STATE OF NEW YORK

8769

IN ASSEMBLY

January 11, 2022

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the general business law, in relation to actions for non-payment of wages; and to amend a chapter of the laws of 2021, amending the labor law and the general business law relating to actions for non-payment of wages, as proposed in legislative bills numbers S. 2766-C and A. 3350-A, in relation to the effectiveness thereof

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

Section 1. Subdivisions 1, 2, 4, 9 and 10 of section 198-e of the labor law, as added by a chapter of the laws of 2021, amending the labor law and the general business law relating to actions for non-payment of wages, as proposed in legislative bills numbers S. 2766-C and A. 3350-A, are amended to read as follows:

1. A contractor making or taking a construction contract shall [~~assume liability~~] **be liable** for any debt resulting from an action under section one hundred ninety-eight of this article, owed to [~~a wage claimant~~] **an employee** or third party on the [~~wage claimant's~~] **employee's** behalf, incurred by a subcontractor at any tier acting under, by, or for the contractor or its subcontractors for the [~~wage claimant's~~] **employee's** performance of labor. **The provisions of this section shall not be deemed to limit the liability of a subcontractor under section one hundred ninety-eight of this article.**

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

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

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

LBD04456-14-2

section one hundred ninety-six-a of this article, to make a [~~wage~~] claim **pursuant to this section** on his or her behalf.

9. [~~Any~~] **A contractor's** liability [~~assigned to a contractor~~] pursuant to the provisions of this section shall be applicable **only** for [~~any~~] claims occurring no [~~later~~] **earlier** than three years prior to the initiation of such claim in a court of competent jurisdiction or the commencement of a civil action brought forth by the attorney general or department. **Before bringing a civil action pursuant to this section, an employee, or third party on such employee's behalf, must give the contractor notice of the alleged violation. The notice need only describe the general nature of the claim and shall not limit the liability of the contractor or preclude subsequent amendments of an action to encompass additional employees employed by the subcontractor. An employee, or third party on such employee's behalf, may not bring a civil action until ten business days after giving the contractor notice of the alleged violation and may not bring a civil action if the contractor corrects the alleged violation. An employee, or third party on such employee's behalf, is not required to give notice to a contractor pursuant to this subdivision before bringing a civil action pursuant to this section if any employee, or third party on any employee's behalf, previously has given notice to such contractor of the same alleged violation or a prior alleged violation by the same subcontractor.** The provisions of this section shall not be deemed to diminish, impair, or otherwise infringe on any other rights of an employee provided pursuant to this chapter, including the right of an employee to bring an action against any employer under the provisions of section one hundred ninety-eight of this article.

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

§ 2. Subdivision 1 of section 756-f of the general business law, as added by a chapter of the laws of 2021, amending the labor law and the general business law relating to actions for non-payment of wages, as proposed in legislative bills numbers S. 2766-C and A. 3350-A, is amended to read as follows:

1. Upon request of a contractor, or a contractor's subcontractor, to any subcontractor which performs any portion of work within the scope of the contractor's construction contract with an owner, such subcontractor shall provide certified payroll records which, at a minimum, contain all lawfully required information required **by articles six and nineteen of the labor law** for all employees providing labor on the project. Such payroll records shall contain sufficient information to apprise the contractor or subcontractor of such subcontractor's payment status in paying wages and [~~making any applicable fringe or other benefit payments or contributions to a third party on its~~] **benefits, as defined by section one hundred ninety-eight-c of the labor law, including payments or contributions on the** employee's behalf. Payroll records shall be marked or redacted to an extent only to prevent disclosure of an indi-

vidual's full social security number but shall provide the last four digits of the social security number.

§ 3. Section 4 of a chapter of the laws of 2021, amending the labor law and the general business law relating to actions for non-payment of wages, as proposed in legislative bills numbers S. 2766-C and A. 3350-A, is amended to read as follows:

§ 4. 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 **and shall only apply to wages, benefits, and/or wage supplements earned on or after such effective date**.

§ 4. This act shall take effect immediately; provided, however, that sections one and two of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021, amending the labor law and the general business law relating to actions for non-payment of wages, as proposed in legislative bills numbers S. 2766-C and A. 3350-A, takes effect.