

SB 426 -4, -10, -11 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/26, 3/26

WHAT THE MEASURE DOES:

This measure makes a property owner and their general/direct contractor jointly and severally liable for designated construction workers' unpaid wages and authorizes such construction workers to file a civil action to recover the wages.

Detailed Summary:

Defines key terms and parties

- "Owner" – a person or entity with an ownership interest in land or real estate that is being developed or constructed.
- "Direct contractor" – a person, construction manager, or joint venture that enters a construction contract with a property owner; a.k.a. a general contractor.
- "Subcontractor" – a person with an implied or express contract to perform work within the scope of a direct contractor's contract with an owner.
- "Unrepresented employee" – a direct contractor's or subcontractor's employee who is not represented by a labor union and not subject to a collective bargaining agreement that provides a binding mechanism to recover unpaid wages.

Authorizes unpaid workers to file civil action against owner and direct contractor

- Renders the owner and direct contractor jointly and severally liable for the unrepresented employee's unpaid wages, benefits, and penalty wages.
- Authorizes an unrepresented employee, their representative, or the Attorney General to file a civil action against a project owner, the direct contractor, and any subcontractors to recover unpaid wages and resulting damages, including interest, penalty wages, attorney fees and costs.
- Requires notice before filing a civil action against the owner or direct contractor.
- Imposes a six-year statute of limitations from the time such unpaid wages became due.
- Invalidates any agreement to waive, release, or indemnify an owner or direct contractor.

Creates subcontractor disclosure requirements.

- Requires subcontractors to disclose to an owner or direct contractor, upon request, certified payroll records, relevant contact information, the start & end date of the construction contract, and an affidavit as to any legal violations for unpaid wages over the prior five-year period.
- Authorizes an owner and direct contractor to withhold payment to a subcontractor only if the subcontractor, upon receiving a request, fails to make the above-listed disclosures, or to the extent the owner or director contractor has paid wages owed by the subcontractor to the subcontractor's employees.

Protects workers' personal information

- Prohibits contractors from disclosing personally identifying information except as necessary to comply with federal or state law.

Applicability clause

- Applies law to labor performed on or after the measure's effective date.

ISSUES DISCUSSED:

- Discrimination against marginalized workers
- Lack of recourse to recover unpaid wages
- Resulting increase in construction and insurance costs
- Undocumented workers
- Housing shortage
- Banks and lenders as potential “owners”

EFFECT OF AMENDMENT:

-4 This amendment clarifies that a construction worker must prove in an associated civil action that the owner or direct contractor knew or should have known about the unpaid wages.

-10 The amendment clarifies various provisions of the measure.

Detailed Summary:

- Exempts financial institutions from the definition of “owner” and properties used as the owner’s primary home.
- Defines the term “fringe benefit contributions.”
- Clarifies the Attorney General may bring a civil action via assignment rather than directly on behalf of an unrepresented employee.
- Requires notices to be sent by certified mail and provides the owner or direct contractor with a three-week right to cure alleged violations.
- Sets a two-year statute of limitations.
- Clarifies that an owner or direct contractor, as a defense against liability, bears the burden of establishing a construction worker is an independent contractor as opposed to an employee.
- Clarifies that the owner retains all rights against direct contractors and subcontractors and that a direct contractor retains all rights against subcontractors.
- Tailors subcontractors’ disclosure requirement.
- Clarifies that an owner or direct contractor may only withhold subcontractor payment to the extent they have directly paid the subcontractors’ employees.

FISCAL: Fiscal impact issued

REVENUE: No revenue impact

-11 The amendment clarifies various provisions of the measure.

Detailed Summary:

- Exempts financial institutions from the definition of “owner” and properties used as the owner’s primary home.
- Defines the term “fringe benefit contributions.”
- Clarifies the term “authorized third party representative, excluding labor organizations.
- Eliminates penalty wages as a measure of recovery.
- Clarifies the Attorney General may bring a civil action via assignment rather than directly on behalf of an unrepresented employee.
- Requires notices to be sent by certified mail and provides the owner or direct contractor with a 30-day right to cure alleged violations.
- Sets a two-year statute of limitations.
- Clarifies that the owner retains all rights against direct and subcontractors.
- Tailors subcontractors’ disclosure requirement.

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- Clarifies that an owner or direct contractor may only withhold subcontractor payment to the extent they have directly paid the subcontractors' employees.
- Reserves the rights and protections provided by Oregon's existing wage claim statutes, ORS 652.310 to 652.414, for an owner or direct contractor that has paid amounts pursuant to this measure, including the right to recover amounts paid from the Wage Collection Account under ORS 652.400.

BACKGROUND:

Construction workers have no private right of action to collect unpaid wages, but they can file a claim with the Bureau of Labor and Industry (BOLI). BOLI may pursue an investigation, lawsuit, or administrative claim on behalf of the construction worker. ORS 652.330. BOLI may also pay the unpaid wages through the Wage Security Fund and pursue reimbursement from the associated employer. ORS 652.414. However, BOLI has a significant [backlog](#) for wage claims, and has implemented triage criteria, including limiting its investigations to persons making under \$25.34 per hour. <https://www.oregon.gov/boli/about/Pages/Claim-and-Complaint-Triage.aspx>.

Pursuant to ORS 652.150, construction workers are entitled to recover what are known as penalty wages when an employer willfully fails to pay wages. Penalty wages are assessed at a worker's standard hourly rate, eight hours per day for up to 30 days.

California has enacted legislation similar to this bill. Ca. Code LAB 218.7, 218.8.