STATE OF NEW YORK

3350

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. JOYNER -- 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:

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

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

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

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

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

5. In the case of an action against a subcontractor, the contractor 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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benefits, wage supplements, penalties, liquidated damages, attorneys' fees and any other costs resulting from such action.

6. Nothing herein shall preclude the attorney general from bringing a civil action to collect unpaid wages and penalties on behalf of employees pursuant to this section.

7. As used in this section:

a. "Construction contract" means a written or oral agreement for the construction, reconstruction, alteration, maintenance, moving or demolition of any building, structure or improvement, or relating to the excavation of or other development or improvement to land. For purposes of this section, a construction contract shall not include any contract which is subject to article eight of this chapter.

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

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

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

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

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