S T A T E  O F  N E W  Y O R K

401

2009-2010 Regular Sessions

I N  A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JOHN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to requiring contractors and subcontractors who perform public work contracts to file certain documentation with the department of labor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The labor law is amended by adding a new section 220-i to read as follows:

S 220-I. FILING SCHEDULE OF EMPLOYEES, WAGES PAID, AND OTHER INFORMATION. 1. FILING REQUIREMENT. ALL CONTRACTORS OR SUBCONTRACTORS WHO CONTRACT WITH THE STATE OR A PUBLIC BENEFIT CORPORATION OR A MUNICIPAL CORPORATION OR A COMMISSION APPOINTED PURSUANT TO LAW TO PERFORM PUBLIC WORK SHALL, BEFORE THE FRIDAY OF EVERY SECOND WEEK, FILE WITH THE DEPARTMENT A SWORN AFFIDAVIT FOR THE PREVIOUS REPORTING PERIOD, SETTING OUT IN DETAIL THE NUMBER OF PERSONS EMPLOYED, WAGES PAID, JOB CLASSIFICATION OF EACH EMPLOYEE, AND HOURS WORKED EACH DAY AND WEEK ON A FORM PROVIDED BY THE DEPARTMENT.

2. NOTICE OF WORK AND COMPLETION; FILING FEE, AND WITHHOLDING OF PAYMENT. (A) BEFORE COMMENCING A PUBLIC WORK CONTRACT, THE PERSON ENTERING INTO THE CONTRACT WITH A CONTRACTING ENTITY SHALL DESIGNATE A PRIMARY CONTRACTOR FOR PURPOSES OF THIS SECTION. BEFORE WORK COMMENCES, THE PRIMARY CONTRACTOR SHALL FILE A NOTICE OF WORK WITH THE DEPARTMENT. THE NOTICE OF WORK MUST LIST WORK TO BE PERFORMED UNDER THE PUBLIC WORK CONTRACT BY EACH CONTRACTOR WHO WILL PERFORM ANY PORTION OF WORK ON THE CONTRACT AND THE CONTRACT PRICE BEING PAID TO EACH CONTRACTOR. THE PRIMARY CONTRACTOR SHALL PAY ALL FILING FEES FOR EACH CONTRACTOR PERFORMING WORK ON THE CONTRACT, INCLUDING A FILING FEE BASED ON THE CONTRACT PRICE BEING PAID FOR WORK PERFORMED BY THE PRIMARY CONTRACTOR'S EMPLOYEES. THE FILING FEE PAYABLE SHALL BE THE SUM OF ALL FEES CALCU-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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LATED FOR EACH CONTRACTOR. THE FILING FEE SHALL BE ONE PERCENT OF EACH CONTRACTOR'S CONTRACT PRICE. THE TOTAL FILING FEE PAYABLE BY THE PRIMARY CONTRACTOR UNDER THIS PARAGRAPH MAY NOT EXCEED FIVE THOUSAND DOLLARS. THERE IS NO FEE FOR A CONTRACT UNDER WHICH THE TOTAL AMOUNT PAYABLE BY THE CONTRACTING AGENCY IS LESS THAN TWENTY-FIVE THOUSAND DOLLARS. FOR THE PURPOSES OF THIS PARAGRAPH "CONTRACTOR" MEANS AN EMPLOYER WHO IS USING EMPLOYEES TO PERFORM PUBLIC WORK UNDER THE CONTRACT OR A SUBCONTRACT.

(B) UPON COMPLETION OF ALL WORK ON THE PUBLIC WORK CONTRACT, THE PRIMARY CONTRACTOR SHALL FILE WITH THE DEPARTMENT A NOTICE OF COMPLETION TOGETHER WITH PAYMENT OF ANY ADDITIONAL FILING FEES OWED DUE TO INCREASED CONTRACT AMOUNTS. WITHIN THIRTY DAYS AFTER THE DEPARTMENT'S RECEIPT OF THE PRIMARY CONTRACTOR'S NOTICE OF COMPLETION, THE DEPARTMENT SHALL INFORM THE CONTRACTING AGENCY OF THE AMOUNT, IF ANY, TO BE WITHHELD FROM THE FINAL PAYMENT.

(C) A CONTRACTING AGENCY (I) MAY RELEASE FINAL PAYMENT ON A PUBLIC WORK CONTRACT TO THE EXTENT THAT THE AGENCY HAS RECEIVED VERIFICATION FROM THE DEPARTMENT THAT:

(A) THE PRIMARY CONTRACTOR HAS COMPLIED WITH PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION;

(B) THE DEPARTMENT IS NOT CONDUCTING AN INVESTIGATION UNDER THIS SUBDIVISION; AND

(C) THE DEPARTMENT HAS NOT ISSUED A NOTICE OF A VIOLATION OF THIS SECTION TO THE PRIMARY CONTRACTOR OR ANY OTHER CONTRACTORS WORKING ON THE PUBLIC WORK CONTRACT; AND

(II) SHALL WITHHOLD FROM THE FINAL PAYMENT AN AMOUNT SUFFICIENT TO PAY THE DEPARTMENT'S ESTIMATE OF WHAT MAY BE NEEDED TO COMPENSATE THE EMPLOYEES OF ANY CONTRACTORS UNDER INVESTIGATION ON A PUBLIC WORK CONTRACT, AND ANY UNPAID FILING FEES.

(D) THE NOTICE AND FILING FEE REQUIRED UNDER PARAGRAPH (A) OF THIS SUBDIVISION MAY BE FILED AFTER WORK HAS BEGUN IF: (I) THE PUBLIC WORK CONTRACT IS FOR WORK UNDERTAKEN IN IMMEDIATE RESPONSE TO AN EMERGENCY; AND

(II) THE NOTICE AND FEES ARE FILED NOT LATER THAN FOURTEEN DAYS AFTER THE WORK HAS BEGUN.

(E) A FALSE STATEMENT MADE ON A NOTICE REQUIRED BY THIS SECTION IS PUNISHABLE BY ONE YEAR IN JAIL OR A ONE THOUSAND DOLLAR FINE PER OFFENSE OR A COMBINATION OF BOTH.

3. DEFINITIONS. FOR PURPOSES OF THIS SECTION, "CONTRACTING AGENCY" MEANS THE STATE OR A POLITICAL SUBDIVISION OF THE STATE THAT HAS ENTERED INTO A PUBLIC WORK CONTRACT WITH A CONTRACTOR.

4. CURRENT PUBLIC CONSTRUCTION CONTRACTS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A CONTRACTOR OR SUBCONTRACTOR THAT BEGAN WORK ON A PUBLIC WORK CONTRACT BEFORE THE EFFECTIVE DATE OF THIS SECTION, BUT HAS NOT COMPLETED THE WORK UPON THE EFFECTIVE DATE OF THIS SECTION, SHALL BE REQUIRED TO FILE A NOTICE OF WORK WITH THE DEPARTMENT. THE CONTRACTOR OR SUBCONTRACTOR SHALL FILE THE NOTICE NOT LATER THAN THIRTY DAYS AFTER THE DEPARTMENT PROVIDES THE CONTRACTOR OR SUBCONTRACTOR WITH A COPY OF THE NOTICE FORM. THE CONTRACTOR OR SUBCONTRACTOR IS NOT REQUIRED TO PAY A FEE FOR FILING.

S 2. Online payroll reporting. Not later than one year after this act shall have become a law, the department of labor shall provide for filing of payroll reports as required by this act, by secure online electronic filing.

S 3. This act shall take effect one year after it shall have become a law.