

7482--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

May 22, 2013

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Introduced by M. of A. CAMARA, ROZIC, BENEDETTO, CRESPO, JACOBS, STECK, LIFTON, ABINANTI, SEPULVEDA, ROSENTHAL, MOYA -- Multi-Sponsored by -- M. of A. CLARK, MILLMAN, MOSLEY, SKARTADOS -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1     Section 1. The opening paragraph of subdivision 1, and subdivisions 2,  
2     3, 8, 9 and 10 of section 230 of the labor law, the opening paragraph of  
3     subdivision 1 as amended and subdivision 9 as added by chapter 542 of  
4     the laws of 1984, subdivisions 2, 3 and 8 as added by chapter 777 of the  
5     laws of 1971 and subdivision 10 as added by chapter 547 of the laws of  
6     1998, are amended and a new subdivision 15 is added to read as follows:  
7     "Building service employee" or "employee" means any person performing  
8     work in connection with the care or maintenance of an existing building,  
9     or in connection with the transportation of office furniture or equip-  
10    ment to or from such building, or in connection with the transportation  
11    and delivery of fossil fuel to such building, OR ANY PERSON PERFORMING  
12    JANITORIAL OR SECURITY WORK ON OR ABOUT A FACILITY OF A PUBLIC AGENCY  
13    PROVIDING PUBLIC UTILITY SERVICES, for a contractor under a contract  
14    with a public agency which is in excess of [one] TWO thousand [five  
15    hundred] dollars and the principal purpose of which is to furnish  
16    services through the use of building service employees. THE PROVISIONS  
17    OF THIS ARTICLE SHALL NOT APPLY TO ANY EMPLOYEE DIRECTLY OR INDIRECTLY  
18    PERFORMING WORK FOR OR ON BEHALF OF A BUSINESS IMPROVEMENT DISTRICT  
19    UNLESS SUCH WORK WOULD HAVE BEEN SUBJECT TO THE REQUIREMENTS OF THIS  
20    ARTICLE AS IN EFFECT ON JANUARY FIRST, TWO THOUSAND THIRTEEN.

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

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2. "Building 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].

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.

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

10. "Substantially-owned affiliated entity" shall mean the parent company of the PUBLIC UTILITY, contractor or subcontractor, any subsidiary of the PUBLIC UTILITY, contractor or subcontractor, or any entity in which the parent of the PUBLIC UTILITY, contractor or subcontractor owns more than fifty percent of the voting stock, or an entity in which one or more of the top five shareholders of the PUBLIC UTILITY, contractor or subcontractor individually or collectively also owns a controlling share of the voting stock, or an entity which exhibits any other indicia of control over the PUBLIC UTILITY, contractor or subcontractor or over which the PUBLIC UTILITY, contractor or subcontractor exhibits control, regardless of whether or not the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include: power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

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

S 2. Subdivision 2 of section 235 of the labor law is amended by adding a new paragraph g to read as follows:

G. 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, FOR SAID SERVICE WORK OR FOR ANY PUBLIC OR PRIVATE WORK PERFORMED BY SAID PERSON OR CORPORATION DURING THE SAME PERIOD OF TIME AS SAID SERVICE WORK. IN THE EVENT SAID

1 PERSON OR CORPORATION FAILS TO PROVIDE THE REQUESTED INFORMATION WITHIN  
2 THE ALLOTTED TEN DAYS, THE FISCAL OFFICER MAY, WITHIN FIFTEEN DAYS,  
3 ORDER THE FINANCIAL OFFICER OF THE PUBLIC AGENCY TO IMMEDIATELY WITHHOLD  
4 FROM PAYMENT TO SAID PERSON OR CORPORATION UP TO TWENTY-FIVE PERCENT OF  
5 THE AMOUNT, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS, TO BE PAID TO  
6 SAID PERSON OR CORPORATION UNDER THE TERMS OF THE CONTRACT PURSUANT TO  
7 WHICH SAID SERVICE WORK IS BEING PERFORMED. SAID AMOUNT WITHHELD SHALL  
8 BE IMMEDIATELY RELEASED UPON RECEIPT BY THE PUBLIC AGENCY OF A NOTICE  
9 FROM THE FISCAL OFFICER INDICATING THAT THE REQUEST FOR RECORDS HAD BEEN  
10 SATISFIED.

11 S 3. Subdivision 2 of section 237 of the labor law, as amended by  
12 chapter 698 of the laws of 1988, is amended to read as follows:

13 2. A. Before payment is made by or on behalf of a public agency of any  
14 sums due on account of a contract for service work, it shall be the duty  
15 of the comptroller of the state or the financial officer of such public  
16 agency or other officer or person charged with the custody and disburse-  
17 ment of the state or corporate funds applicable to the contract under  
18 and pursuant to which payment is made, to require the contractor to file  
19 a statement in writing in form satisfactory to such officer certifying  
20 to the amounts then due and owing from such contractor filing such  
21 statement to or on behalf of any and all service employees for daily or  
22 weekly wages on account of labor performed upon the work under the  
23 contract, setting forth therein the names of the persons whose wages are  
24 unpaid and the amount due to or on behalf of each respectively, which  
25 statement so to be filed shall be verified by the oath of the contractor  
26 that he or she has read such statement subscribed by him or her and  
27 knows the contents thereof, and that the same is true of his or her own  
28 knowledge. THE CONTRACTOR SHALL FILE THESE PAYROLL RECORDS VERIFIED  
29 UNDER OATH WITHIN NINETY DAYS AFTER ANY LABOR IS PERFORMED UPON THE WORK  
30 UNDER CONTRACT, OR SUCH OTHER TIME AS THE FISCAL OFFICER MAY AUTHORIZE.  
31 ANY PERSON WHO WILLFULLY FAILS TO FILE SUCH PAYROLL RECORDS WITH THE  
32 PUBLIC AGENCY SHALL BE GUILTY OF A CLASS E FELONY.

33 B. EACH PUBLIC AGENCY SHALL DESIGNATE IN WRITING AN INDIVIDUAL  
34 EMPLOYED BY SUCH DEPARTMENT RESPONSIBLE FOR THE RECEIPT, COLLECTION AND  
35 REVIEW FOR FACIAL VALIDITY OF A CONTRACTOR'S CERTIFIED PAYROLL STATE-  
36 MENT, AS SET FORTH IN THIS SUBDIVISION, BEFORE PAYMENT IS MADE. SAID  
37 DESIGNATION SHALL BE FILED WITH THE FISCAL OFFICER AND POSTED IN A  
38 CONSPICUOUS LOCATION AT THE WORK SITE. IF THE DESIGNATED INDIVIDUAL  
39 CANNOT PERFORM THE RECEIPT, COLLECTION AND REVIEW OF CERTIFIED PAYROLLS  
40 DUTIES AS INDICATED ABOVE, FOR ANY REASON, INCLUDING BUT NOT LIMITED TO  
41 REASSIGNMENT, PROMOTION OR SEPARATION FROM EMPLOYMENT, THE PUBLIC AGENCY  
42 MUST IMMEDIATELY DESIGNATE ANOTHER INDIVIDUAL EMPLOYED BY SUCH AGENCY TO  
43 FULFILL SUCH RESPONSIBILITIES. IN THE EVENT THAT A PUBLIC AGENCY FAILS  
44 TO NAME AN INDIVIDUAL RESPONSIBLE FOR THE RECEIPT, COLLECTION AND REVIEW  
45 FOR FACIAL VALIDITY OF CONTRACTORS' CERTIFIED PAYROLLS, THEN THE INDI-  
46 VIDUAL SO RESPONSIBLE SHALL BE THE INDIVIDUAL WHO IS THE CHIEF POLICY  
47 MAKING OFFICER OF SUCH PUBLIC AGENCY.

48 S 4. Subdivision 2 of section 238 of the labor law, as added by chap-  
49 ter 777 of the laws of 1971, is amended to read as follows:

50 2. When a contract for service work contains as part thereof a sched-  
51 ule of wages as provided for in this article, any [contractor] PERSON  
52 who, after entering into such contract[, and any subcontractor of such  
53 contractor who] WILLFULLY fails to pay to any service employee the wages  
54 stipulated in such wage schedule [is guilty of a misdemeanor and upon  
55 conviction shall be punished for a first offense by a fine of five  
56 hundred dollars or by imprisonment for not more than thirty days or by

1 both fine and imprisonment; for a second offense by a fine of one thou-  
2 sand dollars, and in] SHALL BE GUILTY OF A MISDEMEANOR FOR THE FIRST  
3 OFFENSE AND UPON CONVICTION THEREFOR SHALL BE FINED TWO THOUSAND FIVE  
4 HUNDRED DOLLARS OR TWICE THE AMOUNT OF UNDERPAYMENT, WHICHEVER IS GREAT-  
5 ER OR IMPRISONED FOR NOT MORE THAN ONE YEAR, OR BOTH. IF A PERSON STANDS  
6 CONVICTED OF A VIOLATION OF THIS SECTION AND WITHIN THE PREVIOUS SIX  
7 YEARS HAS BEEN CONVICTED ONE OR MORE TIMES OF A VIOLATION OF THIS  
8 SECTION IN SEPARATE TRANSACTIONS, THEN SUCH PERSON SHALL BE GUILTY OF A  
9 CLASS E FELONY UPON CONVICTION FOR SUCH SUBSEQUENT OFFENSE, AND SHALL BE  
10 FINED FIVE THOUSAND DOLLARS OR TRIPLE THE AMOUNT OF UNDERPAYMENT, WHICH-  
11 EVER IS GREATER OR IMPRISONED AS AUTHORIZED BY SECTION 70.00 OF THE  
12 PENAL LAW OR PUNISHED BY BOTH SUCH FINE AND IMPRISONMENT, FOR EACH SUCH  
13 OFFENSE. IN addition [thereto] TO ANY OTHER FINE OR PENALTY THAT MAY BE  
14 IMPOSED FOR SUCH FELONY OFFENSE, the contract on which the violation has  
15 occurred shall be forfeited; and no such contractor shall be entitled to  
16 receive any sum, nor shall any officer, agent or employee of the  
17 contracting public agency pay any such sum or authorize its payment from  
18 the funds under his OR HER charge or control to such contractor for work  
19 done upon the contract on which the contractor has been convicted of a  
20 second offense. If the contractor or subcontractor is a corporation, any  
21 officer of such corporation who knowingly permits the corporation to  
22 fail to make such payment shall also be guilty of [a misdemeanor] THE  
23 OFFENSE DEFINED IN THIS SUBDIVISION and the criminal and civil penalties  
24 [herein] OF THIS SUBDIVISION shall attach to such officer upon  
25 conviction.

26 S 5. Severability. If any clause, sentence, paragraph, section or part  
27 of this act be adjudged by any court of competent jurisdiction to be  
28 invalid and after exhaustion of all further judicial review, the judg-  
29 ment shall not affect, impair or invalidate the remainder thereof, but  
30 shall be confined in its operation to the clause, sentence, paragraph,  
31 section or part of this act directly involved in the controversy in  
32 which the judgment shall have been rendered.

33 S 6. This act shall take effect on the ninetieth day after it shall  
34 have become a law and shall apply to all contracts or other agreements  
35 entered into, renewed or extended on or after such date.