

# House Bill 3193

Sponsored by Representative FAHEY

## 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 that, for employers that are contractors licensed by Construction Contractors Board, order of determination must include statement that failure to pay amounts determined to be owed to wage claimant shall result in Commissioner of Bureau of Labor and Industries notifying board of such failure and board's suspension of contractor's license. Requires board, after notice and opportunity for hearing, to suspend license of contractor until contractor pays amount due on claim.

Expands purposes for which moneys from Wage Security Fund may be used for investigation and enforcement of unpaid compensation, including fringe benefits.

Increases cap on amount of moneys that may be paid from Wage Security Fund to wage claimant.

## A BILL FOR AN ACT

1 Relating to wages; creating new provisions; and amending ORS 652.332, 652.409 and 652.414.

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

3 **SECTION 1.** ORS 652.332 is amended to read:

4 652.332. (1) In any case when the Commissioner of the Bureau of Labor and Industries has received a wage claim complaint which the commissioner could seek to collect through court action, 5 the commissioner may instead elect to seek collection of such claim through administrative proceedings in the manner provided in this section, subject to the employer's right to request a trial 6 in a court of law. The commissioner may join in a single administrative proceeding any number of 7 wage claims against the same employer. Upon making such election, the commissioner shall serve 8 upon the employer and the wage claimant an order of determination directing the employer to pay 9 to the commissioner the amount of the wage claim and any penalty amounts under ORS 279C.855 (1), 10 652.150 and 653.055 (1) determined to be owed the wage claimant. Service shall be made in the same 11 manner as service of summons or by certified mail, return receipt requested. The order of determination shall include: 12

13 (a) A reference to the particular sections of the statutes or rules involved;

14 (b) A short and concise statement of the basis for the amounts determined to be owed to each 15 wage claimant;

16 (c) A statement of the party's right to request a contested case hearing and to be represented 17 by counsel at such a hearing, and of the employer's right to a trial in a court of law, provided that 18 any request for a contested case hearing or trial in a court of law must be received by the commissioner in writing within 20 days after receipt by the party of the order of determination; 19

20 (d) A statement that the employer must, within 20 days after receipt of the order of determination, either pay in full the wage claim and any penalties assessed, or present to the commissioner 21 a written request for a contested case hearing or a trial in a court of law as provided in this section; 22

23 (e) A statement that failure to make a written request to the commissioner for a contested case 24 hearing or a trial of the claim in a court of law within the time specified shall constitute a waiver 25 26 27

**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 of the right thereto and a waiver of the right to a trial by jury; *[and]*

2 **(f) For an employer that is a contractor licensed under ORS chapter 701, a statement**  
 3 **that failure to pay the amounts determined to be owed to each wage claimant, within 10 days**  
 4 **of the date that an order of determination has become final under subsection (2) of this**  
 5 **section, shall result in the commissioner’s notification to the Construction Contractors**  
 6 **Board of such failure to pay and the board’s suspension of the contractor’s license until the**  
 7 **contractor pays the amount due; and**

8 *[(f)]* **(g)** A statement that unless the written requests provided for in paragraph (c) of this sub-  
 9 section are received by the commissioner within the time specified for making such requests, the  
 10 order of determination shall become final.

11 (2) Upon failure of the employer to pay the amount specified in the order of determination or  
 12 to request a trial in a court of law within the time specified, and upon failure of any party to request  
 13 a contested case hearing within the time specified, the order of determination shall become final.

14 (3) If a party makes a timely request for a contested case hearing, a hearing shall be held in  
 15 accordance with the applicable provisions of ORS 183.415 to 183.500 by the commissioner or the  
 16 commissioner’s designee. The commissioner shall adopt rules for such hearing. In any hearing before  
 17 the commissioner’s designee, the designee is authorized to issue the final order in the case. If the  
 18 employer makes a timely request for a trial in a court of law, the commissioner may proceed against  
 19 the employer as provided in ORS 652.330 (1)(b).

20 (4) Final administrative orders issued in a wage claim proceeding are subject to review by the  
 21 Court of Appeals as provided in ORS 183.480 and 183.482.

22 (5) When an order issued under this section becomes final, it may be recorded in the County  
 23 Clerk Lien Record in any county of this state. In addition to any other remedy provided by law,  
 24 recording an order in the County Clerk Lien Record pursuant to the provisions of this section has  
 25 the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in  
 26 ORS 205.125 and 205.126.

27 (6) Where the wage claim arose out of work performed by the claimant for the employer on any  
 28 public works project to which ORS 279C.830 or 279C.840 applies, and a state agency holds sufficient  
 29 funds as retainage on such project to pay such claim or any portion thereof, the state agency may,  
 30 at the request of the commissioner, pay to the commissioner from the retainage all or part of the  
 31 amount due on the claim under the final order.

32 **SECTION 2.** ORS 652.409 is amended to read:

33 652.409. (1) The Wage Security Fund is established separate and distinct from the General Fund.  
 34 After deduction of the amounts provided in ORS 657.439 (2)(a), all moneys received by the Employ-  
 35 ment Department pursuant to ORS 657.439 (2)(a) shall be paid into the State Treasury and credited  
 36 to the Wage Security Fund. All income earned on moneys in the Wage Security Fund invested by  
 37 the State Treasurer shall accrue to the fund.

38 (2) All income earned on moneys in the Wage Security Fund, and all other moneys in the fund,  
 39 are appropriated continuously to the Commissioner of the Bureau of Labor and Industries primarily  
 40 to carry out the provisions of ORS 652.414. Moneys in the fund may also be used, within the division  
 41 of the Bureau of Labor and Industries that enforces wage and hour laws, to investigate and enforce  
 42 claims of underpaid and unpaid wages **and compensation, including fringe benefits**, under this  
 43 chapter and ORS chapter 653.

44 **(3) As used in this section, “fringe benefits” means the amount of compensation that**  
 45 **accompanies or is in addition to an employee’s regular salary or wages, including, but not**

1 **limited to, payment for profit-sharing plans, retirement or pension plans, insurance, sick**  
 2 **leave, holidays, severance or vacation.**

3 **SECTION 3.** ORS 652.414 is amended to read:

4 652.414. Notwithstanding any other provision of law:

5 (1) When an employee files a wage claim under this chapter [*for wages earned and unpaid,*] and  
 6 the Commissioner of the Bureau of Labor and Industries determines that the employer against whom  
 7 the claim was filed has ceased doing business and is without sufficient assets to pay the wage claim  
 8 and the wage claim cannot otherwise be fully and promptly paid, the commissioner, after determin-  
 9 ing that the claim is valid, shall pay the claimant, to the extent provided in subsection (2) of this  
 10 section:

11 (a) The unpaid amount of wages **and compensation** earned within 60 days before the date of  
 12 the cessation of business; or

13 (b) If the claimant filed a wage claim before the cessation of business, the unpaid amount of  
 14 wages **and compensation** earned within 60 days before the last day the claimant was employed.

15 (2) The commissioner shall pay the unpaid amount of wages **and compensation** earned as pro-  
 16 vided in subsection (1) of this section only to the extent of [*\$4,000*] **\$10,000** from such funds as may  
 17 be available pursuant to ORS 652.409 (2).

18 (3) The commissioner may commence an appropriate action, suit or proceeding to recover from  
 19 the employer, or other persons or property liable for the [*unpaid wages*] **wage claim**, amounts paid  
 20 from the Wage Security Fund under subsection (1) of this section. In addition to costs and dis-  
 21 bursements, the commissioner is entitled to recover reasonable attorney fees at trial and on appeal,  
 22 together with a penalty of 25 percent of the amount of wages paid from the Wage Security Fund or  
 23 \$200, whichever amount is the greater. All amounts recovered by the commissioner under this sub-  
 24 section and subsection (4) of this section are appropriated continuously to the commissioner to carry  
 25 out the provisions of this section.

26 (4) The commissioner has a lien on the personal property of the employer for the benefit of the  
 27 fund when the claim is paid under subsection (1) of this section for the amount so paid and the  
 28 penalty referred to in subsection (3) of this section. The commissioner may cause to be filed a veri-  
 29 fied written notice of claim of lien with the recording officer of the county in which the employer  
 30 has its principal place of business no later than 30 days after the date the claim was paid under  
 31 subsection (1) of this section. The notice of claim of lien shall contain:

32 (a) A true statement of the sums paid to wage claimants and the amount of the penalty provided  
 33 for in subsection (3) of this section;

34 (b) The name of the owner of the personal property to be charged with the lien;

35 (c) A description of the personal property to be charged with the lien sufficient for identifica-  
 36 tion. If a lien is being claimed against all personal property of the employer, the description is suf-  
 37 ficient if it states that all personal property of the employer is covered; and

38 (d) The date the wage claim was paid.

39 (5) Liens created by subsection (4) of this section shall be recorded in the same manner as pro-  
 40 vided for in ORS 87.246 and may be foreclosed in the manner provided for in ORS 87.262.

41 (6) Liens created by subsection (4) of this section shall have priority over any other liens or  
 42 security interests perfected after the date the notice of claim is filed with the county recording of-  
 43 ficer under subsections (4) and (5) of this section.

44 (7) The commissioner shall promulgate rules to carry out the provisions of this section that in-  
 45 clude, but are not limited to, prescribing procedures for a timely and cost efficient method for the

1 payment of wage claims from the Wage Security Fund and procedures for prorating wage claims if  
2 insufficient funds are available for payment.

3 (8) Nothing in this section is intended to require the commissioner to pay wage claims for which  
4 moneys are not available under ORS 652.409 (2).

5 **SECTION 4. Section 5 of this 2019 Act is added to and made a part of ORS chapter 701.**

6 **SECTION 5. (1) Upon receipt of the notification provided by the Commissioner of the**  
7 **Bureau of Labor and Industries under ORS 652.332 stating that a contractor has failed to pay**  
8 **the amount of a wage claim as so ordered in a final determination order within 10 days of**  
9 **the issuance of the order, the Construction Contractors Board shall, after notice and op-**  
10 **portunity for a hearing under ORS chapter 183, suspend the license of the contractor.**

11 **(2) The board may not restore a license that has been suspended under subsection (1) of**  
12 **this section until the contractor has paid the amount due on the claim under the final order.**

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