

House Bill 3392

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Northwest Workers' Justice Project)

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**.

Requires day labor service agencies to register with Commissioner of Bureau of Labor and Industries. Requires day labor employer to provide information about work, employer and wages to day laborers. Requires day labor employers to provide certain special attire, accessories, tools or safety equipment to day laborers. Prohibits day labor employers from retaliating or taking certain other actions against day laborers or third party employers.

Requires commissioner to adopt rules to implement and enforce law. Authorizes commissioner to assess civil penalties and to deny, suspend or revoke registration of day labor service agency.

Creates civil action for violation.

A BILL FOR AN ACT

1
2 Relating to day laborers.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Day labor" includes labor or employment that is occasional or irregular, in which**
6 **an individual is employed for not longer than the period of time required to complete the**
7 **assignment for which the individual is hired and in which wage payments are made directly**
8 **or indirectly to the individual by a day labor service agency or a third party employer for**
9 **work undertaken by the individual. "Day labor" does not include labor or employment of a**
10 **professional or clerical nature.**

11 (b) **"Day labor employer" includes:**

12 (A) **Any person that directly or indirectly, through an agent, day labor service agency**
13 **or other person acting in the day labor employer's interest, suffers or permits a day laborer**
14 **to work or otherwise exercises control over the wages, hours or working conditions of a day**
15 **laborer;**

16 (B) **A day labor service agency; and**

17 (C) **A third party employer.**

18 (c) **"Day labor service agency" includes any person that recruits, dispatches or otherwise**
19 **facilitates the employment of day laborers by a third party employer. "Day labor service**
20 **agency" does not include a nonprofit organization described in section 501(c)(3) of the Inter-**
21 **nal Revenue Code.**

22 (d) **"Day laborer" means an individual solicited or employed to engage in day labor.**

23 (e) **"Third party employer" includes a person that suffers or permits a day laborer to**
24 **work by contracting with a day labor service agency for the personal services of the day la-**
25 **borer.**

26 (2) **Day labor service agencies and third party employers are day labor employers and**
27 **share all legal obligations placed on day labor employers by this section.**

28 (3) **A day labor service agency shall register with the Commissioner of the Bureau of**

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 Labor and Industries in accordance with rules adopted by the commissioner, unless the day
 2 labor service agency is regulated as an employment agency under ORS 658.005 to 658.245, or
 3 is licensed as a farm labor contractor under 658.405 to 658.503, and has notified the commis-
 4 sioner that the day labor service agency provides day labor services. The commissioner shall
 5 establish by rule an annual registration fee not exceeding \$250.

6 (4) A day labor service agency offering to refer day laborers to work shall post in the
 7 public reception area of the day labor service agency:

8 (a) A list of all employers that are seeking day laborers. The list must include for each
 9 employer:

10 (A) The name and address of the employer and the address of the work site if different
 11 from that of the employer;

12 (B) The type of job opportunities for day laborers;

13 (C) The amount of wages to be paid per hour for the work; and

14 (D) Whether transportation is available, whether the work site is accessible by public or
 15 personal transportation and the approximate commute time to the work site.

16 (b) A notice to inform the public of a toll-free telephone number for the commissioner
 17 for filing complaints about wage disputes and alleged violations of this section by a day labor
 18 employer. The commissioner shall furnish copies of this notice to day labor service agencies
 19 without charge.

20 (5) A day labor employer shall, for each job opportunity offered, provide a written de-
 21 scription of the work to each day laborer recruited or hired at the time of the recruitment
 22 or hiring, whichever is earlier. The written description of the work must include:

23 (a) A description of the work to be performed by the day laborer, including the pay and
 24 any requirements for special attire, accessories, tools, safety equipment or other items re-
 25 quired by law or custom to perform the work assignment.

26 (b) The exact address of the work site and a telephone number at which a day laborer
 27 can be reached for emergency purposes. If the location is in a rural area, the written de-
 28 scription of the work must contain directions to the work site.

29 (c) The time of day the work will begin and the time of day the work will end.

30 (d) Whether a meal is provided, either by the day labor service agency or the third party
 31 employer, and the cost of the meal, if any, that would be charged to the day laborer.

32 (e) A phone number and business address of the third party employer requesting the day
 33 laborer through the day labor service agency.

34 (6) The postings and the written description of the work required by subsections (4) and
 35 (5) of this section shall be written in English and any other language that is generally used
 36 in the locale of the day labor employer.

37 (7) A day labor employer shall pay a day laborer not less than the prevailing wage rate
 38 paid to permanent employees performing substantially equivalent work, with due consider-
 39 ation given to seniority, experience and skills.

40 (8) When a day labor employer and a day laborer have agreed upon a wage rate, the day
 41 labor employer may not reduce the agreed wage rate during the term of the employment.

42 (9) At the time wages are paid, a day labor employer shall provide a day laborer with a
 43 written statement itemizing the day laborer's total wages, the basis of the calculation of the
 44 wages and the amount and purpose of each deduction made from the wages.

45 (10) A day labor employer shall provide, at no cost to a day laborer, any special attire,

1 accessories, tools, safety equipment or other items required by law or custom to perform the
 2 work assignment. For any other attire, accessories, tools, safety equipment or other items
 3 the day labor employer makes available for purchase, the day labor employer may not charge
 4 the day laborer more than the actual cost or reasonable market value, whichever is less, for
 5 the item. If a day laborer willfully fails to return an item provided by the day labor employer,
 6 the day labor employer may charge the day laborer for the market value of the item.

7 (11) If a day labor employer fails to appear at a designated time and location after re-
 8 questing a day laborer's services, the day labor employer shall compensate the day laborer
 9 for four hours of work at the regular rate of pay.

10 (12) Unless the day laborer requests otherwise, when a day laborer has been transported
 11 to a work site, the day labor employer shall provide transportation back to the point of hire
 12 at the end of each work day.

13 (13) A day labor employer may not:

14 (a) Charge a day laborer for transportation to and from a worksite or between worksites.

15 (b) Directly or indirectly charge a day laborer for cashing a paycheck.

16 (c) Send a day laborer to a workplace where a strike, lockout or other labor trouble ex-
 17 ists.

18 (14) A day labor service agency may not restrict the right of a day laborer to accept
 19 permanent employment with a third party employer to whom the day laborer has been re-
 20 ferred for temporary work or restrict the right of the third party employer to offer perma-
 21 nent employment to a day laborer. The day labor service agency may not charge a day
 22 laborer a fee or fine for accepting an offer of permanent employment from a third party
 23 employer or charge a third party employer additional amounts for offering permanent em-
 24 ployment to a day laborer.

25 (15) Any agreement between a day laborer and a day labor employer to waive any rights
 26 or responsibilities under this section is void and unenforceable as violative of public policy.

27 (16) When a day labor employer has not complied with any notification or record keeping
 28 provisions required under this section or rules adopted under this section, there is a
 29 rebuttable presumption that any reasonable factual presentation by the day laborer is accu-
 30 rate. The presumption may be rebutted only by clear and convincing evidence.

31 (17) A day labor employer may not retaliate against a day laborer seeking to enforce
 32 rights granted under this section. Protected activities include, but are not limited to:

33 (a) Making a complaint to the day laborer's employer;

34 (b) Conferring with a state or federal agency, an attorney or a community organization
 35 concerning rights granted a day laborer under this section;

36 (c) Making a complaint to an employer or a coworker or before a public hearing or the
 37 press that rights granted a day laborer under this section have been violated;

38 (d) Causing to be instituted any proceeding under or related to this section; and

39 (e) Testifying or preparing to testify in an investigation or proceeding under this section.

40 (18) The commissioner shall adopt rules necessary to implement and enforce this section,
 41 including rules for hearings and the assessment of civil penalties for violations of this sec-
 42 tion.

43 (19) The commissioner shall promptly investigate a complaint concerning an alleged vio-
 44 lation of this section or any rule adopted under this section.

45 (20) In addition to any other penalty provided by law, the commissioner may assess a civil

1 **penalty for each violation by:**

2 (a) **A day labor service agency that fails to register in accordance with subsection (3) of**
3 **this section. The civil penalty is \$1,000 for the first violation and \$5,000 for the second and**
4 **any subsequent violation.**

5 (b) **A person that commits a violation of this section, other than a violation described in**
6 **paragraph (a) of this subsection, or any rule adopted under this section. The civil penalty**
7 **may not exceed \$1,000 for each violation for each day laborer affected.**

8 (21) **The commissioner may deny, suspend or revoke the registration of a day labor ser-**
9 **vice agency if warranted by public health and safety concerns or any violation of this section**
10 **or any rule adopted under this section.**

11 (22) **The commissioner or any day laborer aggrieved by a violation of this section or any**
12 **rule adopted under this section by a day labor employer may file a civil action in circuit**
13 **court. The filing of a complaint with the commissioner under this section is not a condition**
14 **precedent to the filing of a civil action. The civil action must be brought within three years**
15 **after the last date of employment with the day labor employer. An action may be brought**
16 **by one or more day laborers for and on behalf of themselves and other day laborers similarly**
17 **situated. Any day laborer whose rights have been violated under this section by a day labor**
18 **employer is entitled to collect:**

19 (a) **Compensatory damages or an amount of \$500 for each violation of this section or a**
20 **rule adopted under this section, whichever is greater;**

21 (b) **In the case of unlawful retaliation, all legal or equitable relief that may be appropri-**
22 **ate; and**

23 (c) **Attorney fees and costs.**
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