

# STATE OF NEW YORK

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6964

2019-2020 Regular Sessions

## IN ASSEMBLY

March 28, 2019

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Introduced by M. of A. CRESPO -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to covered developers, covered employers, covered lessees or lessors, financial assistance provided to covered developers, covered leases, and covered development projects

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 1, 5, 8, 12 and 13 of section 230 of the labor  
2 law, subdivision 1 as amended by chapter 542 of the laws of 1984, subdivi-  
3 sions 5 and 8 as added by chapter 777 of the laws of 1971, and subdivi-  
4 sions 12 and 13 as added by chapter 547 of the laws of 1998, are  
5 amended and seven new subdivisions 15, 16, 17, 18, 19, 20 and 21 are  
6 added to read 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, for a contractor  
12 under a contract with a public agency which is in excess of one thousand  
13 five hundred dollars and the principal purpose of which is to furnish  
14 services through the use of building service employees or in connection  
15 with a covered development project or lease.

16 "Building service employee" or "employee" includes, but is not limit-  
17 ed, to, watchman, guard, doorman, building cleaner, porter, handyman,  
18 janitor, gardener, groundskeeper, stationary fireman, elevator operator  
19 and starter, window cleaner, and occupations relating to the collection  
20 of garbage or refuse, and to the transportation of office furniture and  
21 equipment, and to the transportation and delivery of fossil fuel but  
22 does not include clerical, sales, professional, technician and related  
23 occupations.

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

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1 "Building service employee" or "employee" also does not include any  
2 employee to whom the provisions of articles eight and eight-a of this  
3 chapter are applicable.

4 5. "Wage" includes: (a) basic hourly cash rate of pay; and (b) supple-  
5 ments. The term "supplements" means fringe benefits including medical or  
6 hospital care, pensions on retirement or death, compensation for inju-  
7 ries or illness resulting from occupational activity, or insurance to  
8 provide any of the foregoing, unemployment benefits, life insurance,  
9 disability and sickness insurance, accident insurance, vacation and  
10 holiday pay, costs of apprenticeship or other similar programs and other  
11 bona fide fringe benefits not otherwise required by federal, state or  
12 local law to be provided by the contractor, covered developer, covered  
13 lessee or lessor, covered employer, or subcontractor.

14 8. "Fiscal officer" means the industrial commissioner, except for  
15 building service work performed by or on behalf of a city, or where the  
16 covered development project or real property subject to a covered lease  
17 is located within a city with a population of over one million, in which  
18 case "fiscal officer" means the comptroller or other analogous officer  
19 of such city.

20 12. "Parent company" shall mean an entity that directly controls the  
21 contractor or subcontractor, or covered developer, or covered lessee or  
22 lessor.

23 13. "Subsidiary" shall mean an entity that is controlled directly, or  
24 indirectly through one or more intermediaries, by a contractor or  
25 subcontractor, or covered developer, or covered lessee or lessor, or the  
26 contractor's, or covered developer's, or covered lessee's or lessor's  
27 parent company.

28 15. "Covered developer" means any entity receiving financial assist-  
29 ance in relation to a covered development project, or any assignee or  
30 successor in interest of real property that qualifies as a covered  
31 development project.

32 16. "Covered employer" means any entity, other than a covered develop-  
33 er, or covered lessee or lessor, who employs building service workers at  
34 a covered development project or at any real property subject to a  
35 covered lease.

36 17. "Covered lessee" means any entity leasing real property from a  
37 public agency.

38 18. "Covered lessor" means any entity from whom a public agency is  
39 leasing commercial office space or commercial office facilities of ten  
40 thousand square feet or more, provided that the public agency, whether  
41 through a single agreement or multiple agreements, leases no less than  
42 fifty-one percent of the total square footage of the building to which  
43 the lease or leases apply.

44 19. "Financial assistance" means assistance that is provided to a  
45 covered developer for the improvement or development of real property,  
46 economic development, job retention and growth, or other similar  
47 purposes, and that is paid in whole or in part by a public agency or  
48 agencies, and having a cumulative anticipated total financial value of  
49 one million dollars. Financial assistance includes, but is not limited  
50 to, cash payments or grants, bond financing, tax abatements or  
51 exemptions (including, but not limited to, abatements or exemptions from  
52 real property, mortgage recording, sales and uses taxes, or the differ-  
53 ence between any payments in lieu of taxes and the amount of real prop-  
54 erty or other taxes that would have been due if the property were not  
55 exempted from the payment of such taxes), tax increment financing,  
56 filing fee waivers, energy cost reductions, environmental remediation

1 costs, write-downs in the market value of building, land, or the cost of  
2 capital improvements related to real property that, under ordinary  
3 circumstances, the public agency would not pay for. Where assistance  
4 takes the form of loans or bond financing, the value of the assistance  
5 shall be determined based on the difference between the financing cost  
6 to a borrower and the cost to a similar borrower that does not receive  
7 financial assistance.

8 20. "Covered lease" means any agreement by a public agency with a  
9 covered lessor or lessee.

10 21. "Covered development project" means a project that has received or  
11 is expected to receive financial assistance.

12 § 2. The labor law is amended by adding a new section 231-a to read as  
13 follows:

14 § 231-a. Prevailing wage for covered leases and covered development  
15 projects. 1. Covered developers and covered lessees or lessors shall  
16 endure that all building service employees performing building service  
17 work in connection with a covered development project or covered lease  
18 are paid no less than the prevailing wage.

19 2. The obligation to pay prevailing supplements may be discharged by  
20 furnishing any equivalent combinations of fringe benefits or by making  
21 equivalent or differential payments in cash under rules and regulations  
22 established by the fiscal officer.

23 3. The public agency providing financial assistance or entering into a  
24 covered lease shall require, as a contractual condition of such finan-  
25 cial assistance or covered lease, that any building service employee  
26 performing building service work in connection with a covered develop-  
27 ment project or covered lease, regardless of the employing entity, shall  
28 be paid no less than the prevailing wage; and any lease, contract for  
29 property management services, or contract for the provision of building  
30 services, entered into by the covered developer or covered lessee or  
31 lessor, and any subcontract thereof, shall contain the following  
32 provision: "All building service employees shall be paid no less than  
33 the prevailing wage as provided by the fiscal officer as described in  
34 section two hundred thirty-four of the Labor Law. Any covered employer,  
35 as defined in section two hundred thirty of the Labor Law, shall main-  
36 tain all records relating to the employment of building service workers  
37 as described in section two hundred thirty-three of the Labor Law which  
38 are to be provided to the covered developer. Such covered employer shall  
39 also submit such statements as required under section two hundred thir-  
40 ty-seven of the Labor Law. This requirement shall apply to any covered  
41 development project or real property subject to a covered lease as  
42 provided by Article nine of the Labor Law."

43 4. Upon the awarding of financial assistance or entering into a  
44 covered lease by a public agency, the awarding public agency shall imme-  
45 diately furnish to the fiscal officer:

46 (a) the name and address of the awardee;

47 (b) the date when the financial assistance was awarded or the covered  
48 lease was entered into;

49 (c) the specific building or facility address or addresses, or locali-  
50 ty to which the covered lease or financial assistance pertains, if the  
51 financial assistance is targeted to a particular building or buildings,  
52 facility or facilities, or locality; and

53 (d) the anticipated total value of the financial assistance.

54 5. When the financial assistance to the covered development project  
55 applies to a particular building or buildings, facility or facilities,  
56 or locality, the prevailing wage shall apply only to such building or

1 buildings, facility or facilities, or locality; however, when the finan-  
2 cial assistance is not so limited, the covered development project shall  
3 be deemed to include any building or facility in which the covered  
4 developer operates within the state, and the prevailing wage requirement  
5 set forth in this subdivision shall apply to any building or facility in  
6 which the covered developer operates within the state.

7 6. The fiscal officer shall maintain a list of covered developers,  
8 covered lessees or lessors, and covered development projects, including  
9 the addresses of each. Such list shall be updated and published as often  
10 as is necessary to keep current.

11 7. Within two weeks of receiving financial assistance or entering into  
12 a covered lease, a covered developer, covered lessee or lessor, or  
13 covered employer shall post, in the same location and manner that other  
14 statutorily required notices are posted, at every such covered develop-  
15 ment project or real property subject to the covered lease, and provide  
16 each building service employee a copy of a written notice which shall be  
17 prepared by the fiscal officer, detailing the wages, benefits, and other  
18 protections to which building service employees are entitled under this  
19 section. Such notice shall also provide the name, address and telephone  
20 number of the fiscal officer and a statement advising building service  
21 employees that if they have been paid less than the prevailing wage they  
22 may notify the fiscal officer and request an investigation or bring suit  
23 in a court of competent jurisdiction. Such notices shall be posted in  
24 English and in any other language which at least twenty percent of  
25 employees speak as a primary language. Such notice shall remain posted  
26 for the time that the requirements of this section shall apply and shall  
27 be adjusted periodically to reflect the current prevailing wage for  
28 building service employees. In addition to posting such notice, the  
29 covered developer, covered lessee or lessor, or covered employer shall  
30 provide each individual employee a copy of the notice in English or any  
31 other language spoken by the employee as a primary language, so long as  
32 the fiscal officer has made such notice available to employers in such  
33 language on its website. The fiscal officer shall make available on its  
34 website sample written notices explaining the rights of building service  
35 employees under this section and shall translate such sample written  
36 notices into such languages it deems appropriate.

37 8. The requirements of this section shall apply for the term of the  
38 financial assistance, ten years from the opening date of the financially  
39 assisted project, the duration of any written agreement between a public  
40 agency and the covered developer providing for financial assistance, or  
41 the duration of the covered lease, whichever is longer.

42 9. This section shall not preempt any public agency from establishing  
43 higher minimum wages for covered developers or covered lessees or  
44 lessors receiving financial assistance or leasing from or to a public  
45 agency. Nor shall any covered developer, covered lessee or lessor, or  
46 covered employer be preempted from paying a wage higher than the  
47 prevailing wage.

48 § 3. Section 232 of the labor law, as added by chapter 777 of the laws  
49 of 1971, is amended to read as follows:

50 § 232. Overtime. An employee, employed by a contractor or employed at  
51 a covered development project, or at real property subject to a covered  
52 lease, who works more than eight hours in any one day or more than forty  
53 hours in any workweek shall be paid wages for such overtime at a rate  
54 not less than one-and-one-half times his prevailing basic cash hourly  
55 rate.

§ 4. Subdivisions 1, 2 and 3 of section 233 of the labor law, as added by chapter 777 of the laws of 1971, are amended and two new subdivisions 5 and 6 are added to read as follows:

1. In all cases where service work is being performed pursuant to a contract, or covered lease, or covered development project therefor, the contractor, or covered developer, or covered lessee or lessor, shall keep original payrolls or transcripts thereof, subscribed and confirmed by him as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he was employed, and the wages paid. A covered developer or covered lessee or lessor may satisfy this requirement by obtaining copies of employment records from a covered employer.

2. Where the wages paid include sums which are not paid directly to the workmen weekly and which are expended for supplements, the records required to be maintained shall include a record of such hourly payment on behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom such payment has been made. In all such cases, the contractor, or covered developer, or covered lessee or lessor, shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made. A covered developer, or covered lessee or lessor, may satisfy this requirement by obtaining copies of employment records from a covered employer.

3. The records required to be maintained shall be kept on the site of the work during all of the time that work under the contract, or otherwise subject to the requirements of this section, is being performed.

5. A covered developer, or covered lessee or lessor, shall include a requirement in all leases, management agreements, or service contracts, and any subcontracts thereof, that any covered employer shall comply with the recordkeeping requirements of this section. The covered developer, or covered lessee or lessor shall obtain such records from any covered employer and preserve such records for a period of six years after the completion of the employee's work.

6. Failure to maintain such records as required by this section shall create a rebuttable presumption that the building service employees were not paid the wages and supplements required under this article.

§ 5. Paragraph (f) of subdivision 1 of section 234 of the labor law, as added by chapter 777 of the laws of 1971, is amended to read as follows:

(f) to require a contractor, or covered developer, or covered lessee or lessor, to file with the fiscal officer a record of the wages actually paid by such contractor, or covered developer, or covered lessee or lessor, to the employees and of their hours of work;

§ 6. The labor law is amended by adding a new section 235-a to read as follows:

§ 235-a. Investigations, hearings, and private right of action for covered leases and covered development projects. 1. Whenever the fiscal officer has reason to believe that a building service employee performing building service work in connection with a covered lease or covered development project has been paid less than the applicable prevailing wage and supplements, or upon receipt of a written complaint, the fiscal officer shall conduct a special investigation to determine the facts relating thereto.

2. If, despite the requirements of law, the fiscal officer has not determined the prevailing wage as required in this article, the fiscal



1 officer shall determine in the proceeding before him the wages prevail-  
2 ing at the time the work was performed for the crafts, trades, or occu-  
3 pations of the employees involved.

4 3. In an investigation conducted under the provisions of this section,  
5 the inquiry of the fiscal officer shall not extend to work performed  
6 more than three years prior to: (a) the filing of the complaint; or (b)  
7 the commencement of the investigation upon the fiscal officer's own  
8 violation, whichever occurs first.

9 4. (a) The investigation and hearing shall be expeditiously conducted,  
10 and upon the completion thereof, the fiscal officer shall determine the  
11 issues raised and shall make and file an order in his office stating  
12 such determination, and forthwith serve personally or by mail a copy of  
13 such order and determination together with a notice of filing upon all  
14 parties to the proceeding, and upon the financial officer of the public  
15 agency involved.

16 (b) In addition to directing payment of wages found to be due, such  
17 order of the fiscal officer shall direct payment of liquidated damages  
18 in an amount equal to the greater of two percent of the annual value of  
19 the financial assistance or covered lease, or two-tenths of a percent of  
20 the total value of the financial assistance or covered lease. Where the  
21 fiscal officer is the commissioner, the penalty shall be paid to the  
22 commissioner for deposit in the state treasury. Where the fiscal officer  
23 is a city comptroller or other analogous officer, the penalty shall be  
24 paid to said officer for deposit in the city treasury.

25 (c) An order directing the payment to specified employees of wages  
26 found to be due and unpaid shall include interest at a rate not less  
27 than six per centum per year, and not more than the rate of interest  
28 then in effect as prescribed by the superintendent of financial services  
29 pursuant to section fourteen-a of the banking law per annum from the  
30 time such wages should have been paid. In determining the rate of inter-  
31 est to be imposed, the fiscal officer shall consider the size of the  
32 employer's business, the good faith of the employer, the gravity of the  
33 violation, the history of previous violations of the employer, successor  
34 or substantially-owned affiliated entity, any officer of the covered  
35 developer, covered lessee or lessor, or covered employer who knowingly  
36 participated in the violation of this article, and any of the partners  
37 if the covered developer, covered lessee or lessor, or covered employer  
38 is a partnership, or any of the five largest shareholders of the covered  
39 developer, covered lessee or lessor, or the covered employer, as deter-  
40 mined by the fiscal officer, and the failure to comply with recordkeep-  
41 ing or other non-wage requirements.

42 5. (a) Provided that no proceeding for judicial review as provided in  
43 this section shall then be pending and the time for initiation of such  
44 proceeding shall have expired, the fiscal officer shall file with the  
45 county clerk of the county where the employer resides or has a place of  
46 business, the order of the fiscal officer containing the amount found to  
47 be due. The filing of such order shall have the full force and effect of  
48 a judgment duly docketed in the office of such clerk. The order may be  
49 enforced by and in the name of the fiscal officer in the same manner,  
50 and with like effect, as that prescribed by the civil practice law and  
51 rules for the enforcement of a money judgment.

52 (b) When a final determination has been made in favor of a complain-  
53 ant, and the covered developer, covered lessee or lessor, or covered  
54 employer found in violation of this article has failed to make payment  
55 as required by the order of the fiscal officer, and provided that no  
56 relevant proceeding for judicial review shall then be pending and the

1 time for initiation of such proceeding shall have expired, the fiscal  
2 officer may file a copy of the order of the fiscal officer containing  
3 the amount found to be due with the county clerk of the county of resi-  
4 dence or place of business of any of the following:

5 (i) any substantially-owned affiliated entity or any successor of the  
6 covered developer, covered lessee or lessor, or covered employer;

7 (ii) any of the partners if the covered developer, covered lessee or  
8 lessor, or covered employer is a partnership or any of the five largest  
9 shareholders of the covered developer, covered lessee or lessor, or  
10 covered employer, as determined by the fiscal officer; or

11 (iii) any officer of the covered developer, covered lessee or lessor,  
12 or covered employer who knowingly participated in the violation of this  
13 article; provided, however, that the fiscal officer shall within five  
14 days of the filing of the order provide notice thereof to the partner or  
15 top five shareholders or successor or substantially-owned affiliated  
16 entity.

17 (c) The notified party may contest the filing on the basis that it is  
18 not a partner or one of the five largest shareholders, an officer of the  
19 covered developer, covered lessee or lessor, or covered employer who  
20 knowingly participated in the violation of this article, successor or  
21 substantially-owned affiliated entity. If, after reviewing the informa-  
22 tion provided by the notified party in support of such contest, the  
23 fiscal officer determines that the notified party is not within the  
24 definitions described herein, the fiscal officer shall immediately with-  
25 draw his filing of the order.

26 (d) The filing of such order shall have the full force and effect of a  
27 judgment duly docketed in the office of such clerk. The order may be  
28 enforced by and in the name of the fiscal officer in the same manner,  
29 and with like effect as that prescribed by the civil practice law and  
30 rules for the enforcement of a money judgment.

31 6. When a final determination has been made and such determination is  
32 in favor of an employee, such employee may, in addition to any other  
33 remedy provided by this article, institute an action in any court of  
34 appropriate jurisdiction against the entity found to have violated this  
35 article, any substantially-owned affiliated entity, any officer of the  
36 covered developer, covered lessee or lessor, or covered employer who  
37 knowingly participated in the violation of this article, and any of the  
38 partners if the covered developer, covered lessee or lessor, or covered  
39 employer is a partnership or any of the five largest shareholders of the  
40 covered developer, covered lessee or lessor, or covered employer, as  
41 determined by the fiscal officer, for the recovery of the difference  
42 between the sum, if any, actually paid to him or her by the aforesaid  
43 financial officer pursuant to said order and the amount found to be due  
44 to him or her as determined by said order. Such action must be commenced  
45 within three years from the date of the filing of said order, or if said  
46 order is reviewed in a proceeding pursuant to article seventy-eight of  
47 the civil practice law and rules, within three years after the termi-  
48 nation of such review proceeding.

49 7. (a) Any person claimed to be aggrieved by a violation of this arti-  
50 cle shall have a cause of action in any court of competent jurisdiction  
51 against the entity alleged to have violated this article, any substan-  
52 tially-owned affiliated entity, any officer of the covered developer,  
53 covered lessee or lessor, or covered employer who knowingly participated  
54 in the violation of this article, and any of the partners if the covered  
55 developer, covered lessee or lessor, or covered employer is a partner-  
56 ship or any of the five largest shareholders of the covered developer,

1 covered lessee or lessor, or covered employer, as determined by the  
2 fiscal officer, for the recovery of the difference between the sum, if  
3 any, actually paid to him or her by the aforesaid financial officer  
4 pursuant to said order and the amount found to be due to him or her as  
5 determined by said order. The aggrieved party may seek damages includ-  
6 ing punitive damages, injunctive relief, and such other remedies as may  
7 be appropriate, unless such person has filed a complaint with the fiscal  
8 officer with respect to such claim. In an action brought by a building  
9 service employee, if the court finds in favor of the employee, it shall  
10 award the employee, in addition to other relief, his or her reasonable  
11 attorneys' fees and costs.

12 (b) Investigation by the fiscal officer shall not be a prerequisite  
13 to, nor a bar against, a person bringing a civil action under this  
14 section. Notwithstanding any inconsistent provision of subdivisions one  
15 through six of this section, where a complaint filed with the fiscal  
16 officer is dismissed, an aggrieved person shall maintain all rights to  
17 commence a civil action pursuant to this action as if no complaint had  
18 been filed.

19 (c) No procedure or remedy set forth in this section is intended to be  
20 exclusive or a prerequisite for asserting a claim for relief to enforce  
21 any rights hereunder in a court of law. This section shall not be  
22 construed to limit an employee's right to bring a common law cause of  
23 action for wrongful termination.

24 (d) Any judgement or court order awarding remedies under this section  
25 shall provide that if any amount remains unpaid upon the expiration of  
26 ninety days following issuance of judgement, or ninety days after expi-  
27 ration of the time to appeal and no appeal is then pending, whichever is  
28 later, the total amount of judgement shall automatically increase by  
29 fifteen percent.

30 (e) In any action instituted upon a wage claim by a building service  
31 employee in which the employee prevails, the court may allow such  
32 employee, in addition to ordinary costs, a reasonable sum not exceeding  
33 one hundred dollars for expenses, which may be taxed as costs. No assig-  
34 nee of a wage claim shall be benefitted by this provision.

35 (f) Notwithstanding any other provision of law, an action to recover  
36 upon liability imposed by this article must be commenced within the  
37 greater of six years from the date the cause of action accrued, or two  
38 years from the time the plaintiff or the person whom the plaintiff  
39 claims discovered the fraud, or could with reasonable diligence have  
40 discovered it. The statute of limitations shall be tolled from the date  
41 an employee files a complaint with the fiscal officer or the date the  
42 fiscal officer commences an investigation, whichever is earlier, until  
43 an order to comply issued by the fiscal officer becomes final, or where  
44 the fiscal officer does not issue an order, until the date on which the  
45 fiscal officer notifies the complainant that the investigation has  
46 concluded.

47 8. (a) No person shall take any adverse action against an employee  
48 which penalizes an employee for, or is reasonably likely to deter an  
49 employee from, exercising or attempting to exercise such employee's  
50 rights under this article or interfere with such employee's exercise of  
51 rights under this article.

52 (b) Taking an adverse action includes, but is not limited to, threat-  
53 ening, intimidating, disciplining, discharging, demoting, suspending, or  
54 harassing an employee, reducing the hours of pay of an employee, inform-  
55 ing another employer that an employee has engaged in activities  
56 protected by this article, discriminating against the employee, includ-



ing actions related to perceived immigration status or work authorization, and maintenance or application of an absence control policy that counts protected leave as an absence that may lead to or result in an adverse action.

(c) An employee need not explicitly refer to a provision of this article to be protected from an adverse action.

(d) A casual connection may be established between the exercise, attempted exercise, or anticipated exercise of rights protected by this article and an employer's adverse action against an employee or a group of employees by indirect or direct evidence.

(e) Retaliation is established when it is shown that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

9. (a) When a final determination has been made against a covered employer in favor of a complainant and the covered developer, or covered lessee or lessor, has made payment to the complainant of any wages and interest due the complainant and any civil penalty, and providing that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the covered developer, or covered lessee or lessor, may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of the covered employer. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The judgment may be docketed in favor of the covered developer, or covered lessee or lessor, who may proceed as a judgment creditor against the covered employer for the recovery of all monies paid by the covered developer, or covered lessee or lessor, under such order.

(b) When a covered developer, or covered lessee or lessor, has made payment to a complainant of any wages and interest due to him or her because of a covered employer's violation of this article, the covered developer, or covered lessee or lessor, may bring suit to recover all monies paid by the covered developer, or covered lessee or lessor, from the covered employer.

10. (a) When two judgments or final orders pursuant to the provisions of this section have been entered against a body, as defined by paragraph (b) of this subdivision, who knowingly participated in the violation of this article within any consecutive six-year period determining that such body who knowingly participated in the violation of this article has willfully failed to pay the prevailing wages in accordance with the provisions of this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate covered leases or awards of financial assistance are rendered simultaneously, such entity who knowingly participated in the violation of this article, or any successor is a corporation, any officer of such corporation who knowingly participated in such failure, shall be ineligible to enter into covered leases with a public agency or receive financial assistance for a period of five years from the date of the second order, provided, however, that where any such final order involves the falsification of payroll records or the kickback of wages, the body who knowingly participated in the violation of this article shall be ineligible to enter into covered leases or to receive financial assistance for a period of five years from the date of the first final order. Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of financial assistance or entering into a covered lease with a public

1 agency. The industrial commissioner shall maintain a list of covered  
2 developers, covered lessees or lessors, or covered employers, who are  
3 ineligible, including their names, address, date, and duration of their  
4 ineligibility. Such list shall be updated and published as often as is  
5 necessary to keep it current.

6 (b) For the purposes of paragraph (a) of this subdivision, the term  
7 "body" shall mean a covered developer, covered lessee or lessor, covered  
8 employer, successor, or any substantially-owned affiliated entity of the  
9 covered developer, covered lessee or lessor, or covered employer, any of  
10 the partners if the covered developer, covered lessee or lessor, or  
11 covered employer is a partnership, any of the five largest shareholders  
12 of the covered developer, covered lessee or lessor, or covered employer,  
13 any officer of the covered developer, covered lessee or lessor, or  
14 covered employer.

15 § 7. Subdivision 1 of section 237 of the labor law, as amended by  
16 chapter 698 of the laws of 1988, is amended and a new subdivision 5 is  
17 added to read as follows:

18 1. Subcontractors engaged for service work by a contractor or its  
19 subcontractor and covered employers shall, upon receipt from the covered  
20 developer, or covered lessee or lessor, contractor or its subcontractor  
21 of the schedule of wages and supplements specified in the contract or  
22 the prevailing wage schedule pursuant to this article, provide to the  
23 covered developer, covered lessee or lessor, contractor or its subcon-  
24 tractor a verified statement attesting that the covered employer or  
25 subcontractor has received and reviewed such schedule of wages and  
26 supplements, and agrees that it will pay the applicable prevailing wages  
27 and will pay or provide the supplements specified therein. Such verified  
28 statement shall be filed in the manner described in subdivision three of  
29 this section for subcontractors of a contractor or its subcontractor,  
30 and in the manner described in subdivision five of this section for  
31 covered employers. It shall be a violation of this article for any  
32 covered developer, covered lessee or lessor, contractor or its subcon-  
33 tractor to fail to provide for its subcontractor a copy of the schedule  
34 of wages and supplements specified in the contract or the prevailing  
35 wage schedule pursuant to this article.

36 5. Prior to receiving financial assistance or entering into a covered  
37 lease, or an extension, renewal, amendment, or modification of a covered  
38 lease, and annually thereafter, every covered developer, covered lessee  
39 or lessor, or covered employer shall provide to the public agency leas-  
40 ing or providing financial assistance and to the fiscal officer an annu-  
41 al verified statement that all building service employees employed at a  
42 covered development project or at real property subject to a covered  
43 lease by the covered developer, covered lessee or lessor, or by a  
44 covered employer to perform building service work will be and/or have  
45 been paid the prevailing wage. Such verified statement shall include a  
46 record of the days and hours worked and the wages paid to each building  
47 service employee employed at the covered development project, or at real  
48 property subject to a covered lease. Where the wages paid include sums  
49 which are not paid directly to the workmen weekly and which are expended  
50 for supplements, the statement shall include a record of such hourly  
51 payments on behalf of such employees, the supplement for which such  
52 payment has been made, and the name and address of the person to whom  
53 the payment has been made. Such statement shall be verified by the oath  
54 of the chief executive or chief financial officer of the covered devel-  
55 oper, or covered lessee or lessor, or the designee of any such person  
56 that he or she has read such statements subscribed by him or her and

1 knows the contents thereof, and that the same is true of his or her own  
2 knowledge, except with respect to wages and supplements owing by  
3 contract which may be certified upon information and belief. A  
4 violation of any provision of the statement, or failure to provide such  
5 statement, shall constitute a violation of this section. The fiscal  
6 officer or a public agency leasing or providing financial assistance may  
7 inspect the records maintained pursuant to section two hundred thirty-  
8 three of this article to verify these statements.

9 § 8. Subdivision 1 of section 238 of the labor law, as added by chap-  
10 ter 777 of the laws of 1971, is amended and a new subdivision 3 is added  
11 to read as follows:

12 1. Any contractor, covered developer, covered lessee or lessor,  
13 covered employer, or subcontractor who shall upon his oath verify any  
14 statement required to be filed under this article which is known by him  
15 to be false shall be guilty of perjury and punishable as provided by the  
16 penal law.

17 3. In the event of a failure by a covered developer, covered lessee or  
18 lessor, or covered employer to comply with the provisions of this arti-  
19 cle, the covered developer, covered lessee or lessor, or covered employ-  
20 er shall be provided with a written notice of failure to comply by the  
21 fiscal officer allowing ten days to cure the failure to comply. If the  
22 covered developer, covered lessee or lessor, or covered employer fails  
23 to timely cure in addition to any other remedies available at law or in  
24 equity, the fiscal officer shall be permitted to seek the following  
25 remedies:

26 (a) Suspend the payments of any financial assistance to the covered  
27 developer until the date of cure.

28 (b) Failure to provide a required record or statement or to allow work  
29 place access may result in liquidated damages to an amount equal to the  
30 greater of two percent of the annual value of the financial assistance  
31 or covered lease, or two-tenths of a percent of the total value of the  
32 financial assistance or covered lease.

33 (c) A material breach of this article that continues for a period of  
34 six months or more shall allow the public agency to terminate the finan-  
35 cial assistance or covered lease.

36 (d) Late filing of any report required under this article: a payment  
37 of one thousand dollars per day for each day the report is late, for up  
38 to fourteen days. After fourteen days, the remedy in paragraph (b) of  
39 this subdivision shall apply.

40 (e) Where the fiscal officer is the commissioner, the penalty shall be  
41 paid to the commissioner for deposit in the state treasury. Where the  
42 fiscal officer is a city comptroller or other analogous officer, the  
43 penalty shall be paid to said officer for deposit in the city treasury.

44 § 9. The opening paragraph and subdivision 4 of section 239 of the  
45 labor law, as added by chapter 777 of the laws of 1971, are amended to  
46 read as follows:

47 [Every] Covered developers and covered lessees or lessors shall comply  
48 with the following provisions, and every contract for service work shall  
49 contain provisions by which the contractor agrees:

50 (4) that the contract, covered lease, or grant of financial assistance  
51 may be cancelled or terminated by the public agency, and all moneys due  
52 or to become due thereunder may be forfeited for a second or any subse-  
53 quent violation of the terms or conditions of this section of the  
54 contract.

55 § 10. Section 239-a of the labor law, as added by chapter 777 of the  
56 laws of 1971, is amended to read as follows:

1     § 239-a. Enforcement of article. If the fiscal officer, as defined  
2 herein, finds that any covered developer, covered lessee or lessor, or  
3 contractor on service work fails to comply with or evades the provisions  
4 of this article, he shall present evidence of such noncompliance or  
5 evasion to the public agency having charge of such work, or having  
6 entered into a covered lease or provided financial assistance for the  
7 covered development project, for enforcement. Where such evidence indi-  
8 cates a noncompliance or evasion on the part of a subcontractor or  
9 covered employer, the contractor or covered developer, or covered lessee  
10 or lessor, shall be responsible for such noncompliance or evasion. It  
11 shall be the duty of the public agency in charge of such service work,  
12 or who has entered into a covered lease or provided financial assistance  
13 for the covered development project, to enforce the provisions of this  
14 article.

15     § 11. This act shall take effect immediately.