

# STATE OF NEW YORK

2766

2021-2022 Regular Sessions

## IN SENATE

January 25, 2021

Introduced by Sen. RAMOS -- 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 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 The provisions of this section shall not be deemed to impair the rights  
13 of a contractor to maintain an action against a subcontractor for owed  
14 wages that are paid by a contractor pursuant to this section.

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

18 4. In the case of a private civil action by an employee, such employee  
19 may designate any person, organization or collective bargaining agent  
20 authorized to file a complaint with the commissioner pursuant to  
21 section one hundred ninety-six-a of this article, to make a wage claim  
22 on his or her behalf.

23 5. In the case of an action against a subcontractor, the contractor  
24 shall be considered jointly and severally liable for any unpaid wages,

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

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1 benefits, wage supplements, penalties, liquidated damages, attorneys'  
2 fees and any other costs resulting from such action.

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

6 7. As used in this section:

7 a. "Construction contract" means a written or oral agreement for the  
8 construction, reconstruction, alteration, maintenance, moving or demoli-  
9 tion of any building, structure or improvement, or relating to the exca-  
10 vation of or other development or improvement to land. For purposes of  
11 this section, a construction contract shall not include any contract  
12 which is subject to article eight of this chapter.

13 b. "Contractor" means any person, firm, partnership, corporation,  
14 association, company, organization or other entity, including a  
15 construction manager, general or prime contractor, joint venture, or any  
16 combination thereof, which enters into a construction contract with an  
17 owner.

18 c. "Owner" means any person, firm, partnership, corporation, company,  
19 association or other organization or other entity, or a combination of  
20 any thereof, (with an ownership interest, whether the interest or estate  
21 is in fee, as vendee under a contract to purchase, as lessee or another  
22 interest or estate less than fee) that causes a building, structure or  
23 improvement, new or existing, to be constructed, altered, repaired,  
24 maintained, moved or demolished or that causes land to be excavated or  
25 otherwise developed or improved.

26 d. "Subcontractor" means any person, firm, partnership, corporation,  
27 company, association, organization or other entity, or any combination  
28 thereof, which is a party to a contract with a contractor, and/or the  
29 contractor's subcontractors to perform any portion of work within the  
30 scope of the contractor's construction contract with the owner, includ-  
31 ing where the subcontractor has no direct privity of contract with the  
32 contractor.

33 § 2. Severability. If any provision of this act, or any application of  
34 any provision of this act, is held to be invalid, that shall not affect  
35 the validity or effectiveness of any other provision of this act, or of  
36 any other application of any provision of this act, which can be given  
37 effect without that provision or application; and to that end, the  
38 provisions and applications of this act are severable.

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