

New York Construction Wage Theft Law: Prime Contractors Responsible for Subcontractor's Failures

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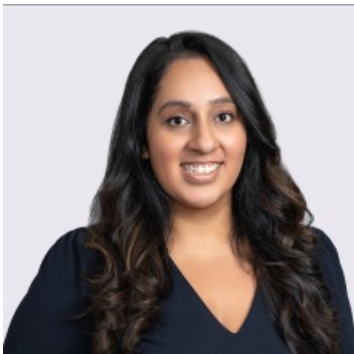
June 30, 2022

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The scope for liability related to employee wage claims has changed dramatically for contractors and subcontractors operating in New York under a new law that shifts wage payment obligations to prime contractors.

New York Governor Kathy Hochul signed into law [NY State Senate Bill S2766C](#), which is intended to reduce wage theft claims and amend wage theft prevention and enforcement in the construction industry within the state, on January 25, 2022, and the new law is effective retroactively to January 4, 2022.

Background

The Legislature proposed this amendment to existing wage theft law to increase the likelihood that allegedly exploited workers in the construction industry will be able to secure payment and collect unpaid wages and benefits for work already performed by shifting the ultimate payment obligation to prime contractors.

Prior to the new law, a worker could only bring a private lawsuit for alleged unpaid wages (including overtime and fringe benefits) against their direct employer. The New York State Assembly asserted that this was a major issue in the construction industry and that subcontractors hid assets, changed their corporate identities, or took part in other alleged unscrupulous practices to avoid liability and make themselves judgment-proof from a potential wage theft action.

The New Standards

There are two sections to the new law. Section one pertains to construction industry wage theft and is codified under NY CLS Labor § 198-e. Pursuant to this new section, a construction contractor, as defined within, would assume liability for *any unpaid wages, benefits, damages, and attorney's fees* related to a civil or administrative action by a wage claimant or the Department of Labor against a lower tier subcontractor.

Section two amends section 756-a of the General Business Law to clarify that a contractor may withhold payment to a subcontractor or lower tier subcontractor for failure to provide certain payroll records.

In essence, under the new legislation, the prime contractor of a construction project is liable for *all* subcontractors that it chooses to utilize on a jobsite for up to three years, in the hopes that “construction workers are quickly able to collect unpaid wages.” However, there is no guarantee that this law will be more effective, given that similar laws in other states still have high rates of alleged wage theft.

Takeaways

The new law aims to create an incentive for the construction industry to ensure compliance and reduce the burden on the Workers' Compensation Board, where these claims were filed originally. In reality, the new law likely will increase the burden on state courts. Plaintiffs are expected to file even more claims against prime contractors (now, for unpaid wages), and prime contractors, in turn, are expected to file third-party actions against their subcontractors for indemnity and contribution.

Prime contractors need to be judicious, so they are not financially liable for subcontractors after project completion, given the three-year statute of limitations. Prime contractors need to be proactive to prevent costly claims that inevitably will arise out of the law. They will need to develop programs to ensure all workers on their projects are adequately and timely paid.

Prime contracts will need to be amended to include expanded indemnity and additional insured provisions for wage theft actions, compliance provisions from subcontractors, a vetting process to ensure compliance from subcontractors and other lower tier contractors, and adequate financial coverage for the prime contractor.

Prime contractors will also need to provide training to their employees to properly inspect subcontractor payroll records and implement the withholding of payments to their subcontractors if there is a potential violation.

If you have any questions about wage theft, any other New York wage and hour law or workplace training, please contact one of the authors of this article or the Jackson Lewis attorney with whom you regularly work.

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