

House Bill 3217

Sponsored by Representative HOLVEY

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**.

Makes contractor liable for unpaid wages, including other benefit payment or contribution, of employee of subcontractor at any tier.

Permits third party owed payment or contribution made as part of employee compensation and joint labor-management cooperation committee to bring action against contractor on behalf of employee for unpaid wages. Requires committee to provide notice of intent to file action to contractor and subcontractor.

Requires subcontractor at any tier to provide certain information to contractor upon request.

Requires contracts entered into between contractors and first-tier subcontractors or between first-tier subcontractors and subcontractors at any tier to include certain provisions to ensure timely payments of wages to employees.

Allows contractor to pay unpaid wages to employee of subcontractor and to withhold payment to subcontractor in amount equal to amount of unpaid wages for subcontractor's failure to meet certain requirements.

Applies to contractors who enter into contract with subcontractor on or after January 1, 2020.

A BILL FOR AN ACT

1
2 Relating to wages of employees of subcontractors.

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

4 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 652.310 to**
5 **652.414.**

6 **SECTION 2. (1) As used in this section:**

7 (a) "Construction" has the meaning given that term in ORS 701.410.

8 (b) "Contractor" has the meaning given that term in ORS 701.410.

9 (c) "Fringe benefits" means the amount of compensation that accompanies or is in addi-
10 tion to an employee's regular salary or wages, including, but not limited to, payment for
11 profit-sharing plans, retirement or pension plans, insurance, sick leave, holidays, severance
12 or vacation.

13 (d) "Subcontractor" has the meaning given that term in ORS 701.410.

14 (2)(a) For purposes of a wage claim filed under ORS chapter 652 by an employee of a
15 subcontractor at any tier, the contractor who entered into a contract to use the services of
16 the subcontractor to perform construction work shall be liable to the employee wage claim-
17 ant in an amount equal to wages earned and unpaid, including any other benefit payments
18 and contributions made as part of the employee's total compensation, and interest owed.

19 (b) Liability under this subsection does not extend to penalties or liquidated damages.

20 (c) Liability for unpaid wages under this subsection is limited to wages earned by the
21 employee for services performed under the contract and interest owed.

22 (3) The Commissioner of the Bureau of Labor and Industries may proceed under ORS
23 652.310 to 652.414 against the contractor as if the contractor was the subcontractor who had
24 employed the employee wage claimant to enforce the liability prescribed by subsection (2)(a)

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 this section, except that the commissioner may not take assignment of a wage claim
 2 brought in an action under subsection (4) of this section.

3 (4) The following may bring an action against the contractor on behalf of the employee
 4 wage claimant to enforce the liability prescribed by subsection (2)(a) of this section:

5 (a) A third party who is owed a payment or contribution on behalf of the employee for
 6 benefits, including fringe benefits, as part of the employee's total compensation; or

7 (b) A joint labor-management cooperation committee established pursuant to the federal
 8 Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a).

9 (5)(a) Before a joint labor-management cooperation committee may bring an action under
 10 subsection (4) of this section, the committee shall provide written notice of the intended
 11 action to the contractor and subcontractor who employed the employee wage claimant, by
 12 first-class mail, no later than 30 days before filing the action.

13 (b) The notice must describe the nature of the claim and may not limit the liability of
 14 the contractor or preclude subsequent amendments of an action to encompass additional
 15 wage claimants employed by the subcontractor.

16 (6) An action under subsection (4) of this section shall be commenced within the appli-
 17 cable statute of limitations prescribed under ORS 12.080.

18 (7) Nothing in this section creates a new right of action of an employee of a subcon-
 19 tractor against a contractor.

20 (8)(a) Upon the request of a contractor who has entered into a contract to use the ser-
 21 vices of a subcontractor at any tier to perform construction work, the subcontractor and
 22 any lower tier subcontractors under the contract shall provide payroll records, including the
 23 employee's name and address, classification, rate of pay, daily and weekly number of hours
 24 worked and gross wages earned and unpaid.

25 (b) The information requested under this subsection shall be limited to those records of
 26 employees of a subcontractor who have filed a wage claim under ORS chapter 652.

27 (c) A subcontractor's failure to comply with this subsection does not relieve a contractor
 28 of the liability prescribed by subsection (2)(a) of this section.

29 (9) The remedies and obligations provided in this section are in addition to any other
 30 remedies and obligations otherwise provided by law, except that nothing in this section shall
 31 be construed to impose liability on a contractor for anything other than unpaid wages, in-
 32 cluding any benefit payments and contributions made as part of the employee's total com-
 33 pensation, and interest owed.

34 (10) This section does not apply to work performed under a public contract under ORS
 35 279C.800 to 279C.870.

36 (11)(a) Every contract entered into between a contractor and a first-tier subcontractor
 37 or between a first-tier subcontractor and a subcontractor at any tier to use the services of
 38 a subcontractor to perform construction work must include at a minimum:

39 (A) A provision in which the subcontractor agrees to make timely payments to employees
 40 of the subcontractor for wages earned for services performed under the contract; and

41 (B) A provision that permits the contractor to withhold payment to a subcontractor at
 42 any tier for the failure of a subcontractor to make timely payments to employees of the
 43 subcontractor for wages earned for services performed under the contract.

44 (b) Lack of privity does not deprive the commissioner or an entity described in subsection
 45 (4) of this section that represents an employee wage claimant from bringing an action

1 against a contractor to enforce the liability prescribed by subsection (2)(a) of this section.

2 (12)(a) Nothing in this section shall alter a contractor's obligation to timely pay a sub-
3 contractor under ORS chapter 701, except that a contractor may withhold payment to a
4 subcontractor because of the subcontractor's failure to:

5 (A) Comply with the request for information under subsection (8) of this section; or

6 (B) Pay wages earned by employees of the subcontractor for services performed under
7 the contract described under subsection (2)(a) of this section.

8 (b) Any payment withheld by a contractor under this subsection may not exceed an
9 amount equal to the unpaid wages described under subsection (2) of this section.

10 (c) A contractor may pay to an employee of a subcontractor an amount equal to wages
11 earned and unpaid and withhold payment to the subcontractor until:

12 (A) The subcontractor satisfies the contractor's request for information under sub-
13 section (8) of this section; and

14 (B)(i) A court order has been issued in the wage claim proceeding under ORS chapter 652;
15 or

16 (ii) The commissioner dismisses the wage claim proceeding, enters into a settlement
17 agreement or enters a final order in the matter.

18 **SECTION 3.** Section 2 of this 2019 Act applies to contractors who enter into a contract
19 to use the services of a subcontractor to perform construction work on or after the effective
20 date of this 2019 Act.

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