

Construction Labor Contractors

Grayber Office Policy Memo

Background

Construction Labor Contractors (CLCs) are under-licensed compared to other regulated sectors. This creates problems for (a) **workers**, due to an increase in unpaid wages and other labor violations; (b) **industry**, due to businesses that are in compliance getting underbid by businesses using unlicensed labor contractors ; and (c) **the State of Oregon**, due to lost revenue, as well as increased costs to resolve labor violations.

Regulation is challenging. Construction Labor Contractors are regulated by the Oregon Contractor Registration Act, or OCRA (*ORS 658.405 et seq.*). CLCs are typically individuals and entities with no attached assets or staff. Some view this as intentionally designed to skirt relevant labor and tax laws in this sector prior to disappearing with no accountability; yet the use of labor contractors is extensive enough, and varied enough, that simply banning the practice outright could cause a significant disruption in the industry. In other industries regulated by OCRA, (janitorial and farm/forest,) there are many *registered* labor contractors, though unregistered labor contractors exist in these industries as well, and more education is needed for labor contractors and users of their services. However, those industries are outside the scope of this policy.

Potential Dual Agency Licensure. All labor contractors are required to register with the Bureau of Labor and Industry (BOLI), whereas construction contractors are licensed through the Construction Contractors Board (CCB). Some Construction Labor Contractors are *also* construction contractors, though not all. A Construction Labor Contractor is a person who:

- “For an agreed remuneration or rate of pay, **recruits, solicits, supplies or employs** workers to perform labor for another in construction.” (Or who does this on behalf of an employer engaged in construction, or who enters into a contract to recruit, solicit, supply or employ workers for another.) *ORS 658.405.*
- A person who makes a substantial investment in the project by owning the

property, pulling permits, or providing machinery or substantial materials is *not* a CLC, along with a few other exceptions.

If a CLC is unlicensed, then the user of their services is jointly liable with the CLC for violations of OCRA, including unpaid wages, penalty wages and numerous other violations which carry a \$1,000 or \$2,000 fine per occurrence, per affected worker.

Good-faith actors in the construction industry may be unaware of OCRA and its requirements. BOLI's presence is an important aspect of ensuring compliance and enforcement pathways regarding OCRA violations, but it also may be causing confusion and unintended violations by otherwise good-faith employers. BOLI is not necessarily structured to serve as a traditional licensing body.,

Proactive Enforcement Required. Enforcement is difficult because BOLI is a complaints-driven investigatory agency, and the speed with which labor contractors come and go on projects requires more proactive worksite visits and monitoring, akin to how CCB commonly operates. Note that private enforcement of OCRA is regularly and effectively done by a small number of employment lawyers.

Impact Data Needed. Anecdotal evidence suggests this is a widespread problem, yet the state has not meaningfully quantified the presence of unlicensed labor contractors within the construction industry, which in turn makes it challenging to assess the need for (and potential impact of) stronger enforcement mechanisms or regulatory environment changes.

Proposal: Unlicensed Construction Contractors Special Mission

BOLI and the CCB shall undertake a 'special mission', focused on tracking and quantifying the presence of unlicensed contractors on construction sites, with specific focus paid to construction *labor* contractors, non-compliance with labor standards, and statutory requirements applying to the employer/employee relationship.

This is akin to an 'emphasis program' conducted by DCBS, or a law enforcement 'special mission' that places temporary priority on speeding, property crime, etc.

Preliminary - Agency Collaboration

BOLI and CCB may collaborate and share data, as well as general knowledge, with one another in order to better understand unlicensed labor contractors, the regulatory environment, enforcement processes, and corrective measures, as well as to better inform the execution of this special mission without expansion of current statutory roles or authorities.

Phase 1 - Strategy and Planning

Prior to the end of 2026, BOLI and CCB shall meet in order to provide CCB with clear definitions, scenarios, and/or real-world examples regarding the use of unlicensed labor contractors on construction sites.

BOLI and CCB shall define the manner in which the Special Mission will be conducted, including worksite visits, screenings, reporting, and followup across each agency. They shall agree upon a process for CCB to report findings to BOLI, the relevant information for CCB to attempt to capture, and the manner in which BOLI shall maintain and share those findings in an accessible manner. External organizations with relevant knowledge shall be consulted as part of this process.

CCB shall issue notice to its licensees and applicants that it will be undertaking this Special Mission, by mailing a letter and/or email to all construction entities and individuals in contact with the agency. This notice shall include OCRA's requirements and the potential need for a separate license through BOLI, to ensure that all employers have received education on how to be compliant with current law.

Phase 2 - Execution

On construction worksite visits executed between January 1 and July 1, 2027, CCB

shall conduct the Special Mission in the manner outlined in Phase 1. This may include screenings for the presence of unlicensed labor contractors , as well as the presence of unlicensed contractors more broadly. CCB shall report findings to BOLI for potential followup. There are no new violation penalties created at this time, though we hope to see a 'chilling effect' on unlicensed CLCs.

Phase 3 - Education and Recommendations

Prior to the end of 2027, CCB and BOLI may adopt new educational materials and methods to help contractors avoid violations of OCRA. CCB and BOLI may alter their current application and licensing process to include information about OCRA, and may alter their testing and continuing education process to include detailed questions about compliance with OCRA.

BOLI may use CCB's findings in support of any relevant enforcement investigations or actions at any time.

CCB and BOLI shall conclude the Special Mission by recommending adjustments to the regulatory environment for the legislature to consider ahead of the 2028 session. Recommendations shall focus on improved enforcement and licensure management within each agency's relevant mission; clarity for employers, workers, and partner organizations; and closing any discovered loopholes or gaps in the regulatory environment.
