

# STATE OF NEW YORK

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2766--C

Cal. No. 1110

2021-2022 Regular Sessions

## IN SENATE

January 25, 2021

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Introduced by Sens. RAMOS, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRISPORT, BROOKS, COMRIE, GAUGHRAN, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, LIU, MANNION, MATTERA, MAY, MAYER, MYRIE, PARKER, REICHLIN-MELNICK, RIVERA, RYAN, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the 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.

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

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

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

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

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

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

24 8. As used in this section:

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

37 b. "Contractor" means any person, firm, partnership, corporation,  
38 association, company, organization or other entity, including a  
39 construction manager, general or prime contractor, joint venture, or any  
40 combination thereof, which enters into a construction contract with an  
41 owner.

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

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

1 9. Any liability assigned to a contractor pursuant to the provisions  
2 of this section shall be applicable for any claims occurring no later  
3 than three years prior to the initiation of such claim in a court of  
4 competent jurisdiction or the commencement of a civil action brought  
5 forth by the attorney general or department. The provisions of this  
6 section shall not be deemed to diminish, impair, or otherwise infringe  
7 on any other rights of an employee provided pursuant to this chapter,  
8 including the right of an employee to bring an action against any  
9 employer under the provisions of section one hundred ninety-eight of  
10 this article.

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

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

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

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

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

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

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

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

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

22     § 3. Severability. If any provision of this act, or any application of  
23     any provision of this act, is held to be invalid, that shall not affect  
24     the validity or effectiveness of any other provision of this act, or of  
25     any other application of any provision of this act, which can be given  
26     effect without that provision or application; and to that end, the  
27     provisions and applications of this act are severable.

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