

# Wage Accountability in the Construction Industry

*House Business and Labor Committee*

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DECEMBER 14, 2018

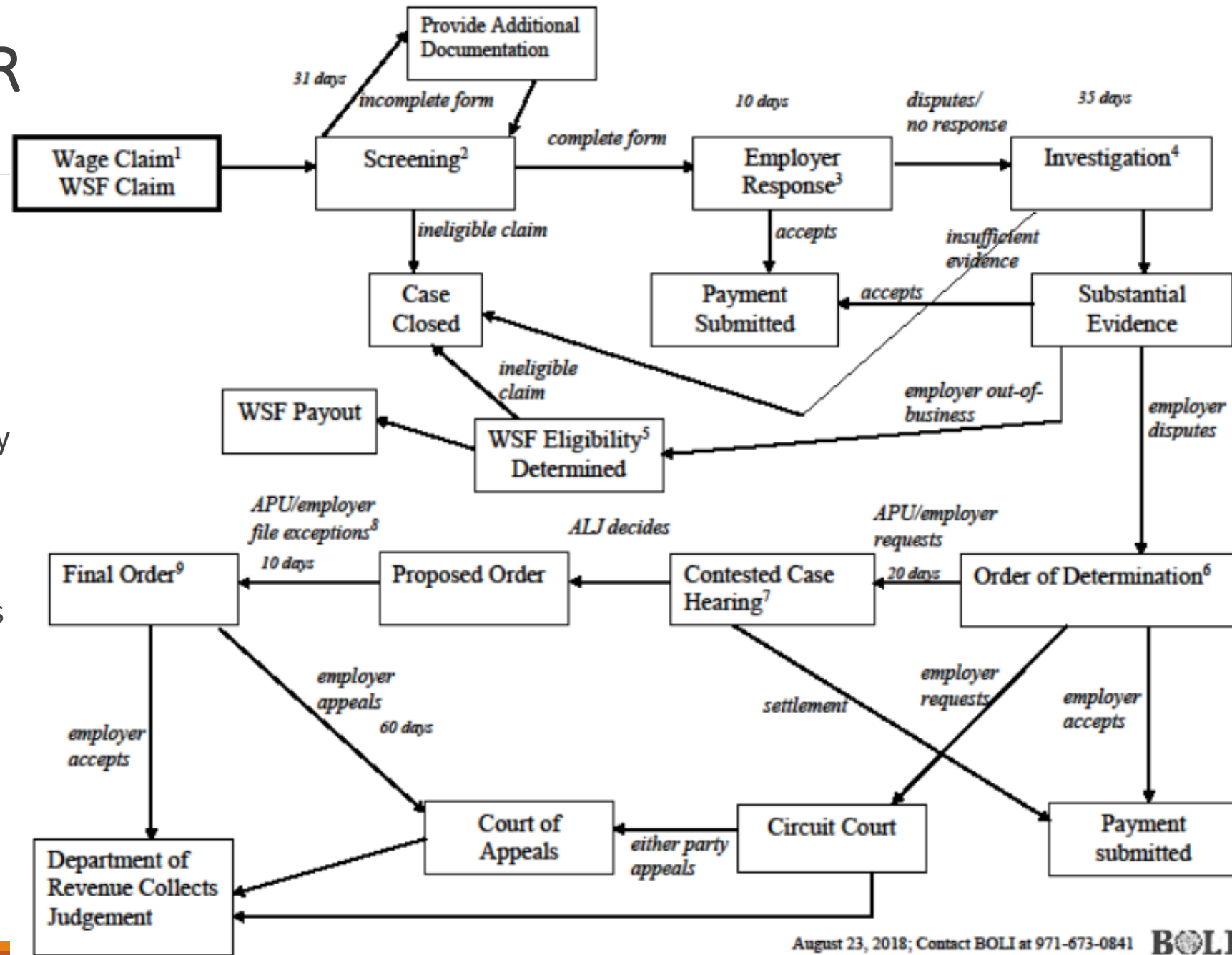
# Agenda

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- Overview of current wage claim processes and options for workers to recover unpaid wages
  - Non-prevailing wage projects
  - Prevailing wage projects
- Analysis of wage claim data from BOLI
  - Non-prevailing wage claims
  - Prevailing wage claims
  - Summary of findings
- Issues identified in analysis

# Current Non-PWR Claim Options

- File a claim with BOLI (see chart at right)
- Small claims court for claims under \$10,000
- Private action with an attorney (either as an individual or via the union)
- Unionized workers may use their unions grievance process

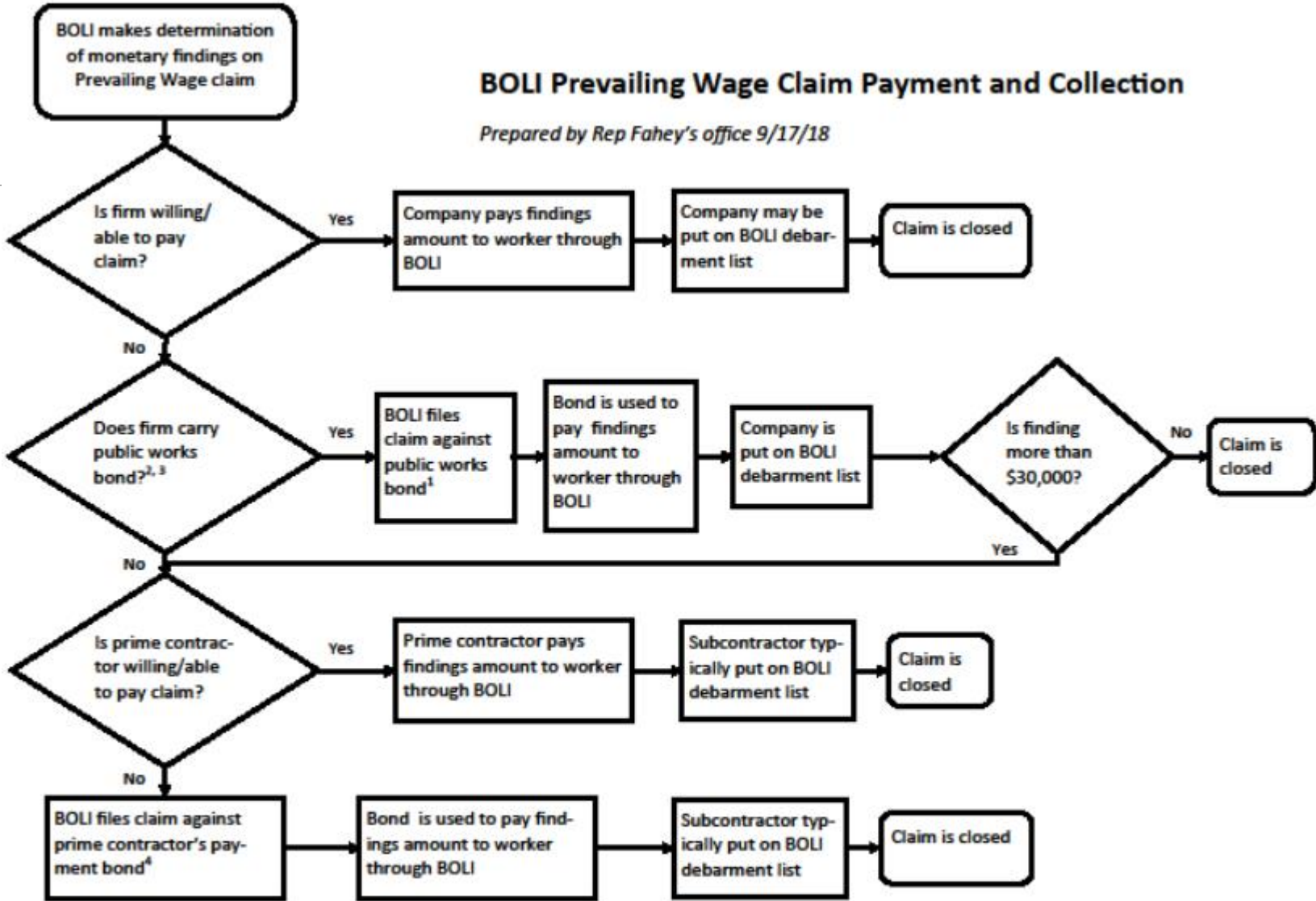


# Current PWR Wage Claim Process

## BOLI Prevailing Wage Claim Payment and Collection

Prepared by Rep Fahey's office 9/17/18

- In the prevailing wage process there are multiple channels by which a worker can be paid, e.g.:
  - Direct payment from employer
  - Public works bond
  - Direct payment from prime contractor
  - Prime contractor payment bond
- There are also incentives for the employer to pay, e.g.:
  - Nonpayment may result in being put on the debarment list
  - Difficulty procuring payment bond in the future



1. Public works bond—\$30,000 bond required for any company (not limited to contractors) doing work on a prevailing wage project. Bond is through BOLI, filed with CCB.  
 2. Businesses certified as disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business are exempt for first 4 years.  
 3. A notice of claim must be filed within 180 days from the last day worked to the holder of the bond in order to file a claim against the bond later on.  
 4. Payment bond—held by prime contractor for each project, specific to project

# Data Analysis Overview

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- 3 years of wage claim data for the construction industry, including both non-PWR and PWR claims, was provided by BOLI; the period covered was 7/1/15 - 6/30/18
- CCB provided licensing data for firms with wage claims filed against them, including license type (commercial/residential/both, general/specialty/both, exempt vs. nonexempt) and current license status
- Separate analyses were conducted for PWR claims and non-PWR claims, because there are different policies and avenues in place for workers to recover unpaid wages/benefits on public works projects
- Key pieces of information analyzed included:
  - # and size of claims
  - # of firms with claims, # of claims per firm
  - % of Monetary Findings paid
  - Use of the Wage Security Fund to pay claims
  - Types of licenses of firms with claims filed against them
- It's important to note that the data we analyzed is not necessarily reflective of the full scope of what may be happening – there are likely workers who experience wage non-payment who do not file claims, and also those who sue to recover wages

# Non-PWR Claims: Number, Size of Claims

- Over the 3 years, a total of 326 non-PWR wage claims were filed by workers in the construction industry
  - This represents approximately 9% of the total # of wage claims received by BOLI
  - The construction workforce represents about 5.5% of non-farm employment in Oregon
- 220 claims, filed against 158 companies, had a monetary finding or are still open; 212 of those claims had a monetary finding
  - The majority of claims (53%) are relatively small, at <\$3,000
- On average, monetary findings were similar to the amount of the claim filed (\$859k determined in findings were 82% of \$1.04M filed in claims)

## Claims with Monetary Findings

Claim Amount	# of Claims
<\$3,000	117
\$3,000-\$9,999	70
\$10,000-\$19,999	27
>\$20,000	6
<b>Total # of Claims:</b>	<b>220</b>
<b>Mean claim:</b>	<b>\$4,715</b>
<b>Median claim:</b>	<b>\$2,400</b>

# Non-PWR Claims: Frequency of Claims against Employers

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- Most employers are not “repeat offenders” – of the 220 claims filed against 158 firms, 78% of them were against firms that only had one claim filed against them over the three-year period
- However, the “repeat offenders” tended to have larger average claims – firms with 2 or more claims represented 57% of the total \$ amount of claims

# of Claims	# of Firms	Total Claims \$	Mean Total Claim \$ per firm
1	123	\$438,564	\$3,565
2	16	\$151,970	\$9,498
3	12	\$244,090	\$20,340
4-5	7	\$202,621	\$28,945
<b>All</b>	<b>158</b>	<b>\$1,037,245</b>	<b>\$6,564</b>

# Non-PWR Claims: Payment of Claims

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- Of the 203 claims that were closed or have a Judgment, **only 31% of the monetary finding amounts have been paid** (\$248k paid vs. \$791k owed)
  - 60% of claims were paid in full, 23% were partially paid, and 17% had no payments
  - The payment rate for wages is 56%, while the payment for penalties (penalty wages, interest, court fees, civil penalties) is only 1%
- **For non-construction claims, payment rates during this time period were higher, at 57%**
- For the 203 claims, companies with higher total findings amounts were much less likely to have paid any significant portion of the claim

Total Findings Due	Average % Findings Paid by Firm
<\$3,000	83%
\$3,000-\$9,999	45%
\$10,000-\$19,999	21%
> \$20,000	13%

- The Wage Security Fund was used to pay 26 claims – total value paid was \$64k. **The WSF caps payouts at \$4,000 per claim and only pays wages** (not benefits, vacation pay, etc.). Because of the cap, \$31k was unpaid.



# Non-PWR Claims: Employer License Data

- We analyzed license data from CCB for the 158 firms which had claims with monetary findings
- **License Status**
  - **22 firms (14%) had no registered license with CCB**
  - 53 firms (33%) had licenses that were suspended or not active **as of August 2018** (not necessarily at the time of claim)
- **Exempt Licenses**
  - **24 firms (15%) had “exempt” license types, which are not allowed to have employees**

- **Residential vs. Commercial**
  - Of the 136 firms with licenses, 58% were licensed for residential work only, 10% are licensed for commercial work only, and 17% of were licensed in both<sup>1</sup>
- **General vs. Specialty**
  - 67% of the 136 firms had only General licenses and 17% had only Specialty licenses<sup>2</sup>

**# of Firms by License Type**

	<b>Residential Only</b>	<b>Commercial Only</b>	<b>Both</b>	<b>Total</b>
General Only	72	12	22	<b>106</b>
Specialty Only	18	4	6	<b>28</b>
Both	1			<b>1</b>
Developer Only	1			<b>1</b>
<b>Total</b>	<b>92</b>	<b>16</b>	<b>28</b>	<b>136</b>

1. For dual-licensed firms, we can't say whether the claim came from a residential or a commercial project.  
 2. Specialty licenses are likely to be acting as subcontractors or working on their own but wouldn't be functioning as a general contractor. General licenses may act as subcontractors or general contractors.

# PWR Investigations: Number, Size, Type of Firms

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- There were 426 total files/investigations; of these, 234 investigations into 137 companies had monetary findings or were still open
  - 189 were closed, with a nearly 100% payment rate
  - 14 were sent to a judgment, with an outstanding \$515,689 owed
  - 31 are still open
- Monetary findings for PWR claims are higher than for non-PWR claims, with eight firms found to owe over \$100,000 (6 of those 8 firms have paid 100% of their amount owed)
- Of the 137 companies:
  - **Most were licensed for commercial work** – 65 (47%) had both commercial and residential licenses, 49 (36%) had commercial only, 2 firms had residential only
  - **Only one firm had an exempt license type**
  - **License status** – *As of November 2018* (not necessarily at the time of claim), 105 firms (85%) had active licenses, 11 firms (8%) had expired or suspended licenses, and **9 firms (7%) were unlicensed**

# PWR Investigations: Payment

- The overall payment rate for all categories of findings is 76%
  - The payment rate for PWR Wages only is 94% (vs. 56% for wages only in non-PWR claims)
  - The payment for the various types of penalties is much lower
  - Several firms had claims on both non-PWR and PWR claims – of those firms, payment rates were higher for the PWR claims than the non-PWR claims

Category	Total Findings (3-yr period)	Total Paid	% Paid in PWR Cases
<b>PWR Wages</b>	\$2,299,173	\$2,155,741	94%
<b>PWR Overtime</b>	\$137,292	\$137,257	100%
<b>Non-PWR wages and benefits<sup>1</sup></b>	\$36,817	\$27,887	76%
<b>PWR Liquidated Damages<sup>2</sup></b>	\$465,798	\$123,039	26%
<b>Court Fees, Interest</b>	\$18,641	\$387	2%
<b>Other Penalties<sup>3</sup></b>	\$345,408	\$79,894	23%
<b>Overall</b>	<b>\$3,303,129</b>	<b>\$2,524,206</b>	<b>76%</b>

<sup>1</sup> Includes OR sick time, minimum wage, overtime, deductions, agreed rate

<sup>2</sup> Similar to penalty wages for non-PWR claims

<sup>3</sup> Includes Penalty Wages, Civil Penalties, and Civil Penalties Claimant





# Summary of Key Observations

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- The construction industry accounts for a higher percentage of the BOLI wage claims than its share of the workforce, even without including prevailing wage claims (9% of wage claims vs. 5.5% of workforce)
- Non-PWR claims from the construction industry are less likely to be paid than in other industries (31% of monetary findings vs. 57%). PWR claims have a much higher payment rate, of 76% of monetary finding
  - When considering only non-penalty items (wages, overtime, benefits) the payment rate for PWR claims is 94% compared to a payment rate of 56% for non-PWR claims
- Most firms that have non-PWR claims filed against them are not “repeat offenders” (78% of claims were against firms that had only one claim filed against them in 3 years). However, the 22% repeat offenders have larger claim sizes, and therefore account for over half of the total \$ amount of claims
- The majority of firms (58%) paid their non-PWR claims in full
  - Firms with low total monetary findings pay their claims at a high rate (83% paid)
  - But firms with high monetary findings have a low rate of payment – 8 firms account for over half of the total non-PWR amount unpaid in the construction industry over the past 3 years
- A significant number of firms with non-PWR claims against them had no license with CCB (14%). An additional 15% of firms had exempt license types, which are not allowed to have employees
- Penalties/additional damages beyond wages are being levied in some claims, but payment rates are low

# What issues have been identified?

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- Construction workers experience wage non-payment at a higher rate than non-construction workers 
  - When construction workers file non-PWR wage claims with BOLI, they are less likely to be paid than workers in other industries. Large claims in construction have a particularly low payment rate 
  - There are a significant number of firms that appear to be operating without a license through CCB or with an exempt license type, but still employing workers 
  - “Good actors” (the vast majority of firms) are being disadvantaged by unlicensed or improperly licensed firms and by the smaller number of “bad actors” (repeat offenders and firms with large, unpaid claims) 
- How can we prevent wage non-payment in the first place? What kinds of deterrents can we put in place?
  - Should we provide different channels for workers to be paid for non-PWR claims? How can we compel employers to pay unpaid amounts?
  - How can we ensure more firms are appropriately licensed? How can BOLI and CCB better share information to trigger license enforcement actions?
  - How can we ensure “bad actors” are held accountable, while ensuring “good actors” are not penalized?