Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Labor & Workplace Standards Committee

HB 2191

Brief Description: Concerning workers' wages and benefits in the construction industry.

Sponsors: Representatives Cortes, Obras, Parshley, Kloba, Callan, Ramel, Mena, Doglio, Simmons, Scott, Peterson, Berry, Fosse, Reed, Salahuddin, Santos, Street, Duerr, Thomas, Stonier, Gregerson, Ormsby, Berg, Goodman, Macri, Hill and Pollet.

Brief Summary of Bill

- Establishes liability and other accountability mechanisms for certain property owners and contractors when a direct contractor or subcontractor on a construction project fails to pay employees' wages or benefits.

Hearing Date: 1/14/26

Staff: Alison Ryan (786-7296).

Background:

Liability for Unpaid Wages.
State minimum wage and related labor laws, collectively referred to as the Minimum Wage Act, allow an employee to seek recovery of unpaid wages from an employer by filing a private suit against the employer or by filing a wage complaint with the Department of Labor and Industries (L&I). An employer includes any individual, partnership, association, corporation, business trust, or any group of persons acting directly or indirectly in the interest of an employer in relation to an employee. Corporate officers are considered employers who can be personally liable jointly with the company for Minimum Wage Act violations, if the violation was willful.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Enforcement.
Under the Minimum Wage Act, an employee may file a private suit against their employer for wages owed to the employee, costs incurred during litigation, and reasonable attorney's fees.

Additionally, the Wage Payment Act establishes procedures for an employee to file a complaint with L&I for unpaid wages. If an employee files a complaint, L&I must investigate the claim. If L&I determines that the employer violated a wage payment requirement, L&I may order the employer to pay the employee wages owed plus 1 percent interest per month.

If L&I determines that the violation was willful, L&I may also order the employer to pay a civil penalty. L&I waives the civil penalty if the employer is not a repeat willful violator and pays wages owed within ten days of receiving L&I's citation.

Upon payment by the employer and acceptance by the employee of wages and interest assessed, the employer's obligations are satisfied, and the employee may not pursue other judicial or administrative action on the same issue as their complaint. If L&I issues a citation and notice of assessment ordering the employer to pay wages, the employee has ten days to opt out if they want to choose a private right of action instead. If the employee does not opt out within ten days, they must accept L&I's notice of assessment and cannot file a private suit.

Retaliation Protections.
State law and L&I's rules prohibit an employer from discriminating or retaliating against an employee, including taking certain adverse actions, because an employee exercised rights under the Minimum Wage Act. These rights include, for example, filing an action or complaint, taking paid sick leave, and testifying or intending to testify in a proceeding related to their rights. L&I's rules provide that an "adverse action" means any action taken or threatened by an employer against an employee for their exercise of rights. Among other specified actions, it includes taking, or threatening to take action, based upon the immigration status of an employee or an employee's family member.

Misclassification of Employees as Independent Contractors.
Independent contractors are exempt from the Minimum Wage Act because independent contractors are not "employed" by an employer. However, an employer cannot avoid complying with the Minimum Wage Act simply by referring to an individual as an "independent contractor." If an employer treats a person as an independent contractor, when that person would be properly classified as an employee, the employer may be liable for wages owed to the employee. To determine whether the worker is an employee or an independent contractor under the Minimum Wage Act, courts and L&I apply the common law six-factor economic realities test.

When a worker brings a civil suit against an employer claiming misclassification, the burden is on the worker, as the plaintiff, to prove they are an employee.

Summary of Bill:

Liability for Unpaid Wages and Benefits.
Liability is extended to certain property owners when a direct contractor or subcontractor on a construction project fails to pay an employee's wages or benefits and to direct contractors when a subcontractor fails to pay. Property owners and direct contractors are jointly and severally liable for a subcontractor's failure to pay.

This extended liability does not apply to state, local, or tribal governments. It also does not apply when a construction project takes place on property that is the property owner's principal residence or on property with five or fewer residential or commercial units on a single tract.

Personal liability is established for officers, directors, and managers of a company when that company is liable for a direct contractor's or subcontractor's failure to pay wages or benefits, regardless of willfulness.

Enforcement.
An employee, third-party on the employee's behalf, the Attorney General, or County Prosecuting Attorney may file a civil suit against a property owner, direct contractor, or subcontractor. Recoverable damages include: unpaid wages, fringe benefit contributions, meal and rest periods, reimbursements, interest, penalties, double damages, noneconomic damages, attorney fees, expert witness fees, and costs incurred in connection with the suit. Penalties and damages are mandatory and awarded regardless of willfulness. There is a three year statute of limitations for filing a civil suit.

Pre-suit investigative authority for the Attorney General is established, including the ability to investigate violations on the Attorney General's own initiative, investigate violations in response to complaints, issue civil investigative demands for documents or testimony, adopt rules, pursue administrative sanctions, and educate the public about compliance.

The Department of Labor and Industries is required to deny, suspend, or revoke a contractor's registration, when the contractor is found liable for failure to pay wages.

Retaliation Protections.
Retaliation and discrimination against an employee for complaining, testifying, or raising concerns are prohibited. The employee, third-party on the employee's behalf, Attorney General, or a county prosecuting attorney may seek relief in court. Using a person's immigration status to impact their wage and hour rights is a violation of this prohibition.

Misclassification of Employees as Independent Contractors.
A property owner or direct contractor cannot avoid liability by claiming that a person is an independent contractor unless the person qualifies as an independent contractor under state law. A rebuttable presumption that a person performing labor is an employee, not an independent contractor, is established.

Requirement for Subcontractors to Share Payroll Information Upon Request.

A subcontractor is required to provide payroll information, and certain other information, to property owners and direct contractors upon request. Workers' personally identifying information may be shared by property owners, direct contractors, or subcontractors only to the extent necessary to comply with this requirement or as permitted by state or federal law.

Appropriation: None.

Fiscal Note: Requested on January 7, 2026.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.