

The Wage Claim Process and Wage Security Fund

House Business and Labor Committee

JANUARY 13, 2020

Agenda

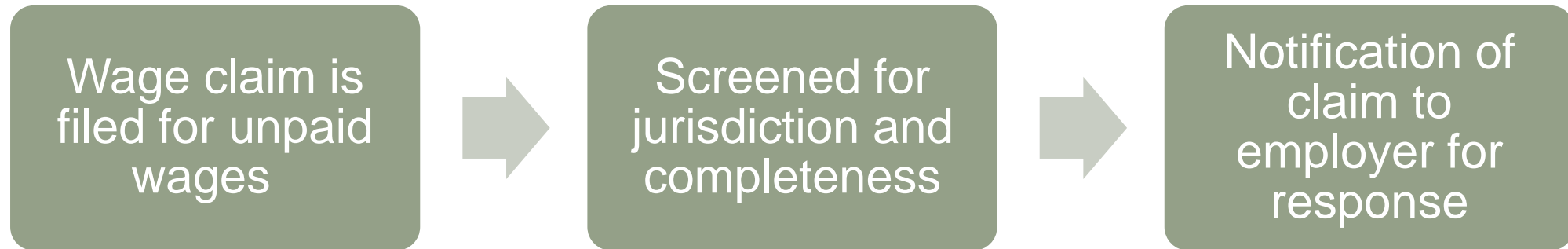
- Overview of current wage claim processes and options for workers to recover unpaid wages*
- Overview of current Wage Security Fund process and uses
- Proposal in LC 81

* This excludes prevailing wage workers

Current Options for Recovering Wages

- File a wage claim with Oregon Labor and Industries
- File a small claims court action for claims under \$10,000
- Take private action through an attorney (either as an individual or via the union)
- File a grievance if the worker is a member of a union

Wage Claim Process



Wage Claim Process

- Employer generally has 10 business days to respond to the claim.
- If the employer submits payment of the claim in full, the payment is forwarded to the claimant and the claim is closed.
- If the employer disputes the wage claim, or fails to respond to the notice, the claim is assigned to a compliance specialist for investigation.

Wage Claim Process

Investigation

- Compliance specialist interviews parties, gathers documentation and evidence from the claimant, employer and witnesses, and calculates wages that may be due.
- If substantial evidence is found in favor of the claimant, the compliance specialist attempts to collect the amount of unpaid wages determined to be owed.
- The wage claim is closed if the employer pays the wages found due or if there is insufficient evidence to demonstrate that a violation of the wage and hour laws has occurred.
- If the employer fails to pay the wages determined to be owed, an Order of Determination is issued and served on the employer.

Wage Claim Process

Administrative Process

- The Order of Determination is a legal order setting out the amount of unpaid wages and any penalty wages or civil penalties owed.
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- Once the Order is served, the employer has 20 days to request a contested case hearing or court trial.
- If the employer does not respond, OR L&I will issue a Final Order of Default based on the Order and the information contained in the agency file.
- Contested case hearings are conducted before an Administrative Law Judge (ALJ).

Wage Claim Process

Administrative Process

- Any participant may file written exceptions to the Proposed Order. Exceptions must contain allegations of error, and must be filed within 10 days after the Proposed Order is issued.
- The Commissioner will issue a written Final Order. Judgments for unpaid wages and penalties obtained by the agency are referred to the State's Department of Revenue for collection.
- An employer may appeal a Commissioner's Final Order to the Oregon Court of Appeals within 60 days.

Wage Security Fund Claim



Wage Security Claim Process

- An investigator determines eligibility for payment from the Wage Security Fund:
 - Employer is no longer in business.
 - There are no assets or resources to pay the wages.
 - The wage claim is valid (the hours worked, rate of pay, amount owed, etc., can be verified).
- The maximum amount payable from the fund, per person, is \$10,000 (\$4,000 prior to January 1, 2020) and is limited to either:
 - The amount of unpaid wages earned in the 60 calendar days immediately before the closure of the business, or
 - The amount of unpaid wages earned within 60 days of the last day of employment if the claim was filed prior to the business closure.

Wage Security Claim Process

- The Fund pays amounts equal to unpaid wages only. It does not cover vacation, sick leave, or other accrued compensatory time or benefits.
- If wages are paid out, Oregon Labor and Industries may pursue employers for reimbursement for amounts paid from the Fund, in addition to penalties, through the administrative process.

Wage Security Fund Overview

- The amount paid into the fund on an annual basis significantly changes from year to year depending on when the transfer from the Employment Dept. occurs.
- Over the last five fiscal years the amount paid from the Fund was between \$245,897 and \$384,567. That was based on a maximum payout of \$4,000 per person.
- The money for the fund comes from a diversion of 0.03% of the employment tax collected during the second calendar quarter of every odd numbered year.

LC 81 Proposal: Increasing unpaid wage reimbursement rates for workers

- Redirect specific civil penalties that currently go to the Common School Fund and an eliminated fund at DHS – 50% for additional technical assistance to employers by BOLI and 50% into the Wage Security Fund
 - Estimated \$67,100/year to each, based on average of penalties collected over past 6 years
- Establish a new, limited use for the Wage Security Fund, allowing for dollars from the Fund to pay unpaid wages owed to workers after a final order has been issued.
 - \$10,000 cap on payouts would still apply
 - BOLI can use current authority to pursue reimbursement from employers for funds dispersed
 - An estimated additional \$85,600/year would be paid out of the WSF for this new use, with an expected recovery of \$20,600 from employers (\$65,000 net after recovery)
 - With an estimated \$67,100/year in civil penalties re-directed into the WSF, the projection is that the ***net WSF balance will be unchanged*** (estimated +\$2,100/year)
- Require BOLI to report back to the legislature about how the technical assistance funds were used, and also about policy recommendations for providing some type of damages to workers for violations that currently have civil penalties.