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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the labor law, in relation to making the failure to post a statement of wage rates and supplements subject to prosecution as a misdemeanor and subject to a civil penalty, and requiring maintenance and production on the job site of "sign-in" and "sign-out" sheets upon the request of the fiscal officer

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

1 Section 1. Subparagraphs (iii) and (iv) of paragraph a of subdivision
2 3-a of section 220 of the labor law, as amended by chapter 8 of the laws
3 of 2008, are amended to read as follows:
4 (iii) The contractor and every sub-contractor shall keep original
5 payrolls or transcripts thereof, subscribed and sworn to or affirmed by
6 him or her as true under the penalties of perjury, setting forth the
7 names and addresses and showing for each worker, laborer, or mechanic
8 the hours and days worked, the occupations worked, the hourly wage rates
9 paid and the supplements paid or provided. Where the contractor or sub-
10 contractor maintains no regular place of business in New York state and
11 where the amount of the contract is in excess of twenty-five thousand
12 dollars such payrolls shall be kept on the site of the work. All other
13 contractors or sub-contractors shall produce within five days on the
14 site of the work and upon formal order of the commissioner OR FISCAL
15 OFFICER or his or her designated representative such original payrolls
16 or transcripts thereof, subscribed and sworn to or affirmed by him or
17 her as true under the penalties of perjury, as may be deemed necessary
18 to adequately enforce the provisions of this article. Every contractor,
19 and sub-contractor, shall submit to the department of jurisdiction with-
20 in thirty days after issuance of its first payroll, and every thirty
21 days thereafter, a transcript of the original payroll record, as

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

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provided by this article, subscribed and sworn to or affirmed as true under the penalties of perjury. Any person who wilfully fails to file such payroll records with the department of jurisdiction shall be guilty of a class E felony. In addition, any person who wilfully fails to file such payroll records within the time specified in this subparagraph shall be subject to a civil penalty of up to one thousand dollars per day.

(iv) The department of jurisdiction shall be required to collect and maintain such payroll records at the times specified in subparagraph (iii) of this paragraph. The original payrolls or transcripts shall be preserved by the department of jurisdiction for five years from the date of completion of the work on the awarded contract. The department of jurisdiction as herein referred to shall be the department of the state, board or officer in the state, or municipal corporation or commission or board appointed pursuant to law, whose duty it is to prepare or direct the preparation of the plans and specifications for a public work project. EVERY CONTRACTOR AND SUB-CONTRACTOR, REGARDLESS OF WHETHER SUCH CONTRACTOR OR SUB-CONTRACTOR MAINTAINS A REGULAR PLACE OF BUSINESS IN NEW YORK STATE, SHALL MAINTAIN ON THE SITE OF THE WORK, OR ON THE SITE WHERE WORKERS REPORT TO WORK, ORIGINAL SIGN-IN AND SIGN-OUT SHEETS OR OTHER RECORDS REFLECTING THE ACTUAL DATES AND TIMES OF WORK, INCLUDING ARRIVAL AND DEPARTURE TIMES, OF ALL LABORERS, WORKERS OR MECHANICS EMPLOYED ON THE PUBLIC WORK, AND THE OCCUPATION IN WHICH THEY WORKED DURING SUCH TIMES, AND SHALL PRODUCE SUCH RECORDS ON THE SITE OF THE WORK, OR ON THE SITE WHERE WORKERS REPORT TO WORK, IMMEDIATELY, UNLESS ADDITIONAL TIME IS GRANTED FOR GOOD CAUSE SHOWN, UPON RECEIPT OF A REQUEST BY THE FISCAL OFFICER TO PRODUCE SUCH RECORDS. Each department of jurisdiction shall designate in writing an individual employed by such department responsible for the receipt, collection and review for facial validity of payrolls. Said designation shall be filed with the fiscal officer and posted in a conspicuous location at the project site. If the designated individual cannot perform the receipt, collection and review of certified payrolls duties as indicated above, for any reason, including but not limited to reassignment, promotion or separation from employment, the department of jurisdiction must immediately designate another individual employed by such department to fulfill such responsibilities. In the event that a department of jurisdiction fails to name an individual responsible for the receipt, collection and review for facial validity of payrolls, as set forth above, then the individual so responsible shall be the individual who is the chief policy-making individual of such department of jurisdiction.

S 2. Paragraph c of subdivision 3-a of section 220 of the labor law, as added by chapter 137 of the laws of 1985, is amended to read as follows:

c. The fiscal officer may require any person or corporation performing such public work to file with the fiscal officer within ten days of receipt of said request, payroll records, sworn to as to their validity and accuracy, [requested by the fiscal officer] OR OTHER RECORDS WHOSE MAINTENANCE OR PRODUCTION IS REQUIRED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, for said public work or for any public or private work performed by said person or corporation during the same period of time as said public work. In the event said person or corporation fails to provide the requested information within the allotted ten days OR FAILS TO PRODUCE RECORDS AS REQUIRED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, the fiscal officer shall, within fifteen days, order the department of jurisdiction to immediately withhold from payment to said person

1 or corporation up to twenty-five percent of the amount, not to exceed
2 one hundred thousand dollars, to be paid to said person or corporation
3 under the terms of the contract pursuant to which said public work is
4 being performed. Said amount withheld shall be immediately released upon
5 receipt by the department of jurisdiction of a notice from the fiscal
6 officer indicating that the request for records had been satisfied.

7 S 3. Subdivision 7 of section 220 of the labor law, as amended by
8 chapter 7 of the laws of 2008, is amended to read as follows:

9 7. Compliance investigations. The fiscal officer as herein defined
10 shall on a verified complaint in writing of any person interested or of
11 any employee organization pursuant to subdivision eight-d of this
12 section, and may on his own initiative cause a compliance investigation
13 to be made to determine whether the contractor or a subcontractor has
14 paid the prevailing rate of wages and prevailing practices for supple-
15 ments in the same trade or occupation in the locality within the state
16 where such public work is being performed, [or] the hours of labor
17 performed by the [workmen] WORKERS, laborers and mechanics employed on
18 such public work, [or both] HAS POSTED A LEGIBLE STATEMENT OF ALL WAGE
19 RATES AND SUPPLEMENTS AS REQUIRED PURSUANT TO PARAGRAPH A OF SUBDIVISION
20 THREE-A OF THIS SECTION OR HAS FAILED TO MAINTAIN OR PRODUCE RECORDS AS
21 REQUIRED PURSUANT TO PARAGRAPH A OF SUBDIVISION THREE-A OF THIS SECTION.
22 The fiscal officer or his agents, examiners and inspectors may examine
23 or cause to be examined the books and records pertaining to the rate of
24 wages paid and supplements provided to the laborers, [workmen] WORKERS
25 and mechanics on said public work [and], the hours of labor performed by
26 such laborers, [workmen] WORKERS and mechanics on said public work AND
27 THE POSTING OF A LEGIBLE STATEMENT, IN A PROMINENT AND ACCESSIBLE PLACE
28 ON THE SITE OF SAID PUBLIC WORK, OF ALL WAGE RATES AND SUPPLEMENTS AS
29 SPECIFIED IN THE CONTRACT TO BE PAID OR PROVIDED, AS THE CASE MAY BE,
30 FOR THE VARIOUS CLASSES OF MECHANICS, WORKERS OR LABORERS EMPLOYED ON
31 SAID PUBLIC WORK. The fiscal officer in such investigation shall be
32 deemed to be acting in a judicial capacity, and shall have the right to
33 issue subpoenas, administer oaths and examine witnesses. The enforcement
34 of a subpoena issued under this section shall be regulated by the civil
35 practice law and rules. Such fiscal officer shall make either an order,
36 determination or any other disposition, including but not limited to an
37 agreed upon settlement and/or stipulation, within six months from the
38 date of filing of such verified complaint, and where a compliance inves-
39 tigation is made without the filing of a verified complaint, within six
40 months from the date a compliance investigation is initiated by such
41 fiscal officer. Upon the making of said order or determination, or upon
42 arriving at such agreed upon settlement and/or stipulation, a copy ther-
43 eof shall be sent by certified mail, return receipt requested, by the
44 fiscal officer: (i) to the person and employee organization, if any, who
45 or which initiated the complaint, (ii) to the person or corporation, if
46 any, against whom the complaint was brought, and (iii) where a compli-
47 ance investigation is made without the filing of a complaint, to the
48 person who or which was the subject of the compliance investigation.

49 S 4. The second undesignated paragraph of subdivision 8 of section 220
50 of the labor law, as amended by chapter 7 of the laws of 2008, is
51 amended to read as follows:

52 In addition to directing payment of wages or supplements including
53 interest found to be due, such order may direct payment of a further sum
54 as a civil penalty in an amount not exceeding twenty-five percent of the
55 total amount found to be due. In assessing the amount of the penalty,
56 due consideration shall be given to the size of the employer's business,

1 the good faith of the employer, the gravity of the violation, the histo-
2 ry of previous violations and the failure to comply with recordkeeping
3 or other non-wage requirements. IN THE EVENT THAT A CONTRACTOR OR SUB-
4 CONTRACTOR ON PUBLIC WORKS IS FOUND TO HAVE WILLFULLY FAILED TO POST ALL
5 WAGE RATES AND SUPPLEMENTS OR TO MAINTAIN OR PRODUCE RECORDS AS REQUIRED
6 BY SUBDIVISION THREE-A OF THIS SECTION, SUCH A VIOLATION SHALL CONSTI-
7 TUTE A WILLFUL VIOLATION, AND THE FISCAL OFFICER MAY ENTER AN ORDER
8 DIRECTING SUCH CONTRACTOR OR SUB-CONTRACTOR TO PAY A SUM AS A CIVIL
9 PENALTY IN AN AMOUNT OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR THE FIRST
10 SUCH NONCOMPLIANCE AND A SUM AS A CIVIL PENALTY IN AN AMOUNT OF NOT MORE
11 THAN ONE THOUSAND DOLLARS FOR EACH SUBSEQUENT NONCOMPLIANCE. SUCH CIVIL
12 PENALTY SHALL NOT BE IMPOSED IF SUCH CONTRACTOR OR SUB-CONTRACTOR PAYS A
13 FINE IMPOSED PURSUANT TO A MISDEMEANOR CONVICTION PURSUANT TO SUBDIVI-
14 SION THREE-A OF THIS SECTION. Where the fiscal officer is the commis-
15 sioner, the penalty shall be paid to the commissioner for deposit in the
16 state treasury. Where the fiscal officer is a city comptroller or other
17 analogous officer, the penalty shall be paid to said officer for deposit
18 in the city treasury.

19 S 5. Subparagraph 1 of paragraph a of subdivision 2 of section 220-b
20 of the labor law, as amended by chapter 547 of the laws of 1998, is
21 amended to read as follows:

22 (1) When any interested person shall file a written complaint with the
23 fiscal officer, as herein defined, alleging unpaid wages or supplements
24 due for labor performed on a public improvement for which a contract has
25 been entered into, and said labor is alleged to have been performed
26 within the two-year period immediately preceding the date of the filing
27 of said complaint, or if, on the fiscal officer's own initiative, unpaid
28 wages or supplements appear to be due, OR IF THE CONTRACTOR OR SUB-CON-
29 TRACTOR HAS FAILED TO POST A LEGIBLE STATEMENT OF WAGES OR TO MAINTAIN
30 OR PROVIDE RECORDS AS REQUIRED BY SUBDIVISION THREE-A OF SECTION TWO
31 HUNDRED TWENTY OF THIS ARTICLE, the fiscal officer shall immediately so
32 notify the financial officer of the civil division interested, or, if
33 there are insufficient moneys still due to the contractor or subcontractor
34 to satisfy said wages and supplements, including interest and penal-
35 ty, the financial officer of another civil division which has entered or
36 subsequently enters into a public improvement contract with the contrac-
37 tor or subcontractor, who shall withhold from any payment due or earned
38 the contractor or subcontractor executing any public improvements,
39 sufficient moneys to satisfy said wages and supplements, including
40 interest at the rate provided herein, and any civil penalty that may be
41 assessed as provided herein, pending a final determination. The finan-
42 cial officer shall immediately confirm in writing to the fiscal officer
43 the amount of money withheld.

44 S 6. Subparagraph 1 of paragraph b of subdivision 3 of section 220-b
45 of the labor law, as amended by chapter 241 of the laws of 2002, is
46 amended to read as follows:

47 (1) When two final determinations have been rendered against a
48 contractor, subcontractor, successor, or any substantially-owned affil-
49 iated entity of the contractor or subcontractor, any of the partners if
50 the contractor or subcontractor is a partnership, any officer of the
51 contractor or subcontractor who knowingly participated in the violation
52 of this article, any of the shareholders who own or control at least ten
53 per centum of the outstanding stock of the contractor or subcontractor
54 or any successor within any consecutive six-year period determining that
55 such contractor, subcontractor, successor, or any substantially-owned
56 affiliated entity of the contractor or subcontractor, any of the part-

ners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from the second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the first final determination.

WHEN TWO FINAL DETERMINATIONS HAVE BEEN ENTERED AGAINST ANY OF THE AFOREMENTIONED ENTITIES OR INDIVIDUALS WITHIN ANY CONSECUTIVE SIX-YEAR PERIOD DETERMINING THAT SUCH ENTITY OR INDIVIDUAL HAS WILLFULLY FAILED TO POST A STATEMENT OF WAGES OR HAS WILLFULLY FAILED TO MAINTAIN OR PRODUCE RECORDS AS REQUIRED BY SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THIS ARTICLE, OR WHEN ONE SUCH DETERMINATION HAS BEEN ENTERED DURING THE SAME CONSECUTIVE SIX-YEAR PERIOD AS A FINAL DETERMINATION THAT ANY SUCH ENTITY OR INDIVIDUAL HAS WILLFULLY FAILED TO PAY THE PREVAILING RATE OF WAGES OR SUPPLEMENTS IN ACCORDANCE WITH THIS ARTICLE, AND SUCH DETERMINATIONS CONCERNED SEPARATE PUBLIC WORK CONTRACTS AND WERE NOT CONCURRENT, ANY SUCH ENTITY OR INDIVIDUAL WHO KNOWINGLY PARTICIPATED IN SUCH FAILURE SHALL BE INELIGIBLE TO SUBMIT A BID ON OR BE AWARDED ANY PUBLIC WORK CONTRACT OR SUBCONTRACT WITH THE STATE, ANY MUNICIPAL CORPORATION OR PUBLIC BODY FOR A PERIOD OF FIVE YEARS FROM THE DATE OF THE SECOND FINAL DETERMINATION.

S 7. Subdivision 6 of section 231 of the labor law, as added by chapter 777 of the laws of 1971, is amended to read as follows:

6. No later than the first day upon which work on said contract is performed by any employee, the contractor shall post in a prominent and accessible place on the site of the work a legible statement of the wages to be paid to the [workmen] WORKERS employed thereon. ANY CONTRACTOR WHO IS FOUND TO HAVE WILLFULLY FAILED TO POST SUCH STATEMENT SHALL BE GUILTY OF A MISDEMEANOR, WHICH UPON CONVICTION THEREOF, SHALL BE PUNISHABLE BY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS FOR EACH OFFENSE.

S 8. Subdivision 1 of section 233 of the labor law, as added by chapter 777 of the laws of 1971, is amended to read as follows:

1 1. In all cases where service work is being performed pursuant to a
2 contract therefor, the contractor shall keep original payrolls or tran-
3 scripts thereof, subscribed and confirmed by him as true, under penal-
4 ties of perjury, showing the hours and days worked by each employee, the
5 craft, trade or occupation at which he was employed, and the wages paid.
6 EVERY CONTRACTOR SHALL MAINTAIN ORIGINAL SIGN-IN AND SIGN-OUT SHEETS OR
7 OTHER RECORDS REFLECTING THE ACTUAL DATES AND TIMES OF WORK, INCLUDING
8 ARRIVAL AND DEPARTURE TIMES, OF ALL BUILDING SERVICE EMPLOYEES EMPLOYED
9 ON THE SITE OF THE WORK, OR ON THE SITE WHERE WORKERS REPORT TO WORK,
10 AND SHALL PRODUCE SUCH RECORDS AT THE WORK SITE OR ON THE SITE WHERE
11 WORKERS REPORT TO WORK, IMMEDIATELY, UNLESS ADDITIONAL TIME IS GRANTED
12 FOR GOOD CAUSE SHOWN, UPON RECEIPT OF A REQUEST BY THE FISCAL OFFICER TO
13 PRODUCE SUCH RECORDS.

14 S 9. Paragraph (c) of subdivision 1 of section 234 of the labor law,
15 as added by chapter 777 of the laws of 1971, is amended to read as
16 follows:

17 (c) to examine the books, documents and records pertaining to the
18 wages paid to, and the hours of work performed by, service employees,
19 AND TO REQUIRE THE IMMEDIATE PRODUCTION OF RECORDS REQUIRED TO BE MAIN-
20 TAINED PURSUANT TO SUBDIVISION ONE OF SECTION TWO HUNDRED THIRTY-THREE
21 OF THIS ARTICLE;

22 S 10. Subdivision 1 of section 235 of the labor law, as added by chap-
23 ter 777 of the laws of 1971, is amended to read as follows:

24 1. Whenever the fiscal officer has reason to believe that a service
25 employee has been paid less than the wages stipulated in the contract,
26 or if such contract has no wage schedule attached thereto and the fiscal
27 officer has reason to believe that a service employee has been paid less
28 than the wages prevailing for his craft, trade or occupation, THAT A
29 CONTRACTOR HAS FAILED TO POST WAGES AS REQUIRED BY SUBDIVISION SIX OF
30 SECTION TWO HUNDRED THIRTY-ONE OF THIS ARTICLE OR FAILED TO MAINTAIN OR
31 PRODUCE RECORDS AS REQUIRED BY SECTION TWO HUNDRED THIRTY-THREE OF THIS
32 ARTICLE, the fiscal officer may, and upon receipt of a written complaint
33 from an employee employed thereon, shall conduct a special investigation
34 to determine the facts relating thereto.

35 S 11. Subdivision 7 of section 235 of the labor law, as amended by
36 chapter 547 of the laws of 1998, is amended to read as follows:

37 7. When, pursuant to the provisions of this section, two final orders
38 have been entered against a contractor, subcontractor, successor, or any
39 substantially-owned affiliated entity of the contractor or subcontractor,
40 any of the partners if the contractor or subcontractor is a part-
41 nership, any of the five largest shareholders of the contractor or
42 subcontractor, any officer of the contractor or subcontractor who know-
43 ingly participated in the violation of this article within any consec-
44 utive six-year period determining that such contractor or subcontractor
45 and/or its successor, substantially-owned affiliated entity of the
46 contractor or subcontractor, any of the partners or any of the five
47 largest shareholders of the contractor or subcontractor, any officer of
48 the contractor or subcontractor who knowingly participated in the
49 violation of this article has willfully failed to pay the prevailing
50 wages in accordance with the provisions of this article, whether such
51 failures were concurrent or consecutive and whether or not such final
52 determinations concerning separate public building service contracts are
53 rendered simultaneously, such contractor, subcontractor, successor, and
54 if the contractor, subcontractor, successor, or any substantially-owned
55 affiliated entity of the contractor or subcontractor, any of the part-
56 ners if the contractor or subcontractor is a partnership, or any of the

1 five largest shareholders of the contractor or subcontractor, any offi-
2 cer of the contractor or subcontractor who knowingly participated in the
3 violation of this article, or any successor is a corporation, any offi-
4 cer of such corporation who knowingly participated in such failure,
5 shall be ineligible to submit a bid on or be awarded any public building
6 service work for a period of five years from the date of the second
7 order, provided, however, that where any such final order involves the
8 falsification of payroll records or the kickback of wages, the contrac-
9 tor, subcontractor, successor, substantially-owned affiliated entity of
10 the contractor or subcontractor, any partner if the contractor or
11 subcontractor is a partnership or any of the five largest shareholders
12 of the contractor or subcontractor, any officer of the contractor or
13 subcontractor who knowingly participated in the violation of this arti-
14 cle shall be ineligible to submit a bid on or be awarded any public
15 building service contract or subcontract with the state, any municipal
16 corporation or public body for a period of five years from the date of
17 the first final order.

18 WHEN TWO FINAL DETERMINATIONS HAVE BEEN ENTERED AGAINST ANY OF THE
19 AFOREMENTIONED ENTITIES OR INDIVIDUALS WITHIN ANY CONSECUTIVE SIX-YEAR
20 PERIOD DETERMINING THAT SUCH ENTITY OR INDIVIDUAL HAS WILLFULLY FAILED
21 TO POST A STATEMENT OF WAGES AS REQUIRED BY SUBDIVISION SIX OF SECTION
22 TWO HUNDRED THIRTY-ONE OF THIS ARTICLE OR HAS WILLFULLY FAILED TO MAIN-
23 TAIN OR PRODUCE RECORDS AS REQUIRED BY SECTION TWO HUNDRED THIRTY-THREE
24 OF THIS ARTICLE, OR WHEN ONE SUCH DETERMINATION HAS BEEN ENTERED DURING
25 THE SAME CONSECUTIVE SIX-YEAR PERIOD AS A FINAL DETERMINATION THAT ANY
26 SUCH ENTITY OR INDIVIDUAL HAS WILLFULLY FAILED TO PAY THE PREVAILING
27 RATE OF WAGES OR SUPPLEMENTS IN ACCORDANCE WITH THIS ARTICLE, AND SUCH
28 DETERMINATIONS CONCERNED SEPARATE BUILDING CONTRACTS AND WERE NOT
29 CONCURRENT, ANY SUCH ENTITY OR INDIVIDUAL WHO KNOWINGLY PARTICIPATED IN
30 SUCH FAILURE SHALL BE INELIGIBLE TO SUBMIT A BID ON OR BE AWARDED ANY
31 PUBLIC BUILDING SERVICE CONTRACT OR SUBCONTRACT WITH THE STATE, ANY
32 MUNICIPAL CORPORATION OR PUBLIC BODY FOR A PERIOD OF FIVE YEARS FROM THE
33 DATE OF THE SECOND FINAL ORDER. Nothing in this subdivision shall be
34 construed as affecting any provision of any other law or regulation
35 relating to the awarding of public contracts.

36 S 12. This act shall take effect September 1, 2009.