

1023

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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, OR SECURITY SERVICE WORK FOR A CONTRACTOR,
13 OTHER THAN A BUSINESS IMPROVEMENT DISTRICT, UNDER CONTRACT WITH A PUBLIC
14 AGENCY WHICH IS IN EXCESS OF TEN THOUSAND DOLLARS AND THE PRINCIPAL
15 PURPOSE OF WHICH IS TO FURNISH SERVICES THROUGH THE USE OF SERVICE
16 EMPLOYEES, OR ANY OTHER PERSON PERFORMING work in connection with the
17 care or maintenance of an existing building, or in connection with the
18 transportation of office furniture or equipment to or from such build-
19 ing, or in connection with the transportation and delivery of fossil
20 fuel to such building, for a contractor under a contract with a public
21 agency which is in excess of [one] TEN thousand [five hundred] dollars
22 and the principal purpose of which is to furnish services through the
23 use of [building] service employees.

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

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1 "[Building service] SERVICE employee" or "employee" includes, but is
2 not limited, to, watchman, guard, doorman, building cleaner, porter,
3 handyman, janitor, gardener, groundskeeper, stationary fireman, elevator
4 operator and starter, window cleaner, and occupations relating to the
5 collection of garbage or refuse, and to the transportation of office
6 furniture and equipment, and to the transportation and delivery of
7 fossil fuel but does not include clerical, sales, professional, techni-
8 cian and related occupations.

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

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

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

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

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

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

51 9. "Fossil fuel" shall mean coal, petroleum products and fuel gases.
52 "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel
53 gases" shall include but not be limited to methane, natural gas, lique-
54 fied natural gas and manufactured fuel gases. "Petroleum products" shall
55 include all products refined or rerefined from synthetic or crude oil or
56 oil extracted from other sources, including natural gas liquids.

1 [Provided that nothing in this subdivision shall affect the exclusion
2 for public utility services set forth in subdivision two of this
3 section.]

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

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

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

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

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

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

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

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

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

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

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

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

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

54 a. At the start of such investigation the fiscal officer may notify
55 the financial officer of the public agency interested who shall, at the
56 direction of the fiscal officer, forthwith withhold from any payment due

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

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

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

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

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

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

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

1 ANY PERSON WHO WILLFULLY FAILS TO FILE SUCH PAYROLL RECORDS WITH THE
2 PUBLIC AGENCY SHALL BE GUILTY OF A CLASS E FELONY.

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

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

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

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

1 section or part of this act directly involved in the controversy in
2 which the judgment shall have been rendered.

3 S 10. This act shall take effect on the ninetieth day after it shall
4 have become a law, and shall apply to all contracts or other agreements
5 entered into, renewed, or extended on or after such date; provided,
6 however:

7 (a) the amendments to subdivision 4 of section 230 of the labor law
8 made by section two of this act shall be subject to the expiration and
9 reversion of such subdivision pursuant to section 5 of chapter 678 of
10 the laws of 2007, as amended, when upon such date the provisions of
11 section four of this act shall take effect; and

12 (b) the amendments to subdivision 5 of section 231 of the labor law
13 made by section three of this act shall be subject to the expiration and
14 reversion of such subdivision pursuant to section 5 of chapter 678 of
15 the laws of 2007, as amended, when upon such date the provisions of
16 section five of this act shall take effect.