

D R A F T

SUMMARY

Establishes right of employee for civil action based on unpaid wages. Authorizes creation of lien on employer's real and personal property for unpaid wages under certain circumstances. Establishes priority of lien for amounts of unpaid wages up to specified amount. Creates exception.

A BILL FOR AN ACT

1
2 Relating to establishing a lien on employer property based on an unpaid
3 wage claim.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part**
6 **of ORS 652.310 to 652.414.**

7 **SECTION 2. (1)(a) An employee has a right of civil action for a**
8 **claim for unpaid wages against the employer in the full amount of the**
9 **employee's unpaid wages due as provided under ORS 652.110, 652.120,**
10 **652.130, 652.140, 652.145, 652.150, 652.160, 652.170, 652.190, 652.200, 652.220,**
11 **652.230, 652.240, 652.250, 652.260 and 653.055.**

12 **(b) An employee who has a claim against the employer under this**
13 **subsection or the assignee of an employee who has filed a wage claim**
14 **under this subsection has a lien upon all property of the employer, real**
15 **and personal, located in this state for the amount of the unpaid wages**
16 **to which the employee is entitled.**

17 **(2)(a) A lien under subsection (1) of this section upon real property**
18 **takes effect on the date on which the employee or the assignee of the**
19 **employee:**

20 **(A) Files a notice of claim of lien with the county clerk of the**

1 county in which the real property is located;

2 (B) Pays any required filing fees; and

3 (C) Serves a copy of the notice filed under this subsection on the
4 employer by certified mail with return receipt requested.

5 (b) The county clerk shall enter notice of the lien in the County
6 Clerk Lien Record.

7 (3)(a) A lien under subsection (1) of this section upon personal
8 property takes effect on the date on which the employee or the
9 assignee of the employee:

10 (A) Files a notice of claim of lien with the Secretary of State;

11 (B) Pays any required filing fees; and

12 (C) Serves a copy of the notice filed under this subsection on the
13 employer by certified mail with return receipt requested.

14 (b) The Secretary of State shall include notice of the lien that is
15 filed under this subsection in the index maintained by the secretary
16 for filing financing statements pursuant to ORS chapter 79.

17 (4) A notice of claim of lien must be a written statement that:

18 (a) Is filed under subsection (2) or (3) of this section within two
19 years after the date on which wages for the final pay period were due;
20 and

21 (b) Specifies:

22 (A) The nature of the claim;

23 (B) The amount claimed;

24 (C) All property, real and personal, upon which the claim is made,
25 in a manner sufficient for identification; and

26 (D) That the person filing the notice has a claim of lien on the
27 property.

28 (5) A lien established under subsection (1) of this section has pri-
29 ority over the rights of any purchaser of property of the employer,
30 including any bona fide purchaser under 11 U.S.C. 545 (2), and over all
31 other debts, judgments, decrees, liens or mortgages against the em-

1 **ployer, except:**

2 (a) A lien established by a commercial lending institution as pro-
3 vided in subsection (6) of this section, regardless of whether those
4 debts, judgments, decrees, liens or mortgages originated before or af-
5 ter the lien established under subsection (1) of this section takes ef-
6 fect; or

7 (b) A lien held by a public body for unpaid taxes.

8 (6)(a) A lien established under subsection (1) of this section does
9 not take priority over a lien of a commercial lending institution
10 against the employer that was originated before the lien established
11 under subsection (1) of this section takes effect.

12 (b) Notwithstanding paragraph (a) of this subsection, a lien estab-
13 lished under subsection (1) of this section has priority for the first
14 \$3,000 of the lien amount over a lien of a commercial lending institu-
15 tion that was originated before the lien established under subsection
16 (1) of this section takes effect.

17 (7) A lien established under subsection (1) of this section expires if
18 the employee or the assignee of the employee does not bring an action
19 to enforce the lien within 120 days after the claim is filed.

20 (8) An employee may bring an action against an employer under
21 subsection (1) of this section without first filing a claim for unpaid
22 wages with the Bureau of Labor and Industries under ORS 652.310 to
23 652.414.

24 (9)(a) The employer against whose property a lien is made under
25 subsection (1) of this section, or an interested person, may file with
26 the recording officer of the county in which the claim of lien on real
27 property is filed, or of the county in which the services for unpaid
28 wages that are claimed were performed, a bond executed by a corpo-
29 ration authorized to issue surety bonds in this state, to the effect that
30 the principal or principals on the bond shall pay the amount of the
31 claim and all costs and attorney fees awarded against the property on

1 account of the lien. The bond must be in an amount that is not less
2 than \$1,000 or 150 percent of the amount claimed under the lien,
3 whichever is greater.

4 (b) In lieu of the surety bond provided for in paragraph (a) of this
5 subsection, the employer against whose property a lien is made under
6 subsection (1) of this section, or an interested person, may deposit
7 with the treasurer of the county in which the claim of lien is filed an
8 amount equal to \$1,000 or 150 percent of the amount claimed under the
9 lien, whichever is greater.

10 (c) A person entitled to file a bond under paragraph (a) of this
11 subsection or to deposit an amount under paragraph (b) of this sub-
12 section may deliver to the lien claimant a written notice:

13 (A) Of the filing of the bond or of the deposit; and

14 (B) That includes a demand that the lien be released or foreclosed,
15 and that states that if the lien is not released or foreclosed, the person
16 may recover the amount of \$500 or the actual costs the person in-
17 curred in complying with this subsection, whichever is greater.

18 (d) The written notice and demand required under paragraph (c) of
19 this subsection must be delivered to the lien claimant by certified mail
20 with return receipt requested. A lien claimant who fails to release or
21 foreclose a lien is liable to the person who filed the bond or made the
22 deposit for the greater of \$500 or the actual costs the person incurred
23 in complying with this subsection if:

24 (A) The person making the demand has complied with the require-
25 ments of this subsection;

26 (B) The lien has not been released or foreclosed within 20 days after
27 the written notice and demand is delivered; and

28 (C) The lien claimant does not bring an action to release or fore-
29 close the lien within the time specified in subsection (7) of this section.

30 (e) If a lien claimant is served with a written notice and demand
31 under paragraph (c) of this subsection and is a prevailing party in the

1 **action to release or foreclose the lien, then in addition to other costs**
2 **and attorney fees to which the lien claimant is entitled, the court shall**
3 **allow the lien claimant \$500 or the actual costs incurred in addressing**
4 **the demand, whichever is greater.**

5 **(f) If the lien claimant establishes the validity of the lien claim in**
6 **an action to enforce the lien, the lien claimant is entitled to judgment**
7 **against the sureties upon the bond or against the money deposited.**

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