

8379

I N S E N A T E

June 27, 2010

Introduced by Sens. SCHNEIDERMAN, ADDABBO, DUANE, ESPADA, HASSELL-THOMPSON, KRUEGER, PARKER, PERALTA, SAVINO, SQUADRON, STEWART-COUSINS, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the labor law, in relation to prevailing wages for service workers

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

1 Section 1. The article heading of article 9 of the labor law, as added
2 by chapter 777 of the laws of 1971, is amended to read as follows:
3 PREVAILING WAGE FOR [BUILDING] SERVICE EMPLOYEES
4 S 2. Subdivisions 1, 2, 3, 4, 6, 8, 9 and 10 of section 230 of the
5 labor law, subdivision 1 as amended and subdivision 9 as added by chap-
6 ter 542 of the laws of 1984, subdivisions 2, 3, 6 and 8 as added by
7 chapter 777 of the laws of 1971, subdivision 4 as amended by chapter 678
8 of the laws of 2007 and subdivision 10 as added by chapter 547 of the
9 laws of 1998, are amended and a new subdivision 15 is added to read as
10 follows:
11 1. "[Building service] SERVICE employee" or "employee" means any
12 person performing JANITORIAL, FOOD OR SECURITY SERVICE WORK FOR A
13 CONTRACTOR, OTHER THAN A BUSINESS IMPROVEMENT DISTRICT, UNDER CONTRACT
14 WITH A PUBLIC AGENCY WHICH IS IN EXCESS OF TEN THOUSAND DOLLARS AND THE
15 PRINCIPAL PURPOSE OF WHICH IS TO FURNISH SERVICES THROUGH THE USE OF
16 SERVICE EMPLOYEES, OR ANY OTHER PERSON PERFORMING work in connection
17 with the care or maintenance of an existing building, or in connection
18 with the transportation of office furniture or equipment to or from such
19 building, or in connection with the transportation and delivery of
20 fossil fuel to such building, for a contractor under a contract with a
21 public agency which is in excess of [one] TEN thousand [five hundred]
22 dollars and the principal purpose of which is to furnish services
23 through the use of [building] service employees.
24 "[Building service] SERVICE employee" or "employee" includes, but is
25 not limited, to, watchman, guard, doorman, building cleaner, porter,
26 handyman, janitor, gardener, groundskeeper, stationary fireman, elevator

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

LBD16378-22-0

operator and starter, window cleaner, FOOD SERVICE WORKER, COOK, BAKER, DISHWASHER, MEAT CUTTER, WAITER, DRIVER and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.

"[Building service] SERVICE employee" or "employee" also does not include any employee to whom the provisions of articles eight and [eight-a] EIGHT-A of this chapter are applicable.

2. "[Building service] SERVICE work" [or "service work"] means work performed by a [building] service employee, but does not include work performed for a contractor under a contract for the furnishing of services by radio, telephone, telegraph or cable companies[; and any contract for public utility services, including electric light and power, water, steam and gas]. "SERVICE WORK" SHALL ALSO INCLUDE WORK PERFORMED UNDER A CONTRACT, WITH THE EXCEPTION OF A CONTRACT OR SUBCONTRACT IN WHICH A BUSINESS IMPROVEMENT DISTRICT IS A PARTY, FOR THE BENEFIT OF A PUBLIC AGENCY WITH ANY THIRD PARTY PERSON OR ENTITY ACTING IN PLACE OF, ON BEHALF OF OR FOR THE BENEFIT OF SUCH PUBLIC AGENCY IN THE PROVISION OF BUILDING OR PROPERTY MANAGEMENT SERVICES OR SIMILAR SERVICES PURSUANT TO ANY LEASE OR OTHER AGREEMENT BETWEEN SUCH THIRD PARTY PERSON OR ENTITY AND THE PUBLIC AGENCY PROVIDED, HOWEVER, THAT "SERVICE WORK" SHALL NOT INCLUDE WORK PERFORMED UNDER A LEASE OR SIMILAR AGREEMENT IN A PRIVATELY OWNED BUILDING WHERE THE SPACE OCCUPIED BY THE PUBLIC AGENCY REPRESENTS LESS THAN TEN THOUSAND SQUARE FEET.

3. "Public agency" means the state, any of its political subdivisions, a public benefit corporation, a public authority, INCLUDING A PUBLIC AUTHORITY PROVIDING PUBLIC UTILITY SERVICES, or commission or special purpose district board appointed pursuant to law, [and] a board of education, AND ANY PUBLIC UTILITY THAT DISTRIBUTES ELECTRIC LIGHT OR POWER, OR GAS OR STEAM SERVICES AT RETAIL RATES REGULATED BY THE PUBLIC SERVICE COMMISSION PURSUANT TO A FRANCHISE GRANTED UNDER THE PROVISIONS OF SECTION SIXTY-EIGHT OR EIGHTY-ONE OF THE PUBLIC SERVICE LAW, AND ANY SUBSTANTIALLY-OWNED AFFILIATED ENTITY OF SUCH PUBLIC UTILITY.

4. "Contractor" means any employer who employs employees to perform [building] service work under a contract with a public agency and shall include any of the contractor's subcontractors.

6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of [building] service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

8. "Fiscal officer" means the [industrial] commissioner, except for [building] service work performed by or on behalf of a city, in which case "fiscal officer" means the comptroller or other analogous officer of such city.

9. "Fossil fuel" shall mean coal, petroleum products and fuel gases. "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel gases" shall include but not be limited to methane, natural gas, liquefied natural gas and manufactured fuel gases. "Petroleum products" shall include all products refined or rerefined from synthetic or crude oil or oil extracted from other sources, including natural gas liquids. [Provided that nothing in this subdivision shall affect the exclusion

1 for public utility services set forth in subdivision two of this
2 section.]

3 10. "Substantially-owned affiliated entity" shall mean the parent
4 company of the PUBLIC UTILITY, contractor or subcontractor, any subsid-
5 iary of the PUBLIC UTILITY, contractor or subcontractor, or any entity
6 in which the parent of the PUBLIC UTILITY, contractor or subcontractor
7 owns more than fifty percent of the voting stock, or an entity in which
8 one or more of the top five shareholders of the PUBLIC UTILITY, contrac-
9 tor or subcontractor individually or collectively also owns a control-
10 ling share of the voting stock, or an entity which exhibits any other
11 indicia of control over the PUBLIC UTILITY, contractor or subcontractor
12 or over which the PUBLIC UTILITY, contractor or subcontractor exhibits
13 control, regardless of whether or not the controlling party or parties
14 have any identifiable or documented ownership interest. Such indicia
15 shall include: power or responsibility over employment decisions, access
16 to and/or use of the relevant entity's assets or equipment, power or
17 responsibility over contracts of the entity, responsibility for mainte-
18 nance or submission of certified payroll records, and influence over the
19 business decisions of the relevant entity.

20 15. "PERSON" SHALL MEAN A HUMAN BEING AND SHALL INCLUDE AN "ENTITY" AS
21 DEFINED IN THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO A CONTRACTOR OR
22 SUBCONTRACTOR.

23 S 3. Subdivisions 1, 3, 4 and 5 of section 231 of the labor law,
24 subdivisions 1, 3 and 4 as added by chapter 777 of the laws of 1971 and
25 subdivision 5 as amended by chapter 678 of the laws of 2007, are amended
26 and a new subdivision 8 is added to read as follows:

27 1. Every contractor shall pay a service employee under a contract for
28 [building] service work a wage of not less than the prevailing wage in
29 the locality for the craft, trade or occupation of the service employee.

30 3. Each contract for [building] service work shall contain as part of
31 the specifications thereof a schedule of the wages required to be paid
32 to the various classes of service employees on such work, and each such
33 contract shall further contain a provision obligating the contractor to
34 pay each employee on such work not less than the wage specified for his
35 craft, trade or occupation in such schedule.

36 4. The public agency, or appropriate officer or agent thereof, whose
37 responsibility it is to prepare or direct the preparation of the plans
38 and specifications for a contract for [building] service work, shall
39 ascertain from such plans and specifications the classifications of
40 employees to be employed on such work and shall file a list of such
41 classifications with the fiscal officer, together with a statement of
42 the work to be performed. The fiscal officer shall determine the crafts,
43 trades and occupations required for such work and shall make a determi-
44 nation of the wages required to be paid in the locality for each such
45 craft, trade or occupation. A schedule of such wages shall be annexed to
46 and form a part of the specifications for the contract prior to the time
47 of the advertisement for bids on such contract and shall constitute the
48 schedule of wages referred to in subdivision three of this section.

49 5. Upon the award of a contract for [building] service work by a
50 public agency other than a city, the contracting public agency shall
51 immediately furnish to the commissioner: (a) the name and address of the
52 contractor to whom the contract was awarded; (b) the date when the
53 contract was awarded; and (c) the approximate consideration stipulated
54 for in the contract.

55 8. THE REQUIREMENTS OF THIS SECTION SHALL APPLY TO ANY PERSON OR ENTI-
56 TY, OTHER THAN A BUSINESS IMPROVEMENT DISTRICT, THAT ENTERS INTO ANY

1 LEASE OR OTHER AGREEMENT WITH A PUBLIC AGENCY THAT INCLUDES THE
2 PROVISION OF SERVICE WORK BY EMPLOYEES WHO WOULD BE REQUIRED TO BE PAID
3 SCHEDULED WAGES PURSUANT TO THIS SECTION IN THE ABSENCE OF SUCH AGREE-
4 MENT. ANY THIRD PARTY PERSON OR ENTITY THAT CONTRACTS FOR OR OTHERWISE
5 ARRANGES FOR THE PAYMENT FOR OR PERFORMANCE OF SERVICE WORK FOR THE
6 BENEFIT OF A PUBLIC AGENCY IN THE PROVISION OF BUILDING OR PROPERTY
7 MANAGEMENT SERVICES OR SIMILAR SERVICES PURSUANT TO ANY SUCH AGREEMENT
8 SHALL DO SO AS AN AGENT OF THE PUBLIC AGENCY. NO PUBLIC AGENCY SHALL
9 ENTER INTO ANY SUCH AGREEMENT WITH ANY PERSON OR ENTITY WITHOUT (A)
10 PREPARATION OF AN AGREEMENT BETWEEN THE PUBLIC AGENCY AND THE THIRD
11 PARTY PERSON OR ENTITY THAT CLEARLY DELINEATES THE RESPONSIBILITIES OF
12 EACH WITH RESPECT TO REPORTING, FILING AND RETENTION OF PAYROLLS AND
13 OTHER DOCUMENTS, AND ANY OTHER ACTIONS REQUIRED PURSUANT TO THIS ARTI-
14 CLE, AND (B) RECEIPT BY THE PUBLIC AGENCY OF A WRITTEN ACKNOWLEDGEMENT
15 FROM SUCH THIRD PARTY PERSON OR ENTITY THAT THE PERSON OR ENTITY AGREES
16 TO UNDERTAKE THOSE RESPONSIBILITIES AS THE AGENT OF THE PUBLIC AGENCY,
17 AND AFFIRMING SUCH PERSON OR ENTITY'S NONDELEGABLE OBLIGATION TO PAY NOT
18 LESS THAN THE WAGES SPECIFIED IN EACH APPLICABLE SCHEDULE. SUCH DOCU-
19 MENTS SHALL BE IN A FORM SATISFACTORY TO THE FISCAL OFFICER AND SHALL BE
20 SUBSCRIBED AND CONFIRMED AS REQUIRED BY SUCH OFFICER. SUCH DOCUMENTS
21 SHALL BE RETAINED AS PROVIDED IN SECTION TWO HUNDRED THIRTY-THREE OF
22 THIS ARTICLE, AND A COPY OF EACH SUCH DOCUMENT SHALL BE FILED BY THE
23 PUBLIC AGENCY WITH THE FISCAL OFFICER WITHIN TEN DAYS OF ITS EXECUTION.
24 NOTWITHSTANDING ANY SUCH AGREEMENT, NOTHING IN THIS SUBDIVISION SHALL BE
25 DEEMED TO RELIEVE THE PUBLIC AGENCY OF ITS RESPONSIBILITIES TO ENSURE
26 COMPLIANCE WITH THIS ARTICLE. ANY LEASE OR AGREEMENT MADE IN CONTRAVEN-
27 TION OF THIS SUBDIVISION SHALL BE VOID AS A MATTER OF PUBLIC POLICY.
28 THE FISCAL OFFICER MAY TAKE ALL ACTIONS NECESSARY TO ENSURE COMPLIANCE
29 WITH THE PROVISIONS OF THIS ARTICLE AGAINST THE PUBLIC AGENCY, ANY THIRD
30 PARTY ACTING IN PLACE OF, ON BEHALF OF OR FOR THE BENEFIT OF SUCH PUBLIC
31 AGENCY PURSUANT TO ANY LEASE OR OTHER AGREEMENT BETWEEN SUCH THIRD PARTY
32 PERSON OR ENTITY AND THE PUBLIC AGENCY, OR BOTH THE PUBLIC AGENCY AND
33 THIRD PARTY JOINTLY.

34 S 4. Subdivision 4 of section 230 of the labor law, as added by chap-
35 ter 777 of the laws of 1971, is amended to read as follows:

36 4. "Contractor" means any employer who employs employees to perform
37 [building] service work under a contract with a public agency, and shall
38 include any of his subcontractors.

39 S 5. Subdivision 5 of section 231 of the labor law, as added by chap-
40 ter 777 of the laws of 1971, is amended to read as follows:

41 5. Upon the award of a contract for [building] service work by a
42 public agency other than a city, the contracting public agency shall
43 immediately furnish to the [industrial] commissioner: (a) the name and
44 address of the contractor to whom the contract was awarded; (b) the date
45 when the contract was awarded; and (c) the approximate consideration
46 stipulated for in the contract.

47 S 6. Paragraphs a and c of subdivision 2 and subdivision 7 of section
48 235 of the labor law, paragraph a of subdivision 2 and subdivision 7 as
49 amended and paragraph c of subdivision 2 as added by chapter 547 of the
50 laws of 1998, are amended and subdivision 2 is amended by adding a new
51 paragraph g to read as follows:

52 a. At the start of such investigation the fiscal officer may notify
53 the financial officer of the public agency interested who shall, at the
54 direction of the fiscal officer, forthwith withhold from any payment due
55 to the contractor executing the contract sufficient money to safeguard
56 the rights of the service employees and to cover the civil penalty that

1 may be assessed as provided herein, or, if there are insufficient moneys
2 still due or earned to the contractor or subcontractor to safeguard the
3 rights of the service employees and to cover the civil penalty that may
4 be assessed as provided herein, the financial officer of another civil
5 division which has entered or subsequently enters into a [building]
6 service work contract with the contractor or subcontractor, who shall
7 withhold from any payment due the contractor or subcontractor executing
8 any [building] service work, sufficient moneys to safeguard the rights
9 of the service employees and to cover the civil penalty that may be
10 assessed as provided herein.

11 c. The notice of withholding shall provide that the fiscal officer
12 intends to instruct the financial officer, not less than ten days
13 following service of the notice by mail, to withhold sufficient moneys
14 to safeguard the rights of the service employees and to cover the civil
15 penalty that may be assessed as provided herein, from any payment due
16 the notified party under any [building] service work contract pending
17 final determination. The notice of withholding shall provide that within
18 thirty days following the date of the notice of withholding the notified
19 party may, contest the withholding on the basis that the notified party
20 is not a partner or one of the five largest shareholders of the subcon-
21 tractor or contractor, an officer of the contractor or subcontractor who
22 knowingly participated in the violation of this article, a substantial-
23 ly-owned affiliated entity or successor. If the notified party fails to
24 contest the notice of withholding, or if the fiscal officer, after
25 reviewing the information provided by the notified party in such
26 contest, determines that the notified party is a partner or one of the
27 five largest shareholders, a substantially-owned affiliated entity, an
28 officer of the contractor or subcontractor who knowingly participated in
29 the violation of this article, or a successor, the fiscal officer may
30 instruct the financial officer to immediately withhold sufficient moneys
31 to safeguard the rights of the service employees and to cover the civil
32 penalty that may be assessed as provided herein from any payment due the
33 notified party under any [building] service work contract pending the
34 final determination.

35 G. THE FISCAL OFFICER MAY REQUIRE ANY PERSON OR CORPORATION PERFORMING
36 SUCH PUBLIC WORK TO FILE WITH THE FISCAL OFFICER WITHIN TEN DAYS OF
37 RECEIPT OF SAID REQUEST, PAYROLL RECORDS, SWORN TO AS TO THEIR VALIDITY
38 AND ACCURACY, REQUESTED BY THE FISCAL OFFICER, FOR SAID SERVICE WORK OR
39 FOR ANY PUBLIC OR PRIVATE WORK PERFORMED BY SAID PERSON OR CORPORATION
40 DURING THE SAME PERIOD OF TIME AS SAID SERVICE WORK. IN THE EVENT SAID
41 PERSON OR CORPORATION FAILS TO PROVIDE THE REQUESTED INFORMATION WITHIN
42 THE ALLOTTED TEN DAYS, THE FISCAL OFFICER MAY, WITHIN FIFTEEN DAYS,
43 ORDER THE FINANCIAL OFFICER OF THE PUBLIC AGENCY TO IMMEDIATELY WITHHOLD
44 FROM PAYMENT TO SAID PERSON OR CORPORATION UP TO TWENTY-FIVE PERCENT OF
45 THE AMOUNT, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS, TO BE PAID TO
46 SAID PERSON OR CORPORATION UNDER THE TERMS OF THE CONTRACT PURSUANT TO
47 WHICH SAID SERVICE WORK IS BEING PERFORMED. SAID AMOUNT WITHHELD SHALL
48 BE IMMEDIATELY RELEASED UPON RECEIPT BY THE PUBLIC AGENCY OF A NOTICE
49 FROM THE FISCAL OFFICER INDICATING THAT THE REQUEST FOR RECORDS HAD BEEN
50 SATISFIED.

51 7. When, pursuant to the provisions of this section, two final orders
52 have been entered against a contractor, subcontractor, successor, or any
53 substantially-owned affiliated entity of the contractor or subcontrac-
54 tor, any of the partners if the contractor or subcontractor is a part-
55 nership, any of the five largest shareholders of the contractor or
56 subcontractor, any officer of the contractor or subcontractor who know-

1 ingly participated in the violation of this article within any consec-
2 utive six-year period determining that such contractor or subcontractor
3 and/or its successor, substantially-owned affiliated entity of the
4 contractor or subcontractor, any of the partners or any of the five
5 largest shareholders of the contractor or subcontractor, any officer of
6 the contractor or subcontractor who knowingly participated in the
7 violation of this article has willfully failed to pay the prevailing
8 wages in accordance with the provisions of this article, whether such
9 failures were concurrent or consecutive and whether or not such final
10 determinations concerning separate public [building] service WORK
11 contracts are rendered simultaneously, such contractor, subcontractor,
12 successor, and if the contractor, subcontractor, successor, or any
13 substantially-owned affiliated entity of the contractor or subcontrac-
14 tor, any of the partners if the contractor or subcontractor is a part-
15 nership, or any of the five largest shareholders of the contractor or
16 subcontractor, any officer of the contractor or subcontractor who know-
17 ingly participated in the violation of this article, or any successor is
18 a corporation, any officer of such corporation who knowingly partic-
19 ipated in such failure, shall be ineligible to submit a bid on or be
20 awarded any public [building] service work for a period of five years
21 from the date of the second order, provided, however, that where any
22 such final order involves the falsification of payroll records or the
23 kickback of wages, the contractor, subcontractor, successor, substan-
24 tially-owned affiliated entity of the contractor or subcontractor, any
25 partner if the contractor or subcontractor is a partnership or any of
26 the five largest shareholders of the contractor or subcontractor, any
27 officer of the contractor or subcontractor who knowingly participated in
28 the violation of this article shall be ineligible to submit a bid on or
29 be awarded any public [building] service WORK contract or subcontract
30 with the state, any municipal corporation or public body for a period of
31 five years from the date of the first final order. Nothing in this
32 subdivision shall be construed as affecting any provision of any other
33 law or regulation relating to the awarding of public contracts.

34 S 7. Subdivision 2 of section 237 of the labor law, as amended by
35 chapter 698 of the laws of 1988, is amended to read as follows:

36 2. A. Before payment is made by or on behalf of a public agency of any
37 sums due on account of a contract for service work, it shall be the duty
38 of the comptroller of the state or the financial officer of such public
39 agency or other officer or person charged with the custody and disburse-
40 ment of the state or corporate funds applicable to the contract under
41 and pursuant to which payment is made, to require the contractor to file
42 a statement in writing in form satisfactory to such officer certifying
43 to the amounts then due and owing from such contractor filing such
44 statement to or on behalf of any and all service employees for daily or
45 weekly wages on account of labor performed upon the work under the
46 contract, setting forth therein the names of the persons whose wages are
47 unpaid and the amount due to or on behalf of each respectively, which
48 statement so to be filed shall be verified by the oath of the contractor
49 that he or she has read such statement subscribed by him or her and
50 knows the contents thereof, and that the same is true of his or her own
51 knowledge. THE CONTRACTOR SHALL FILE THESE PAYROLL RECORDS VERIFIED
52 UNDER OATH WITHIN NINETY DAYS AFTER ANY LABOR IS PERFORMED UPON THE WORK
53 UNDER CONTRACT, OR SUCH OTHER TIME AS THE FISCAL OFFICER MAY AUTHORIZE.
54 ANY PERSON WHO WILLFULLY FAILS TO FILE SUCH PAYROLL RECORDS WITH THE
55 PUBLIC AGENCY SHALL BE GUILTY OF A CLASS E FELONY.

1 B. EACH PUBLIC AGENCY SHALL DESIGNATE IN WRITING AN INDIVIDUAL
2 EMPLOYED BY SUCH DEPARTMENT RESPONSIBLE FOR THE RECEIPT, COLLECTION AND
3 REVIEW FOR FACIAL VALIDITY OF A CONTRACTOR'S CERTIFIED PAYROLL STATE-
4 MENT, AS SET FORTH IN THIS SUBDIVISION, BEFORE PAYMENT IS MADE. SAID
5 DESIGNATION SHALL BE FILED WITH THE FISCAL OFFICER AND POSTED IN A
6 CONSPICUOUS LOCATION AT THE WORK SITE. IF THE DESIGNATED INDIVIDUAL
7 CANNOT PERFORM THE RECEIPT, COLLECTION AND REVIEW OF CERTIFIED PAYROLLS
8 DUTIES AS INDICATED ABOVE, FOR ANY REASON, INCLUDING BUT NOT LIMITED TO
9 REASSIGNMENT, PROMOTION OR SEPARATION FROM EMPLOYMENT, THE PUBLIC AGENCY
10 MUST IMMEDIATELY DESIGNATE ANOTHER INDIVIDUAL EMPLOYED BY SUCH AGENCY TO
11 FULFILL SUCH RESPONSIBILITIES. IN THE EVENT THAT A PUBLIC AGENCY FAILS
12 TO NAME AN INDIVIDUAL RESPONSIBLE FOR THE RECEIPT, COLLECTION AND REVIEW
13 FOR FACIAL VALIDITY OF CONTRACTORS' CERTIFIED PAYROLLS, THEN THE INDI-
14 VIDUAL SO RESPONSIBLE SHALL BE THE INDIVIDUAL WHO IS THE CHIEF
15 POLICY-MAKING OFFICER OF SUCH PUBLIC AGENCY.

16 S 8. Subdivision 2 of section 238 of the labor law, as added by chap-
17 ter 777 of the laws of 1971, is amended to read as follows:

18 2. When a contract for service work contains as part thereof a sched-
19 ule of wages as provided for in this article, any [contractor] PERSON
20 who, after entering into such contract[, and any subcontractor of such
21 contractor who] WILLFULLY fails to pay to any service employee the wages
22 stipulated in such wage schedule [is guilty of a misdemeanor and upon
23 conviction shall be punished for a first offense by a fine of five
24 hundred dollars or by imprisonment for not more than thirty days or by
25 both fine and imprisonment; for a second offense by a fine of one thou-
26 sand dollars, and in] SHALL BE GUILTY OF A MISDEMEANOR FOR THE FIRST
27 OFFENSE AND UPON CONVICTION THEREFOR SHALL BE FINED TWO THOUSAND FIVE
28 HUNDRED DOLLARS OR TWICE THE AMOUNT OF UNDERPAYMENT, WHICHEVER IS GREAT-
29 ER OR IMPRISONED FOR NOT MORE THAN ONE YEAR, OR BOTH. IF A PERSON STANDS
30 CONVICTED OF A VIOLATION OF THIS SECTION AND WITHIN THE PREVIOUS SIX
31 YEARS HAS BEEN CONVICTED ONE OR MORE TIMES OF A VIOLATION OF THIS
32 SECTION IN SEPARATE TRANSACTIONS, THEN SUCH PERSON SHALL BE GUILTY OF A
33 CLASS E FELONY UPON CONVICTION FOR SUCH SUBSEQUENT OFFENSE, AND SHALL BE
34 FINED FIVE THOUSAND DOLLARS OR TRIPLE THE AMOUNT OF UNDERPAYMENT, WHICH-
35 EVER IS GREATER OR IMPRISONED AS AUTHORIZED BY SECTION 70.00 OF THE
36 PENAL LAW OR PUNISHED BY BOTH SUCH FINE AND IMPRISONMENT, FOR EACH SUCH
37 OFFENSE. IN addition [thereto] TO ANY OTHER FINE OR PENALTY THAT MAY BE
38 IMPOSED FOR SUCH FELONY OFFENSE, the contract on which the violation has
39 occurred shall be forfeited; and no such contractor shall be entitled to
40 receive any sum, nor shall any officer, agent or employee of the
41 contracting public agency pay any such sum or authorize its payment from
42 the funds under his OR HER charge or control to such contractor for work
43 done upon the contract on which the contractor has been convicted of a
44 second offense. If the contractor or subcontractor is a corporation, any
45 officer of such corporation who knowingly permits the corporation to
46 fail to make such payment shall also be guilty of [a misdemeanor] THE
47 OFFENSE DEFINED IN THIS SUBDIVISION and the criminal and civil penalties
48 [herein] OF THIS SUBDIVISION shall attach to such officer upon
49 conviction.

50 S 9. Severability. If any clause, sentence, paragraph, section or part
51 of this act be adjudged by any court of competent jurisdiction to be
52 invalid and after exhaustion of all further judicial review, the judg-
53 ment shall not affect, impair or invalidate the remainder thereof, but
54 shall be confined in its operation to the clause, sentence, paragraph,
55 section or part of this act directly involved in the controversy in
56 which the judgment shall have been rendered.

1 S 10. This act shall take effect on the ninetieth day after it shall
2 have become a law, and shall apply to all contracts or other agreements
3 entered into, renewed, or extended on or after such date; provided,
4 however: (a) the amendments to subdivision 4 of section 230 of the
5 labor law made by section two of this act shall be subject to the expi-
6 ration and reversion of such subdivision pursuant to section 5 of chap-
7 ter 678 of the laws of 2007, as amended, when upon such date the
8 provisions of section four of this act shall take effect; and
9 (b) the amendments to subdivision 5 of section 231 of the labor law
10 made by section three of this act shall be subject to the expiration and
11 reversion of such subdivision pursuant to section 5 of chapter 678 of
12 the laws of 2007, as amended, when upon such date the provisions of
13 section five of this act shall take effect.