

# House Bill 3319

Sponsored by COMMITTEE ON JUDICIARY (at the request of City of Salem)

## 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 **as introduced**.

Entitles prevailing party in certain wage claim cases to recover attorney fees. Removes prohibition on awarding attorney fees against Commissioner of Bureau of Labor and Industries.

Makes public agency liable for workers' unpaid wages, fringe benefits and penalty wages when public agency fails to include certain information about prevailing rates of wage in specifications for public works contract.

Makes contractor liable for unpaid wages, including fringe benefits, of workers on public works project if contractor is notified of requirement to pay prevailing rates of wage in contract or documents related to contract. Allows penalty wages if violation was intentional.

## A BILL FOR AN ACT

1  
2 Relating to wages; creating new provisions; and amending ORS 279C.850, 279C.855, 279C.870 and  
3 652.330.

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

5 **SECTION 1.** ORS 279C.850 is amended to read:

6 279C.850. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries  
7 may enter the office or business establishment of any contractor or subcontractor performing public  
8 works and gather facts and information necessary to determine whether the prevailing rate of wage  
9 is actually being paid by [*such*] **the** contractor or subcontractor to workers upon public works.

10 (2) Upon request by the commissioner, every contractor or subcontractor performing work on  
11 public works shall make available to the commissioner for inspection during normal business hours  
12 any payroll or other records in the possession or under the control of the contractor or subcon-  
13 tractor that are deemed necessary by the commissioner to determine whether the prevailing rate  
14 of wage is actually being paid by [*such*] **the** contractor or subcontractor to workers upon public  
15 works. The commissioner's request must be made a reasonable time in advance of the inspection.

16 (3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commissioner  
17 under this section is not open to inspection by the public.

18 (4) The commissioner may, without necessity of an assignment, initiate legal proceedings against  
19 employers to enjoin future failures to pay required prevailing rates of wage or overtime pay and to  
20 require the payment of prevailing rates of wage or overtime pay due employees. The  
21 [*commissioner*] **prevailing party** is entitled to recover, in addition to other costs, such sum as the  
22 court or judge may determine reasonable as attorney fees. If the commissioner does not prevail in  
23 the action, the commissioner shall pay all costs, [*and*] disbursements **and attorney fees** from the  
24 Bureau of Labor and Industries Account.

25 **SECTION 2.** ORS 279C.855 is amended to read:

26 279C.855. (1) [*Any*] **If a contractor or subcontractor is notified of the requirement to**  
27 **comply with ORS 279C.840 in the advertisement for bids, the request for bids, the contract**  
28 **specifications or the accepted bid or elsewhere in the contract documents, the contractor or**

**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 subcontractor or contractor's or subcontractor's surety that violates the provisions of ORS 279C.840  
 2 is liable to the workers affected in the amount of their unpaid minimum wages, including all fringe  
 3 benefits [as defined in ORS 279C.800], and, **if the violation is intentional, a court may award**  
 4 [in] an additional amount equal to the unpaid wages as [liquidated damages] **a penalty wage.**

5 (2) Actions to enforce liability to workers under subsection (1) of this section may be brought  
 6 as actions on contractors' bonds as provided for in ORS 279C.610.

7 (3) If [the] a public agency fails to include a provision that the contractor and any subcontractor  
 8 shall comply with ORS 279C.840 in the advertisement for bids, the request for bids, the contract  
 9 specifications[,] **or** the accepted bid or elsewhere in the contract documents, the liability of the  
 10 public agency for unpaid minimum wages, as described in subsection (1) of this section, is joint and  
 11 several with any contractor or subcontractor that had notice of the requirement to comply with ORS  
 12 279C.840.

13 (4) **When a public works project is subject to ORS 279C.800 to 279C.870 and the Davis-**  
 14 **Bacon Act (40 U.S.C. 3141 et seq.), if a public agency fails to include the state and federal**  
 15 **prevailing rates of wage in the specifications for the contract for public works as required**  
 16 **under ORS 279C.830 (1)(a), or fails to include in the specifications information showing which**  
 17 **prevailing rate of wage is higher for workers in each trade or occupation in each locality as**  
 18 **required under ORS 279C.830 (1)(b):**

19 (a) **The public agency is liable to each affected worker for the worker's unpaid minimum**  
 20 **wages, including fringe benefits, in an amount that equals, for each hour worked, the dif-**  
 21 **ference between the applicable higher rate of wage and the lower rate of wage; and**

22 (b) **If the public agency's failure was intentional, a court may award to each affected**  
 23 **worker an additional amount, equal to the amount of unpaid minimum wages due under**  
 24 **paragraph (a) of this subsection, as a penalty wage.**

25 (5) The Commissioner of the Bureau of Labor and Industries may enforce the provisions of [this  
 26 subsection] **subsections (3) and (4) of this section** by a civil action under ORS 279C.850 (4), by a  
 27 civil action on an assigned wage claim under ORS 652.330, or by an administrative proceeding on  
 28 an assigned wage claim under ORS 652.332.

29 **SECTION 3.** ORS 279C.870 is amended to read:

30 279C.870. (1) The Commissioner of the Bureau of Labor and Industries or any other person may  
 31 bring a civil action in any court of competent jurisdiction to require a public agency under a public  
 32 contract with a contractor to withhold twice the wages in dispute if it is shown that the contractor  
 33 or subcontractor on the contract has intentionally failed or refused to pay the prevailing rate of  
 34 wage to workers employed on that contract and to require the contractor to pay the prevailing rate  
 35 of wage and any deficiencies that can be shown to exist because of improper wage payments already  
 36 made. In addition to other relief, the court may also enjoin the contractor or subcontractor from  
 37 committing future violations. The contractor or subcontractor involved shall be named as a party  
 38 in all civil actions brought under this section. In addition to other costs, the court may award the  
 39 prevailing party reasonable attorney fees at the trial and on appeal. [However, attorney fees may  
 40 not may be awarded against the commissioner under this section.]

41 (2) The court shall require any party, other than the commissioner, that brings a civil action  
 42 under this section to post a bond sufficient to cover the estimated attorney fees and costs to the  
 43 public agency and to the contractor or subcontractor of any temporary restraining order, prelimi-  
 44 nary injunction or permanent injunction awarded in the action, in the event that the party bringing  
 45 the action does not ultimately prevail.

(3) In addition to any other relief, the court in a civil action brought under this section may enjoin the public agency from contracting with the contractor or subcontractor if the court finds that the commissioner would be entitled to place the contractor or subcontractor on the ineligible list established under ORS 279C.860 (1). If the court issues such an injunction, the commissioner shall place the contractor or subcontractor on the list for a period of three years, subject to the provision of ORS 279C.860 (2).

**SECTION 4.** ORS 652.330 is amended to read:

652.330. (1) The Commissioner of the Bureau of Labor and Industries shall enforce ORS 652.310 to 652.414 and to that end may:

(a) Investigate and attempt equitably to adjust controversies between employers and employees in respect of wage claims or alleged wage claims.

(b) Take assignments, in trust, of wage claims or judgments thereon, liens and other instruments of security for payment of wages from the assigning employees, spouses, parents or legal guardians, having a right to the wages of *[such]* **the** employees. All such assignments shall run to the commissioner and any successors in office. The commissioner may sue employers on wage claims and other persons or property liable for any payment thereof thus assigned with the benefits and subject to existing laws applying to actions by employees for collection of wages. The *[commissioner]* **prevailing party** is entitled to recover, in addition to costs, such sum as the court or judge may adjudge reasonable as attorney fees at trial and on appeal. The commissioner may join in a single proceeding and in one cause of action any number of wage claims against the same employer. If the commissioner does not prevail in such action, the commissioner shall pay all costs, *[and]* disbursements **and attorney fees** from the Bureau of Labor and Industries Account.

(c) Make complaint in a criminal court for any violation of any law providing for payment of wages and imposing a penalty for its violation as for a crime.

(d) In any case where a civil action may be brought under this chapter for the collection of a wage claim, provide for an administrative proceeding to determine the validity and enforce collection of the claim. The administrative proceeding shall be conducted as provided in this chapter, and is subject to the employer's right to elect a trial in a court of law.

(2) An assigning wage claimant *[shall]* **may** not be regarded as a party to any court action brought by the commissioner under this section for any purpose.

**SECTION 5. (1) The amendments to ORS 279C.850, 279C.870 and 652.330 by sections 1, 3 and 4 of this 2007 Act apply only to actions filed on or after the effective date of this 2007 Act.**

**(2) The amendments to ORS 279C.855 by section 2 of this 2007 Act apply only to public contracts for public works first advertised or solicited on or after the effective date of this 2007 Act.**

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