

# STATE OF NEW YORK

3350--A

R. R. 14

2021-2022 Regular Sessions

## IN ASSEMBLY

January 22, 2021

Introduced by M. of A. JOYNER, BRONSON, OTIS, SIMON, GONZALEZ-ROJAS, KELLES, L. ROSENTHAL, BRABENEC -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- ordered to a third reading, passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the special order of third reading

AN ACT to amend the labor law and the general business 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 or its subcontractors for the wage claimant's performance  
9 of labor.

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

16 3. Notwithstanding any other provision of law, the remedies available  
17 for a claim pursuant to subdivision one of this section shall only be  
18 civil and administrative actions.

19 4. In the case of a private civil action by an employee, such employee  
20 may designate any person, organization or collective bargaining agent

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

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1 authorized to file a complaint with the commissioner pursuant to  
2 section one hundred ninety-six-a of this article, to make a wage claim  
3 on his or her behalf.

4 5. In the case of an action against a subcontractor, the contractor  
5 shall be considered jointly and severally liable for any unpaid wages,  
6 benefits, wage supplements, and any other remedies available pursuant to  
7 the requirements of section one hundred ninety-eight of this article.

8 6. Nothing herein shall preclude the attorney general from bringing a  
9 civil action to collect unpaid wages and penalties on behalf of employ-  
10 ees pursuant to this section.

11 7. A contractor or any other person shall not evade, or commit any act  
12 that negates, the requirements of this section, provided, however, that  
13 this section shall not be deemed to prohibit a contractor or subcontrac-  
14 tor from establishing by contract or enforcing any other lawful remedies  
15 against a subcontractor it hires for liability created by violation of  
16 this section, provided that such contract or arrangement does not dimin-  
17 ish the right of employees to bring an action under the provisions of  
18 this section.

19 8. As used in this section:

20 a. "Construction contract" means a written or oral agreement for the  
21 construction, reconstruction, alteration, maintenance, moving or demoli-  
22 tion of any building, structure or improvement, or relating to the exca-  
23 vation of or other development or improvement to land. For purposes of  
24 this section, a construction contract shall not include: any contract  
25 which is subject to article eight of this chapter; a home improvement  
26 contract for the performance of a home improvement between a home  
27 improvement contractor and the owner of an owner-occupied dwelling; and  
28 a home construction contract for one- or two-family dwelling units  
29 except where such contract or contracts results in the construction of  
30 more than ten one- or two-family owner-occupied dwellings at one project  
31 site annually.

32 b. "Contractor" means any person, firm, partnership, corporation,  
33 association, company, organization or other entity, including a  
34 construction manager, general or prime contractor, joint venture, or any  
35 combination thereof, which enters into a construction contract with an  
36 owner.

37 c. "Owner" means any person, firm, partnership, corporation, company,  
38 association or other organization or other entity, or a combination of  
39 any thereof, (with an ownership interest, whether the interest or estate  
40 is in fee, as vendee under a contract to purchase, as lessee or another  
41 interest or estate less than fee) that causes a building, structure or  
42 improvement, new or existing, to be constructed, altered, repaired,  
43 maintained, moved or demolished or that causes land to be excavated or  
44 otherwise developed or improved.

45 d. "Subcontractor" means any person, firm, partnership, corporation,  
46 company, association, organization or other entity, or any combination  
47 thereof, which is a party to a contract with a contractor, and/or party  
48 to a contract with the contractor's subcontractors at any tier to  
49 perform any portion of work within the scope of the contractor's  
50 construction contract with the owner, including where the subcontractor  
51 has no direct privity of contract with the contractor.

52 9. Any liability assigned to a contractor pursuant to the provisions  
53 of this section shall be applicable for any claims occurring no later  
54 than three years prior to the initiation of such claim in a court of  
55 competent jurisdiction or the commencement of a civil action brought  
56 forth by the attorney general or department. The provisions of this

1 section shall not be deemed to diminish, impair, or otherwise infringe  
2 on any other rights of an employee provided pursuant to this chapter,  
3 including the right of an employee to bring an action against any  
4 employer under the provisions of section one hundred ninety-eight of  
5 this article.

6 10. Nothing in this section shall be deemed to diminish the rights,  
7 privileges, or remedies of any employee under any collective bargaining  
8 agreement. The provisions of this section may be waived by a collective  
9 bargaining agreement with a bona fide building and construction trade  
10 labor organization which has established itself, and/or its affiliates,  
11 as the collective bargaining representative for persons performing work  
12 on a project, provided that for such waiver to be valid, it shall  
13 explicitly reference this section. Provided, however, that such waiver  
14 shall not diminish or impair the rights of an employee provided under  
15 any other section of this chapter.

16 § 2. The general business law is amended by adding a new section 756-f  
17 to read as follows:

18 § 756-f. Wage theft prevention and enforcement. 1. Upon request of a  
19 contractor, or a contractor's subcontractor, to any subcontractor which  
20 performs any portion of work within the scope of the contractor's  
21 construction contract with an owner, such subcontractor shall provide  
22 certified payroll records which, at a minimum, contain all lawfully  
23 required information required for all employees providing labor on the  
24 project. Such payroll records shall contain sufficient information to  
25 apprise the contractor or subcontractor of such subcontractor's payment  
26 status in paying wages and making any applicable fringe or other benefit  
27 payments or contributions to a third party on its employee's behalf.  
28 Payroll records shall be marked or redacted to an extent only to prevent  
29 disclosure of an individual's full social security number but shall  
30 provide the last four digits of the social security number.

31 2. Upon request of a contractor, or a contractor's subcontractor, to  
32 any subcontractor which performs any portion of work within the scope of  
33 the contractor's construction contract with an owner, such subcontractor  
34 shall provide: (a) the names of all workers of such subcontractor on the  
35 project, including the names of all those designated as independent  
36 contractors; (b) when applicable, the name of the contractor's subcon-  
37 tractor with whom such subcontractor is under contract; (c) the antic-  
38 ipated contract start date; (d) the scheduled duration of work; (e) when  
39 applicable, local unions with whom such subcontractor is a signatory  
40 contractor; and (f) the name, address and phone number of a contact for  
41 such subcontractor.

42 3. Failure to timely comply with a request for information as provided  
43 herein shall be a basis for a contractor to withhold payments owed to a  
44 subcontractor at any tier.

45 4. Unless otherwise required by law, a contractor or subcontractor  
46 shall not communicate an individual's personal identifying information  
47 to the general public. For purposes of this section, "personal identify-  
48 ing information" shall have the same definition as provided for in para-  
49 graph (d) of subdivision one of section two hundred three-d of the labor  
50 law.

51 5. For the purposes of this section, "contractor" means any person,  
52 firm, partnership, corporation, association, company, organization or  
53 other entity, including a construction manager, general or prime  
54 contractor, joint venture, or any combination thereof, which enters into  
55 a construction contract with an owner.

1     6. For the purposes of this section, "owner" means any person, firm,  
2 partnership, corporation, company, association or other organization or  
3 other entity, or a combination of any thereof, (with an ownership inter-  
4 est, whether the interest or estate is in fee, as vendee under a  
5 contract to purchase, as lessee or another interest or estate less than  
6 fee) that causes a building, structure or improvement, new or existing,  
7 to be constructed, altered, repaired, maintained, moved or demolished or  
8 that causes land to be excavated or otherwise developed or improved.

9     7. For the purposes of this section, "subcontractor" means any person,  
10 firm, partnership, corporation, company, association, organization or  
11 other entity, or any combination thereof, which is a party to a contract  
12 with a contractor, and/or party to a contract with the contractor's  
13 subcontractors at any tier, to perform any portion of work within the  
14 scope of the contractor's construction contract with the owner, includ-  
15 ing where the subcontractor has no direct privity of contract with the  
16 contractor.

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

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