

*Testimony in Support of SB 426*  
May 7, 2025

Chair Grayber, Vice Chairs Muñoz and Elmer, Members of the Committee,

My name is Kate Suisman. I am an attorney at the Northwest Workers' Justice Project (NWJP). Thank you for the opportunity to give testimony on this important bill. We represent workers in low-wage jobs when bad things happen to them at work: when they are not paid, or are discriminated against for being in a protected class or are retaliated against for speaking up. Finally, we engage in policy advocacy and try to bring the important perspectives of workers in low-wage jobs and immigrant workers to these policy discussions.

We strongly encourage your support of SB 426, a bill that will address the serious issue of wage theft in construction. Many of our clients are construction workers; most are immigrants who work for lower-tier subcontractors doing jobs like framing, drywall and roofing. Currently, many workers have a difficult time collecting wages they are owed when subcontractors fail to pay them. In these situations, the general contractor who hired a company committing wage theft has many ways to avoid liability and look the other way, while benefitting from the workers' labor. This is also true for owners of property where wage theft is taking place.

I'd like to share a few stories about our clients to illustrate the problem. We are currently working on multiple, large construction wage theft cases. These cases often take years to complete, and workers are left in dire straits during the multi-year process of recovering wages they earned.

The following is a case I testified about two years ago when this bill came before this committee, and sadly is still going on. A group of seven workers in Beaverton worked for around six months starting in late 2020 doing drywall and got paid only infrequently, often with checks that bounced. We estimate each of our clients is owed between \$17,000 and \$23,000 in wages and penalties, with about half the amount owed being penalties. When the wage payment issues began, the workers went to the drywall subcontractor who continued to make excuses. The workers then went to the general contractor, who said they would look into the issue, but did not pay them. Under current law, we would have to prove that the general contractor was a "joint employer" of the workers, along with the drywall company, in order to hold the general contractor responsible for the unpaid wages. This is a complex legal argument which uses a 13-factor test to determine whether or not the general contractor was in fact a joint employer.

Most concerning about this case is that the scofflaw entities had a track record of not paying bills when due. A CCB search shows over \$500,000 in unpaid claims between the two subcontracting entities which directly employed our clients. They had a history of CCB complaints against them and administrative suspensions. This information was readily available to the general contractor who contracted with them.

Almost five years have passed since these workers earned their wages, and they are still fighting to be paid. The people who are least likely to be able to weather an event like this are the ones most impacted by this unlawful behavior, when in fact the owner of the property and the general contractor have many more resources and much more power over the behavior of the subcontractors.

We have another current case with a group of workers who were not paid overtime and prevailing wage. They went to the general contractor who said they would try to sort it out, but instead, the workers were fired in retaliation for speaking up. Since this was a prevailing wage claim, we were able to file with the US Department of Labor, who was able to hold the GC liable through unique tools they have as the DOL. This is how things should work, and in fact do work on some prevailing wage projects.

And the general contractor in the DOL case may or may not have jointly employed the workers, as in this next example which deals with another group of recent clients. A group of ten framing workers in Lane County was having trouble getting paid. They were being paid in cash, and not at the rates that had been agreed upon. They also found out some other workers on the job were receiving prevailing wages while they were not- they were being paid less than half than other workers on the job doing similar work. They complained to the general contractor, who pressured the subcontractor to pay the workers, but did not in fact succeed in getting the workers paid. This was one of the workers' only contacts with the general contractor, making a "joint employment" case as discussed above near impossible.

A fact pattern in our construction cases goes like this: a general contractor uses a subcontractor who is subcontractor in name only. It is the company who issues the payroll, and is the employer on paper, but actually is an arm of the general contractor. This type of arrangement is set up to avoid responsibility. We have sued some of these general contracting entities and their "subcontractors" multiple times for similar wage violations. But these general contractors are not dissuaded from this practice, because it benefits them to deny their relationship with the subcontractor and the workers.

A slight variation on that theme involves a subcontractor who only works with one general contractor, and is akin to an in-house entity. The general contractor calls them a subcontractor, but their relationship is an exclusive one- the general contractor always uses that subcontractor, and the subcontractor only works for that contractor. Yet, it can be difficult to establish liability by the general contractor when the subcontractor steals workers' wages.

When we are unable to hold the general contractor liable, we often are left with recourse only against the subcontractor. Many subcontractors who fail to pay our clients are under-resourced, smaller companies that sometimes do not respond to our demand at all. If they do respond, they may not have the resources to pay our clients what they are owed. If they do not respond, our clients are left with a default judgment against the subcontractor, which likely will not be paid at any point by the responsible party. We may be able to recover some of the wages through BOLI's Wage Security Fund, but that often does not cover all wages owed and cannot be used for penalties.

We hear from many more construction workers than we can help, and our referral list for Spanish-speaking wage/hour attorneys is extremely short. Many times we have to refer workers to BOLI, where their claims will sit for many months or years and where they may or may not receive penalty wages.

We see wage theft committed by new and established businesses alike, by immigrant and non-immigrant owned businesses. Owners and general contractors currently use companies that follow the law, as well as ones that don't. We agree that new businesses have a learning curve regarding the laws they need to follow but paying wages when due is a basic concept, understood by workers and employers implicitly.

The bill before you offers a solution to a serious and long-standing problem. General contractors need to do their due diligence about who is providing them labor. And if they end up contracting with entities who fail to pay workers their wages, the general contractor and property owner should have responsibility. As it is now, this system of willful ignorance is benefiting some greatly- and hurting others greatly. Workers often end up owed wages from entities that are impossible or near-impossible to collect against, while the general contractor walks away getting the labor of the unpaid workers. This is not fair, and we have a way to fix it.

Please join community members, advocates and workers in support. Thank you very much.