
SENATE BILL 5565

State of Washington

66th Legislature

2019 Regular Session

By Senators Kuderer, Wellman, Palumbo, Hunt, Keiser, Das, Randall,
and Takko

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 benefit payments or contributions. The liability may not extend to
15 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 against a direct contractor the
23 liability for unpaid wages created by subsection (1) of this section
24 pursuant to RCW 49.48.083. A direct contractor may appeal a citation
25 and notice of assessment under RCW 49.48.084 and the department may
26 collect wages and interest owed under RCW 49.48.086. Alternatively,
27 the department may file a civil action against the direct contractor
28 to enforce the liability under this subsection. For either an
29 administrative action or civil cause of action under this subsection
30 (2), the direct contractor's liability does not extend beyond wages
31 and interest.

32 (b) A third party owed fringe or other benefit payments or
33 contributions on a wage claimant's behalf may bring a civil action
34 against a direct contractor to enforce the liability created by
35 subsection (1) of this section. The court shall award a prevailing
36 plaintiff in such an action the plaintiff's reasonable: (i)
37 Attorneys' fees; (ii) costs; and (iii) expert witness fees.

38 (c) A joint committee or other interested party may bring a civil
39 action against a direct contractor or subcontractor at any tier for
40 unpaid wages owed to an employee by the direct contractor or

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

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

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

17 (4) (a) Upon request by a direct contractor to a subcontractor,
18 the subcontractor and any lower tier subcontractors under contract to
19 the subcontractor must provide:

20 (i) Payroll records that contain the certified information
21 required by the department for nonagricultural employees and the last
22 four digits of the employees' social security number. The records
23 must also contain sufficient information to apprise the requesting
24 party of the subcontractor's payment status in making fringe or other
25 benefit payments or contributions to a third party on the employee's
26 behalf; and

27 (ii) Award information that includes the project name, name and
28 address of the subcontractor, contractor with whom the subcontractor
29 is under contract, anticipated start date, duration, and estimated
30 journey level and apprentice hours, and contact information for its
31 subcontractors on the project.

32 (b) A direct contractor may withhold as disputed all sums owed if
33 a subcontractor does not timely provide the information required
34 under (a) of this subsection within ten business days of the request,
35 until that information is provided.

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

39 (5) The obligations and remedies in this section are in addition
40 to any obligations and remedies otherwise provided in law. This

1 section does not impose liability on a direct contractor for anything
2 other than unpaid wages and fringe or other benefit payments or
3 contributions including interest owed.

4 (6) A civil action authorized by this section must be commenced
5 within one year from the date the claimed labor was performed or the
6 claimed contract work was substantially completed or abandoned,
7 whichever occurred first.

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

10 The definitions in this section apply throughout this section and
11 sections 1 and 2 of this act unless the context clearly requires
12 otherwise.

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

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

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

20 (4) "Interested party" means a contractor, subcontractor, an
21 employee of a contractor or subcontractor, an organization whose
22 members' wages, benefits, and conditions of employment are affected
23 by section 2 of this act, and the director of labor and industries or
24 the director's designee.

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

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

31 (7) "Subcontractor" means a contractor that does not have a
32 direct contractual relationship with an owner. "Subcontractor"
33 includes a contractor that has a contractual relationship with a
34 direct contractor or with another subcontractor.

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

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