

# STATE OF NEW YORK

9658

## IN ASSEMBLY

February 3, 2020

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 actions for non-payment of wages

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

1 Section 1. The labor law is amended by adding a new section 198-e to  
2 read as follows:

3 § 198-e. Construction industry wage theft. 1. A contractor making or  
4 taking a construction contract shall assume liability for any debt  
5 resulting from an action under section one hundred ninety-eight of this  
6 article, owed to a wage claimant or third party on the wage claimant's  
7 behalf, incurred by a subcontractor at any tier acting under, by, or for  
8 the contractor for the wage claimant's performance of labor.

9 2. No agreement or release by an employee or subcontractor to waive  
10 liability assigned to a contractor under this section shall be valid.  
11 The provisions of this section shall not be deemed to impair the rights  
12 of a contractor to maintain an action against a subcontractor for owed  
13 wages that are paid by a contractor pursuant to this section.

14 3. Notwithstanding any other provision of law, the remedies available  
15 for a claim pursuant to subdivision one of this section shall only be  
16 civil and administrative actions. In the case of a civil action by an  
17 employee, such employee may designate a third party to make a wage claim  
18 on his or her behalf. In the case of an action against a subcontractor,  
19 the contractor shall be considered jointly and severally liable for any  
20 unpaid wages, benefits, wage supplements, penalties, liquidated damages,  
21 attorneys' fees and any other costs resulting from such action.

22 4. As used in this section:

23 a. "Construction contract" means a written or oral agreement for the  
24 construction, reconstruction, alteration, maintenance, moving or demoli-  
25 tion of any building, structure or improvement, or relating to the exca-  
26 vation of or other development or improvement to land. For purposes of  
27 this section, a construction contract shall not include any contract  
28 which is subject to article eight of this chapter.

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

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1 b. "Contractor" means any person, firm, partnership, corporation,  
2 association, company, organization or other entity, including a  
3 construction manager, or any combination thereof, which enters into a  
4 construction contract with an owner.

5 c. "Owner" means any person, firm, partnership, corporation, company,  
6 association or other organization or other entity, or a combination of  
7 any thereof, (with an ownership interest, whether the interest or estate  
8 is in fee, as vendee under a contract to purchase, as lessee or another  
9 interest or estate less than fee) that causes a building, structure or  
10 improvement, new or existing, to be constructed, altered, repaired,  
11 maintained, moved or demolished or that causes land to be excavated or  
12 otherwise developed or improved.

13 d. "Subcontractor" means any person, firm, partnership, corporation,  
14 company, association, organization or other entity, or any combination  
15 thereof, which is a party to a contract with a contractor or another  
16 subcontractor to perform a portion of work pursuant to a construction  
17 contract.

18 § 2. Severability. If any provision of this act, or any application of  
19 any provision of this act, is held to be invalid, that shall not affect  
20 the validity or effectiveness of any other provision of this act, or of  
21 any other application of any provision of this act, which can be given  
22 effect without that provision or application; and to that end, the  
23 provisions and applications of this act are severable.

24 § 3. This act shall take effect on the one hundred twentieth day after  
25 it shall have become a law and shall apply to construction contracts  
26 entered into, renewed, modified or amended on or after such effective  
27 date.