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

400

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 providing for additional penalties for failure to pay prevailing wages or supplements

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

Section 1. Section 220-g of the labor law, as amended by chapter 242 of the laws of 2002, is amended to read as follows:

S 220-g. [Additional] PRIVATE enforcement of article. 1. For the purpose of enforcing this article, the affected employee may bring an action to recover from the bond which is required by section one hundred thirty-seven of the state finance law, of the contractor, the subcontractor or both, unpaid wages and supplements, including interest as provided for in subdivision eight of section two hundred twenty of this article, due to persons furnishing labor to either the contractor or subcontractor. Said action may be brought against the contractor, the subcontractor, or the issuer of such bond, without prior notice, within one year of the date of the last alleged underpayment, or within one year of the date of the filing of an order by the commissioner or other fiscal officer determining a wage or supplement underpayment. The employee may permit an employee organization or the commissioner or other fiscal officer to commence such action on his OR HER behalf.

2. IN THE EVENT THAT AN AUTHORIZED OFFICIAL HAS DISPENSED WITH THE REQUIREMENT TO POST A PAYMENT BOND IN ACCORD WITH THE PROVISIONS OF SECTION ONE HUNDRED THIRTY-SEVEN OF THE STATE FINANCE LAW IN A CONTRACT FOR THE PROSECUTION OF A PUBLIC IMPROVEMENT FOR THE STATE OF NEW YORK, A MUNICIPAL CORPORATION, A PUBLIC BENEFIT CORPORATION OR A COMMISSION APPOINTED PURSUANT TO LAW, OR IN THE ABSENCE OF A REQUIREMENT TO POST SUCH A BOND, AN AGGRIEVED EMPLOYEE OR AN EMPLOYEE ORGANIZATION ON BEHALF OF SUCH EMPLOYEE MAY BRING AN ACTION TO RECOVER AMOUNTS AUTHORIZED HERE-

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

LBD02603-01-9

BY DIRECTLY FROM THE CONTRACTOR OR SUBCONTRACTOR FOR WHICH LABOR WAS PERFORMED IN THE PROSECUTION OF SUCH PUBLIC IMPROVEMENT.

3. ACTIONS BROUGHT PURSUANT TO THIS SECTION MAY BE BROUGHT IN THE COUNTY IN WHICH SUCH LABOR WAS PERFORMED OR IF SUCH LABOR WAS PERFORMED IN MORE THAN ONE COUNTY, THEN IN ANY SUCH COUNTY UNLESS OTHERWISE SPECIFIED BY THE TERMS OF THE BOND FROM WHICH RECOVERY IS SOUGHT.

4. UPON A FINDING OF UNDERPAYMENT OR NONPAYMENT OF WAGES AND/OR SUPPLEMENTS, THE COURT, IN ADDITION TO ORDERING PAYMENT OF SUCH WAGES AND/OR SUPPLEMENTS, SHALL ORDER PAYMENT (A) TO EACH AFFECTED EMPLOYEE OF A SUM EQUAL TO THREE TIMES THE FULL AMOUNT OF WAGES OR SUPPLEMENTS IMPROPERLY WITHHELD FROM SUCH EMPLOYEE, (B) TO EACH AFFECTED EMPLOYEE OR TO THE EMPLOYEE ORGANIZATION WHICH BROUGHT THE ACTION ON BEHALF OF SUCH EMPLOYEE, BUT ONLY TO THE EXTENT PAID OR OWED AND ADMITTED, ALL COURT COSTS AND FEES, REASONABLE ATTORNEY'S FEES AND DISBURSEMENTS, INCLUDING FEES OF EXPERT WITNESSES, AND (C) TO THE COMMISSIONER A CIVIL PENALTY IN AN AMOUNT EQUAL TO TWENTY-FIVE PERCENT OF THE SUM OF ALL WAGES AND/OR SUPPLEMENTS FOUND TO HAVE BEEN IMPROPERLY WITHHELD WHICH SUM SHALL BE PAID INTO A SPECIAL ACCOUNT ESTABLISHED BY THE STATE COMPTROLLER FOR THE SOLE PURPOSE OF PROVIDING FUNDS TO BE USED BY THE COMMISSIONER FOR ENFORCEMENT OF THE PROVISIONS OF THIS ARTICLE.

S 2. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to any conduct occurring on or after such effective date.