

## LEGISLATION UPDATE: UNPAID WAGES AS BASIS FOR PROPERTY LIENS

The Washington Legislature is considering a bill (Senate Bill 5355 & House Bill 1369) that would create a new statutory lien to secure unpaid wages. If the bill is enacted, employees would be able to attach a lien against the assets of their employer, and, if the employer is an entity, its individual owners, officers, and other employees personally responsible for certain wage violations.

### What does it do?

The lien would secure payment of wage claims. Similar to construction liens, an employee would be required to perfect the lien within eight months of attachment. An employee could perfect by commencing a lien-foreclosure action (similar to construction liens) or by commencing a proceeding to recover the wages at issue in an appropriate court or administrative process. The proposed lien statute would entitle employees to recover attorney fees and costs as part of the process. The lien would not be available to “highly compensated” employees and to employees otherwise eligible to attach a materialman’s lien (i.e. construction lien).

### Whose property does it affect?

Property subject to this lien includes all real and personal property of the employer. If the employer is a business entity, property subject to this lien includes the real and personal property of any officer, vice principal, or agent individually liable for the wage claim under RCW 49.52.070. Where applicable, property subject to this lien also includes the property of spouses, domestic partners, and heirs. This new lien would also be available to workers who maintain a customer’s real property, even if the customer hired them indirectly.

### Where does it apply?

The property subject to the lien must be in Washington. The new law would not require that employers or property owners themselves be located in Washington.

### When would the lien arise?

The employee’s right to place a lien on the employer’s property arises as soon as the wages are first overdue. The lien right would expire after two years. This new law would not go into effect until January 1, 2022, which means it would apply to claims for wages first due on or after January 1, 2020.

### What is the policy purpose of this legislation?

Worker’s rights groups advocated for this change in the law partially as a reaction to economic stress and rising inequality during the COVID-19 pandemic. Under current wage recovery

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laws, employees have to rely on the Department Labor & Industries to pursue regulatory remedies or wait until after they receive a judgment in court. In the meantime, competing creditors or a dissipation of assets could prevent the employee from obtaining recovery. The proposed law would allow employees to obtain a property interest in the assets of their employers (and possibly their agents and principals) earlier in time.

### How does it affect other creditors?

Wage liens on real property have priority over all other unrecorded or subsequently filed liens. These liens will be subordinate to any other previously recorded interest. For wage liens upon personal property, the wage lien has priority over all other subsequently perfected security interests or financing statements covering collateral. If a previously perfected security interest or financing statement lapses, the wage lien will take priority. Generally, buyers of personal property will not be subject to a wage lien if they acquire the property in good faith and without notice or knowledge of the lien.

### What is the status of this bill?

The bill is still in the policy committees in both the House and Senate. If the bill makes it through these committees, it will still be subject to amendment and a full vote in each chamber. We will provide updates if the legislature makes notable changes to or approves this bill. You can also track the bill's progress in both chambers: [Senate Bill 5355 here](#) and its companion [House Bill 1369 here](#).

Please do not hesitate to contact us with any questions or concerns you may have.

Best regards,



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