
SUBSTITUTE HOUSE BILL 1395

State of Washington

66th Legislature

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By House Labor & Workplace Standards (originally sponsored by Representatives Pellicciotti, Hansen, Reeves, Sells, Frame, Peterson, Dolan, Doglio, Ormsby, Blake, Riccelli, Valdez, and Goodman)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to direct contractor liability for payment of
2 wages and benefits; adding new sections to chapter 49.48 RCW; and
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The purpose of this act is to:

6 (1) Protect construction employees and their families by ensuring
7 that employment obligations of wage and benefit contribution payments
8 are made for their work on privately funded construction projects;

9 (2) Protect construction employers who are put at a competitive
10 disadvantage by others that fail to pay wages and benefit
11 contributions;

12 (3) Encourage self-policing in the construction industry, where
13 subcontractors fail to comply with employment obligations or where
14 subcontracting is used to evade employment obligations, by making
15 direct contractors liable for the wage and benefit contributions not
16 paid by subcontractors; and

17 (4) Give direct contractors the means to monitor the wage and
18 benefit contribution payments of subcontractors, as is similarly
19 required on publicly funded construction projects.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.48

2 RCW to read as follows:

3 (1) (a) A direct contractor entering into a contract in the state
4 for the erection, construction, alteration, or repair of a building,
5 structure, or other private work, shall assume, and is liable for,
6 any debt owed to an employee or third party owed fringe or other
7 benefit payments or contributions on a wage claimant's behalf,
8 incurred by a subcontractor at any tier, acting under, by, or for the
9 direct contractor for the employee's performance of labor included in
10 the subject of the contract between the direct contractor and the
11 owner.

12 (b) The direct contractor's liability under this section shall
13 extend only to any unpaid wages, including interest, and any fringe
14 or other benefit payments or contributions. The liability may not
15 extend to any penalties or other damages.

16 (c) A direct contractor or any other person may not evade, or
17 commit any act that negates, the requirements of this section.
18 However, this section does not prohibit a direct contractor or
19 subcontractor at any tier from establishing by contract or enforcing
20 any otherwise lawful remedies against a subcontractor it hires for
21 liability created under this section.

22 (2) (a) The department may enforce liability for unpaid wages
23 against a direct contractor under subsection (1) of this section when
24 there is a citation and notice of assessment issued to an employer
25 under RCW 49.48.083. In addition, upon complaint of an interested
26 party, the department may investigate a direct contractor for
27 liability for unpaid wages following procedures under RCW 49.48.083.
28 A direct contractor may appeal a citation and notice of assessment
29 under RCW 49.48.084 and the department may collect wages and interest
30 owed under RCW 49.48.086. Alternatively, the department may file a
31 civil action against the direct contractor to enforce the liability
32 under this subsection. For either an administrative action or civil
33 cause of action under this subsection (2), the direct contractor's
34 liability does not extend beyond wages and interest. The time limits
35 under subsection (6) of this section apply to administrative actions
36 against direct contractors for liability for unpaid wages and
37 interest.

38 (b) A third party owed fringe or other benefit payments or
39 contributions on a wage claimant's behalf may bring a civil action
40 against a direct contractor to enforce the liability created by

1 subsection (1) of this section. The court shall award a prevailing
2 plaintiff in such an action the plaintiff's reasonable: (i)
3 Attorneys' fees; (ii) costs; and (iii) expert witness fees.

4 (c) A joint committee or other interested party may bring a civil
5 action against a direct contractor or subcontractor at any tier for
6 unpaid wages owed to an employee by the direct contractor or
7 subcontractor, including unpaid wages owed by the direct contractor,
8 under subsection (1) of this section. The court shall award a
9 prevailing plaintiff in such an action the plaintiff's reasonable:
10 (i) Attorneys' fees; (ii) costs; and (iii) expert witness fees.
11 Before filing an action under this subsection, a joint committee or
12 other interested party must provide the direct contractor and
13 subcontractor that employed the employee at least thirty days' notice
14 by first-class mail. The notice need only describe the general nature
15 of the claim and does not limit the liability of the direct
16 contractor or preclude subsequent amendments of any action to
17 encompass additional employees employed by the contractor.

18 (d) No other person or entity may bring an action against a
19 direct contractor to enforce the liability created by subsection (1)
20 of this section.

21 (3) This section does not apply to work entered into by the state
22 or any political subdivision of the state.

23 (4)(a) Upon request by a direct contractor to a subcontractor,
24 the subcontractor and any lower tier subcontractors under contract to
25 the subcontractor must provide:

26 (i) Payroll records that contain the information required by the
27 department's rules under chapters 49.12 and 49.46 RCW, and showing
28 only the last four digits of the employees' social security number.
29 The records must also contain sufficient information to apprise the
30 requesting party of the subcontractor's payment status in making
31 fringe or other benefit payments or contributions to a third party on
32 the employee's behalf; and

33 (ii) Award information that includes the project name, name and
34 address of the subcontractor, contractor with whom the subcontractor
35 is under contract, anticipated start date, duration, and estimated
36 journey level and apprentice hours, and contact information for its
37 subcontractors on the project.

38 (b) A direct contractor may withhold as disputed all sums owed if
39 a subcontractor does not timely provide the information required

1 under (a) of this subsection within ten business days of the request,
2 until that information is provided.

3 (c) A subcontractor's failure to comply with (a) of this
4 subsection may not relieve a direct contractor from any of the
5 obligations of this section.

6 (5) The obligations and remedies in this section are in addition
7 to any obligations and remedies otherwise provided in law. This
8 section does not impose liability on a direct contractor for anything
9 other than unpaid wages and fringe or other benefit payments or
10 contributions including interest owed.

11 (6) A civil action authorized by this section must be commenced
12 within one year from the date the claimed labor was performed or the
13 claimed contract work was substantially completed or abandoned,
14 whichever occurred first. This time is tolled in accordance with RCW
15 49.48.083(5) in the event of an administrative investigation of wage
16 complaints of the direct contractor liability for unpaid wages
17 created by subsection (1) of this section.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.48
19 RCW to read as follows:

20 The definitions in this section apply throughout this section and
21 sections 1 and 2 of this act unless the context clearly requires
22 otherwise.

23 (1) "Department" means the department of labor and industries.

24 (2) "Direct contractor" means a contractor that has a direct
25 contractual relationship with an owner.

26 (3) "Fringe or other benefit payments or contributions" means
27 payments made by an employer on behalf of employees for group life
28 insurance, health insurance, disability insurance, sick leave, annual
29 leave, educational benefits, and pensions.

30 (4) "Interested party" means a contractor, subcontractor, an
31 employee of a contractor or subcontractor, an organization whose
32 members' wages, benefits, and conditions of employment are affected
33 by section 2 of this act, and the director of labor and industries or
34 the director's designee.

35 (5) "Joint committee" means a joint labor-management cooperation
36 committee established pursuant to Title 29 U.S.C. Sec. 175a of the
37 federal labor management cooperation act of 1978.

1 (6) "Owner" means the person who causes the erection,
2 construction, alteration, or repair of a building, structure, or
3 other private work.

4 (7) "Subcontractor" means a contractor that does not have a
5 direct contractual relationship with an owner. "Subcontractor"
6 includes a contractor that has a contractual relationship with a
7 direct contractor or with another subcontractor.

8 (8) "Wages" has the same meaning as "wage" in RCW 49.46.010.

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