

5338

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. SAVINO -- 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 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.  
21 2. "Building service work" or "service work" means work performed by a  
22 building service employee, but does not include work performed for a  
23 contractor under a contract for the furnishing of services by radio,  
24 telephone, telegraph or cable companies[; and any contract for public

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

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1 utility services, including electric light and power, water, steam and  
2 gas].

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

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

16 9. "Fossil fuel" shall mean coal, petroleum products and fuel gases.  
17 "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel  
18 gases" shall include but not be limited to methane, natural gas, lique-  
19 fied natural gas and manufactured fuel gases. "Petroleum products" shall  
20 include all products refined or rerefined from synthetic or crude oil or  
21 oil extracted from other sources, including natural gas liquids.  
22 [Provided that nothing in this subdivision shall affect the exclusion  
23 for public utility services set forth in subdivision two of this  
24 section.]

25 10. "Substantially-owned affiliated entity" shall mean the parent  
26 company of the PUBLIC UTILITY, contractor or subcontractor, any subsid-  
27 iary of the PUBLIC UTILITY, contractor or subcontractor, or any entity  
28 in which the parent of the PUBLIC UTILITY, contractor or subcontractor  
29 owns more than fifty percent of the voting stock, or an entity in which  
30 one or more of the top five shareholders of the PUBLIC UTILITY, contrac-  
31 tor or subcontractor individually or collectively also owns a control-  
32 ling share of the voting stock, or an entity which exhibits any other  
33 indicia of control over the PUBLIC UTILITY, contractor or subcontractor  
34 or over which the PUBLIC UTILITY, contractor or subcontractor exhibits  
35 control, regardless of whether or not the controlling party or parties  
36 have any identifiable or documented ownership interest. Such indicia  
37 shall include: power or responsibility over employment decisions, access  
38 to and/or use of the relevant entity's assets or equipment, power or  
39 responsibility over contracts of the entity, responsibility for mainte-  
40 nance or submission of certified payroll records, and influence over the  
41 business decisions of the relevant entity.

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

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

47 G. THE FISCAL OFFICER MAY REQUIRE ANY PERSON OR CORPORATION PERFORMING  
48 SUCH PUBLIC WORK TO FILE WITH THE FISCAL OFFICER WITHIN TEN DAYS OF  
49 RECEIPT OF SAID REQUEST, PAYROLL RECORDS, SWORN TO AS TO THEIR VALIDITY  
50 AND ACCURACY, REQUESTED BY THE FISCAL OFFICER, FOR SAID SERVICE WORK OR  
51 FOR ANY PUBLIC OR PRIVATE WORK PERFORMED BY SAID PERSON OR CORPORATION  
52 DURING THE SAME PERIOD OF TIME AS SAID SERVICE WORK. IN THE EVENT SAID  
53 PERSON OR CORPORATION FAILS TO PROVIDE THE REQUESTED INFORMATION WITHIN  
54 THE ALLOTTED TEN DAYS, THE FISCAL OFFICER MAY, WITHIN FIFTEEN DAYS,  
55 ORDER THE FINANCIAL OFFICER OF THE PUBLIC AGENCY TO IMMEDIATELY WITHHOLD  
56 FROM PAYMENT TO SAID PERSON OR CORPORATION UP TO TWENTY-FIVE PERCENT OF

1 THE AMOUNT, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS, TO BE PAID TO  
2 SAID PERSON OR CORPORATION UNDER THE TERMS OF THE CONTRACT PURSUANT TO  
3 WHICH SAID SERVICE WORK IS BEING PERFORMED. SAID AMOUNT WITHHELD SHALL  
4 BE IMMEDIATELY RELEASED UPON RECEIPT BY THE PUBLIC AGENCY OF A NOTICE  
5 FROM THE FISCAL OFFICER INDICATING THAT THE REQUEST FOR RECORDS HAD BEEN  
6 SATISFIED.

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

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

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

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

46 2. When a contract for service work contains as part thereof a sched-  
47 ule of wages as provided for in this article, any [contractor] PERSON  
48 who, after entering into such contract[, and any subcontractor of such  
49 contractor who] WILLFULLY fails to pay to any service employee the wages  
50 stipulated in such wage schedule [is guilty of a misdemeanor and upon  
51 conviction shall be punished for a first offense by a fine of five  
52 hundred dollars or by imprisonment for not more than thirty days or by  
53 both fine and imprisonment; for a second offense by a fine of one thou-  
54 sand dollars, and in] SHALL BE GUILTY OF A MISDEMEANOR FOR THE FIRST  
55 OFFENSE AND UPON CONVICTION THEREFOR SHALL BE FINED TWO THOUSAND FIVE  
56 HUNDRED DOLLARS OR TWICE THE AMOUNT OF UNDERPAYMENT, WHICHEVER IS GREAT-

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

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

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