

7482

2013-2014 Regular Sessions

I N A S S E M B L Y

May 22, 2013

Introduced by M. of A. CAMARA -- read once and referred 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 1, 2, 3, 8, 9 and 10 of section 230 of the
2 labor law, subdivision 1 as amended and subdivision 9 as added by chap-
3 ter 542 of the laws of 1984, subdivisions 2, 3 and 8 as added by chapter
4 777 of the laws of 1971 and subdivision 10 as added by chapter 547 of
5 the laws of 1998, are amended and a new subdivision 15 is added to read
6 as follows:

7 1. "Building service employee" or "employee" means any person perform-
8 ing work in connection with the care or maintenance of an existing
9 building, or in connection with the transportation of office furniture
10 or equipment to or from such building, or in connection with the trans-
11 portation and delivery of fossil fuel to such building, OR ANY PERSON
12 PERFORMING JANITORIAL OR SECURITY WORK ON OR ABOUT A FACILITY OF A
13 PUBLIC AGENCY PROVIDING PUBLIC UTILITY SERVICES, for a contractor under
14 a contract with a public agency which is in excess of [one] TWO thousand
15 [five 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 PROVISIONS OF THIS ARTI-
20 CLE ON JANUARY FIRST, TWO THOUSAND THIRTEEN.

21 "Building service employee" or "employee" includes, but is not limit-
22 ed[,] to, watchman, guard, doorman, building cleaner, porter, handyman,
23 janitor, gardener, groundskeeper, stationary fireman, elevator operator
24 and starter, window cleaner, and occupations relating to the collection
25 of garbage or refuse, and to the transportation of office furniture and

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

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1 equipment, and to the transportation and delivery of fossil fuel but
2 does not include clerical, sales, professional, technician and related
3 occupations.

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

7 2. "Building service work" or "service work" means work performed by a
8 building service employee, but does not include work performed for a
9 contractor under a contract for the furnishing of services by radio,
10 telephone, telegraph or cable companies[; and any contract for public
11 utility services, including electric light and power, water, steam and
12 gas].

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

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

26 9. "Fossil fuel" shall mean coal, petroleum products and fuel gases.
27 "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel
28 gases" shall include but not be limited to methane, natural gas, lique-
29 fied natural gas and manufactured fuel gases. "Petroleum products" shall
30 include all products refined or rerefined from synthetic or crude oil or
31 oil extracted from other sources, including natural gas liquids.
32 [Provided that nothing in this subdivision shall affect the exclusion
33 for public utility services set forth in subdivision two of this
34 section.]

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

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

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

1 G. THE FISCAL OFFICER MAY REQUIRE ANY PERSON OR CORPORATION PERFORMING
2 SUCH PUBLIC WORK TO FILE WITH THE FISCAL OFFICER WITHIN TEN DAYS OF
3 RECEIPT OF SAID REQUEST, PAYROLL RECORDS, SWORN TO AS TO THEIR VALIDITY
4 AND ACCURACY, REQUESTED BY THE FISCAL OFFICER, FOR SAID SERVICE WORK OR
5 FOR ANY PUBLIC OR PRIVATE WORK PERFORMED BY SAID PERSON OR CORPORATION
6 DURING THE SAME PERIOD OF TIME AS SAID SERVICE WORK. IN THE EVENT SAID
7 PERSON OR CORPORATION FAILS TO PROVIDE THE REQUESTED INFORMATION WITHIN
8 THE ALLOTTED TEN DAYS, THE FISCAL OFFICER SHALL, WITHIN FIFTEEN DAYS,
9 ORDER THE FINANCIAL OFFICER OF THE PUBLIC AGENCY TO IMMEDIATELY WITHHOLD
10 FROM PAYMENT TO SAID PERSON OR CORPORATION UP TO TWENTY-FIVE PERCENT OF
11 THE AMOUNT, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS, TO BE PAID TO
12 SAID PERSON OR CORPORATION UNDER THE TERMS OF THE CONTRACT PURSUANT TO
13 WHICH SAID SERVICE WORK IS BEING PERFORMED. SAID AMOUNT WITHHELD SHALL
14 BE IMMEDIATELY RELEASED UPON RECEIPT BY THE PUBLIC AGENCY OF A NOTICE
15 FROM THE FISCAL OFFICER INDICATING THAT THE REQUEST FOR RECORDS HAD BEEN
16 SATISFIED.

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

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

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

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

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

33 S 5. Severability. If any clause, sentence, paragraph, section or part
34 of this act be adjudged by any court of competent jurisdiction to be
35 invalid and after exhaustion of all further judicial review, the judg-
36 ment shall not affect, impair or invalidate the remainder thereof, but
37 shall be confined in its operation to the clause, sentence, paragraph,
38 section or part of this act directly involved in the controversy in
39 which the judgment shall have been rendered.

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