) Nothing in this section shall alter a direct contractor’s obli-  
5 gation to timely pay a subcontractor under ORS chapter 701, except  
6 that a direct contractor may withhold payment to a subcontractor:

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

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

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

15       “(5) A direct contractor or subcontractor may not disclose per-  
16 sonally identifying information about workers who perform work on  
17 a construction project except to the extent necessary to comply with  
18 federal or state laws.

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

22       “SECTION 4. Sections 2 and 3 of this 2025 Act apply to labor per-  
23 formed by workers on a project for a direct contractor or subcontrac-  
24 tor on or after the effective date of this 2025 Act.”.