

STATE OF NEW YORK

2517

2023-2024 Regular Sessions

IN SENATE

January 23, 2023

Introduced by Sens. RAMOS, HARCKHAM, SALAZAR, SKOUFIS, STAVISKY -- 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 covered developers, covered employers, covered lessees or lessors, financial assistance provided to covered developers, covered leases, and covered development projects

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

1 Section 1. Subdivisions 1, 5, 8, 12 and 13 of section 230 of the labor
2 law, subdivisions 1 and 8 as amended by chapter 88 of the laws of 2021,
3 subdivision 5 as added by chapter 777 of the laws of 1971, and subdivi-
4 sions 12 and 13 as added by chapter 547 of the laws of 1998, are amended
5 and seven new subdivisions 15, 16, 17, 18, 19, 20 and 21 are added to
6 read as follows:

7 1. "Building service employee" or "employee" means any person perform-
8 ing work in connection with the care or maintenance of an existing
9 building, or in connection with the transportation of office furniture
10 or equipment to or from such building, or in connection with the trans-
11 portation and delivery of fossil fuel to such building, for a contractor
12 under a contract with a public agency which is in excess of one thousand
13 five hundred dollars and the principal purpose of which is to furnish
14 services through the use of building service employees or in connection
15 with a covered development project or lease.

16 "Building service employee" or "employee" includes, but is not limit-
17 ed, to, watchman, guard, doorman, building cleaner, porter, handyman,
18 janitor, gardener, groundskeeper, stationary [~~fireman~~] firefighter,
19 elevator operator and starter, window cleaner, and occupations relating
20 to the collection of garbage or refuse, and to the transportation of
21 office furniture and equipment, and to the transportation and delivery

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

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1 of fossil fuel but does not include clerical, sales, professional, tech-
2 nician and related occupations.

3 "Building service employee" or "employee" also does not include any
4 employee to whom the provisions of articles eight and eight-a of this
5 chapter are applicable.

6 5. "Wage" includes: (a) basic hourly cash rate of pay; and (b) supple-
7 ments. The term "supplements" means fringe benefits including medical or
8 hospital care, pensions on retirement or death, compensation for inju-
9 ries or illness resulting from occupational activity, or insurance to
10 provide any of the foregoing, unemployment benefits, life insurance,
11 disability and sickness insurance, accident insurance, vacation and
12 holiday pay, costs of apprenticeship or other similar programs and other
13 bona fide fringe benefits not otherwise required by federal, state or
14 local law to be provided by the contractor, covered developer, covered
15 lessee or lessor, covered employer, or subcontractor.

16 8. "Fiscal officer" means the industrial commissioner, except for
17 building service work performed by or on behalf of a city, or where the
18 covered development project or real property subject to a covered lease
19 is located within a city with a population of over one million, in which
20 case "fiscal officer" means the comptroller or other analogous officer
21 of such city.

22 12. "Parent company" shall mean an entity that directly controls the
23 contractor or subcontractor, or covered developer, or covered lessee or
24 lessor.

25 13. "Subsidiary" shall mean an entity that is controlled directly, or
26 indirectly through one or more intermediaries, by a contractor or
27 subcontractor, or covered developer, or covered lessee or lessor, or the
28 contractor's, or covered developer's, or covered lessee's or lessor's
29 parent company.

30 15. "Covered developer" means any entity receiving financial assist-
31 ance in relation to a covered development project, or any assignee or
32 successor in interest of real property that qualifies as a covered
33 development project.

34 16. "Covered employer" means any entity, other than a covered develop-
35 er, or covered lessee or lessor, who employs building service workers at
36 a covered development project or at any real property subject to a
37 covered lease.

38 17. "Covered lessee" means any entity leasing real property from a
39 public agency.

40 18. "Covered lessor" means any entity from whom a public agency is
41 leasing commercial office space or commercial office facilities of ten
42 thousand square feet or more, provided that the public agency, whether
43 through a single agreement or multiple agreements, leases no less than
44 fifty-one percent of the total square footage of the building to which
45 the lease or leases apply.

46 19. "Financial assistance" means assistance that is provided to a
47 covered developer for the improvement or development of real property,
48 economic development, job retention and growth, or other similar
49 purposes, and that is paid in whole or in part by a public agency or
50 agencies, and having a cumulative anticipated total financial value of
51 one million dollars. Financial assistance includes, but is not limited
52 to, cash payments or grants, bond financing, tax abatements or
53 exemptions (including, but not limited to, abatements or exemptions from
54 real property, mortgage recording, sales and uses taxes, or the differ-
55 ence between any payments in lieu of taxes and the amount of real prop-
56 erty or other taxes that would have been due if the property were not

1 exempted from the payment of such taxes), tax increment financing,
2 filing fee waivers, energy cost reductions, environmental remediation
3 costs, write-downs in the market value of building, land, or the cost of
4 capital improvements related to real property that, under ordinary
5 circumstances, the public agency would not pay for. Where assistance
6 takes the form of loans or bond financing, the value of the assistance
7 shall be determined based on the difference between the financing cost
8 to a borrower and the cost to a similar borrower that does not receive
9 financial assistance.

10 20. "Covered lease" means any agreement by a public agency with a
11 covered lessor or lessee.

12 21. "Covered development project" means a project that has received or
13 is expected to receive financial assistance.

14 § 2. The labor law is amended by adding a new section 231-a to read as
15 follows:

16 § 231-a. Prevailing wage for covered leases and covered development
17 projects. 1. Covered developers and covered lessees or lessors shall
18 ensure that all building service employees performing building service
19 work in connection with a covered development project or covered lease
20 are paid no less than the prevailing wage.

21 2. The obligation to pay prevailing supplements may be discharged by
22 furnishing any equivalent combinations of fringe benefits or by making
23 equivalent or differential payments in cash under rules and regulations
24 established by the fiscal officer.

25 3. The public agency providing financial assistance or entering into a
26 covered lease shall require, as a contractual condition of such finan-
27 cial assistance or covered lease, that any building service employee
28 performing building service work in connection with a covered develop-
29 ment project or covered lease, regardless of the employing entity, shall
30 be paid no less than the prevailing wage; and any lease, contract for
31 property management services, or contract for the provision of building
32 services, entered into by the covered developer or covered lessee or
33 lessor, and any subcontract thereof, shall contain the following
34 provision: "All building service employees shall be paid no less than
35 the prevailing wage as provided by the fiscal officer as described in
36 section two hundred thirty-four of the Labor Law. Any covered employer,
37 as defined in section two hundred thirty of the Labor Law, shall main-
38 tain all records relating to the employment of building service workers
39 as described in section two hundred thirty-three of the Labor Law which
40 are to be provided to the covered developer. Such covered employer shall
41 also submit such statements as required under section two hundred thir-
42 ty-seven of the Labor Law. This requirement shall apply to any covered
43 development project or real property subject to a covered lease as
44 provided by Article nine of the Labor Law."

45 4. Upon the awarding of financial assistance or entering into a
46 covered lease by a public agency, the awarding public agency shall imme-
47 diately furnish to the fiscal officer:

48 (a) the name and address of the awardee;

49 (b) the date when the financial assistance was awarded or the covered
50 lease was entered into;

51 (c) the specific building or facility address or addresses, or locali-
52 ty to which the covered lease or financial assistance pertains, if the
53 financial assistance is targeted to a particular building or buildings,
54 facility or facilities, or locality; and

55 (d) the anticipated total value of the financial assistance.

1 5. When the financial assistance to the covered development project
2 applies to a particular building or buildings, facility or facilities,
3 or locality, the prevailing wage shall apply only to such building or
4 buildings, facility or facilities, or locality; however, when the finan-
5 cial assistance is not so limited, the covered development project shall
6 be deemed to include any building or facility in which the covered
7 developer operates within the state, and the prevailing wage requirement
8 set forth in this subdivision shall apply to any building or facility in
9 which the covered developer operates within the state.

10 6. The fiscal officer shall maintain a list of covered developers,
11 covered lessees or lessors, and covered development projects, including
12 the addresses of each. Such list shall be updated and published as often
13 as is necessary to keep current.

14 7. Within two weeks of receiving financial assistance or entering into
15 a covered lease, a covered developer, covered lessee or lessor, or
16 covered employer shall post, in the same location and manner that other
17 statutorily required notices are posted, at every such covered develop-
18 ment project or real property subject to the covered lease, and provide
19 each building service employee a copy of a written notice which shall be
20 prepared by the fiscal officer, detailing the wages, benefits, and other
21 protections to which building service employees are entitled under this
22 section. Such notice shall also provide the name, address and telephone
23 number of the fiscal officer and a statement advising building service
24 employees that if they have been paid less than the prevailing wage they
25 may notify the fiscal officer and request an investigation or bring suit
26 in a court of competent jurisdiction. Such notices shall be posted in
27 English and in any other language which at least twenty percent of
28 employees speak as a primary language. Such notice shall remain posted
29 for the time that the requirements of this section shall apply and shall
30 be adjusted periodically to reflect the current prevailing wage for
31 building service employees. In addition to posting such notice, the
32 covered developer, covered lessee or lessor, or covered employer shall
33 provide each individual employee a copy of the notice in English or any
34 other language spoken by the employee as a primary language, so long as
35 the fiscal officer has made such notice available to employers in such
36 language on its website. The fiscal officer shall make available on its
37 website sample written notices explaining the rights of building service
38 employees under this section and shall translate such sample written
39 notices into such languages it deems appropriate.

40 8. The requirements of this section shall apply for the term of the
41 financial assistance, ten years from the opening date of the financially
42 assisted project, the duration of any written agreement between a public
43 agency and the covered developer providing for financial assistance, or
44 the duration of the covered lease, whichever is longer.

45 9. This section shall not preempt any public agency from establishing
46 higher minimum wages for covered developers or covered lessees or
47 lessors receiving financial assistance or leasing from or to a public
48 agency. Nor shall any covered developer, covered lessee or lessor, or
49 covered employer be preempted from paying a wage higher than the
50 prevailing wage.

51 § 3. Section 232 of the labor law, as added by chapter 777 of the laws
52 of 1971, is amended to read as follows:

53 § 232. Overtime. An employee, employed by a contractor or employed at
54 a covered development project, or at real property subject to a covered
55 lease, who works more than eight hours in any one day or more than forty
56 hours in any workweek shall be paid wages for such overtime at a rate

1 not less than one-and-one-half times his prevailing basic cash hourly
2 rate.

3 § 4. Subdivisions 1, 2 and 3 of section 233 of the labor law, subdivi-
4 sions 1 and 2 as amended by chapter 88 of the laws of 2021, subdivision
5 3 as added by chapter 777 of the laws of 1971, are amended and two new
6 subdivisions 5 and 6 are added to read as follows:

7 1. In all cases where service work is being performed pursuant to a
8 contract, or covered lease, or covered development project therefor the
9 contractor, or covered developer, or covered lessee or lessor, shall
10 keep original payrolls or transcripts thereof, subscribed and confirmed
11 by him as true, under penalties of perjury, showing the hours and days
12 worked by each employee, the craft, trade or occupation at which he was
13 employed, and the wages paid. A covered developer or covered lessee or
14 lessor may satisfy this requirement by obtaining copies of employment
15 records from a covered employer.

16 2. Where the wages paid include sums which are not paid directly to
17 the workmen weekly and which are expended for supplements, the records
18 required to be maintained shall include a record of such hourly payment
19 on behalf of such employees, the supplement for which such payment has
20 been made, and the name and address of the person to whom such payment
21 has been made. In all such cases, the contractor, or covered developer,
22 or covered lessee or lessor, shall keep a true and inscribed copy of the
23 agreement under which such payments are made, a record of all net
24 payments made thereunder, and a list of all persons for whom such
25 payments are made. A covered developer, or covered lessee or lessor, may
26 satisfy this requirement by obtaining copies of employment records from
27 a covered employer.

28 3. The records required to be maintained shall be kept on the site of
29 the work during all of the time that work under the contract, or other-
30 wise subject to the requirements of this section, is being performed.

31 5. A covered developer, or covered lessee or lessor, shall include a
32 requirement in all leases, management agreements, or service contracts,
33 and any subcontracts thereof, that any covered employer shall comply
34 with the recordkeeping requirements of this section. The covered devel-
35 oper, or covered lessee or lessor shall obtain such records from any
36 covered employer and preserve such records for a period of six years
37 after the completion of the employee's work.

38 6. Failure to maintain such records as required by this section shall
39 create a rebuttable presumption that the building service employees were
40 not paid the wages and supplements required under this article.

41 § 5. Paragraph (f) of subdivision 1 of section 234 of the labor law,
42 as added by chapter 777 of the laws of 1971, is amended to read as
43 follows:

44 (f) to require a contractor, or covered developer, or covered lessee
45 or lessor, to file with the fiscal officer a record of the wages actual-
46 ly paid by such contractor, or covered developer, or covered lessee or
47 lessor, to the employees and of their hours of work;

48 § 6. The labor law is amended by adding a new section 235-a to read as
49 follows:

50 § 235-a. Investigations, hearings, and private right of action for
51 covered leases and covered development projects. 1. Whenever the fiscal
52 officer has reason to believe that a building service employee perform-
53 ing building service work in connection with a covered lease or covered
54 development project has been paid less than the applicable prevailing
55 wage and supplements, or upon receipt of a written complaint, the fiscal

1 officer shall conduct a special investigation to determine the facts
2 relating thereto.

3 2. If, despite the requirements of law, the fiscal officer has not
4 determined the prevailing wage as required in this article, the fiscal
5 officer shall determine in the proceeding before him or her the wages
6 prevailing at the time the work was performed for the crafts, trades, or
7 occupations of the employees involved.

8 3. In an investigation conducted under the provisions of this section,
9 the inquiry of the fiscal officer shall not extend to work performed
10 more than three years prior to: (a) the filing of the complaint; or (b)
11 the commencement of the investigation upon the fiscal officer's own
12 violation, whichever occurs first.

13 4. (a) The investigation and hearing shall be expeditiously conducted,
14 and upon the completion thereof, the fiscal officer shall determine the
15 issues raised and shall make and file an order in his or her office
16 stating such determination, and forthwith serve personally or by mail a
17 copy of such order and determination together with a notice of filing
18 upon all parties to the proceeding, and upon the financial officer of
19 the public agency involved.

20 (b) In addition to directing payment of wages found to be due, such
21 order of the fiscal officer shall direct payment of liquidated damages
22 in an amount equal to the greater of two percent of the annual value of
23 the financial assistance or covered lease, or two-tenths of a percent of
24 the total value of the financial assistance or covered lease. Where the
25 fiscal officer is the commissioner, the penalty shall be paid to the
26 commissioner for deposit in the state treasury. Where the fiscal officer
27 is a city comptroller or other analogous officer, the penalty shall be
28 paid to said officer for deposit in the city treasury.

29 (c) An order directing the payment to specified employees of wages
30 found to be due and unpaid shall include interest at a rate not less
31 than six per centum per year, and not more than the rate of interest
32 then in effect as prescribed by the superintendent of financial services
33 pursuant to section fourteen-a of the banking law per annum from the
34 time such wages should have been paid. In determining the rate of inter-
35 est to be imposed, the fiscal officer shall consider the size of the
36 employer's business, the good faith of the employer, the gravity of the
37 violation, the history of previous violations of the employer, successor
38 or substantially-owned affiliated entity, any officer of the covered
39 developer, covered lessee or lessor, or covered employer who knowingly
40 participated in the violation of this article, and any of the partners
41 if the covered developer, covered lessee or lessor, or covered employer
42 is a partnership, or any of the five largest shareholders of the covered
43 developer, covered lessee or lessor, or the covered employer, as deter-
44 mined by the fiscal officer, and the failure to comply with recordkeep-
45 ing or other non-wage requirements.

46 5. (a) Provided that no proceeding for judicial review as provided in
47 this section shall then be pending and the time for initiation of such
48 proceeding shall have expired, the fiscal officer shall file with the
49 county clerk of the county where the employer resides or has a place of
50 business, the order of the fiscal officer containing the amount found to
51 be due. The filing of such order shall have the full force and effect of
52 a judgment duly docketed in the office of such clerk. The order may be
53 enforced by and in the name of the fiscal officer in the same manner,
54 and with like effect, as that prescribed by the civil practice law and
55 rules for the enforcement of a money judgment.

1 (b) When a final determination has been made in favor of a complain-
2 ant, and the covered developer, covered lessee or lessor, or covered
3 employer found in violation of this article has failed to make payment
4 as required by the order of the fiscal officer, and provided that no
5 relevant proceeding for judicial review shall then be pending and the
6 time for initiation of such proceeding shall have expired, the fiscal
7 officer may file a copy of the order of the fiscal officer containing
8 the amount found to be due with the county clerk of the county of resi-
9 dence or place of business of any of the following:

10 (i) any substantially-owned affiliated entity or any successor of the
11 covered developer, covered lessee or lessor, or covered employer;

12 (ii) any of the partners if the covered developer, covered lessee or
13 lessor, or covered employer is a partnership or any of the five largest
14 shareholders of the covered developer, covered lessee or lessor, or
15 covered employer, as determined by the fiscal officer; or

16 (iii) any officer of the covered developer, covered lessee or lessor,
17 or covered employer who knowingly participated in the violation of this
18 article; provided, however, that the fiscal officer shall within five
19 days of the filing of the order provide notice thereof to the partner or
20 top five shareholders or successor or substantially-owned affiliated
21 entity.

22 (c) The notified party may contest the filing on the basis that it is
23 not a partner or one of the five largest shareholders, an officer of the
24 covered developer, covered lessee or lessor, or covered employer who
25 knowingly participated in the violation of this article, successor or
26 substantially-owned affiliated entity. If, after reviewing the informa-
27 tion provided by the notified party in support of such contest, the
28 fiscal officer determines that the notified party is not within the
29 definitions described herein, the fiscal officer shall immediately with-
30 draw his or her filing of the order.

31 (d) The filing of such order shall have the full force and effect of a
32 judgment duly docketed in the office of such clerk. The order may be
33 enforced by and in the name of the fiscal officer in the same manner,
34 and with like effect as that prescribed by the civil practice law and
35 rules for the enforcement of a money judgment.

36 6. When a final determination has been made and such determination is
37 in favor of an employee, such employee may, in addition to any other
38 remedy provided by this article, institute an action in any court of
39 appropriate jurisdiction against the entity found to have violated this
40 article, any substantially-owned affiliated entity, any officer of the
41 covered developer, covered lessee or lessor, or covered employer who
42 knowingly participated in the violation of this article, and any of the
43 partners if the covered developer, covered lessee or lessor, or covered
44 employer is a partnership or any of the five largest shareholders of the
45 covered developer, covered lessee or lessor, or covered employer, as
46 determined by the fiscal officer, for the recovery of the difference
47 between the sum, if any, actually paid to him or her by the aforesaid
48 financial officer pursuant to said order and the amount found to be due
49 to him or her as determined by said order. Such action must be commenced
50 within three years from the date of the filing of said order, or if said
51 order is reviewed in a proceeding pursuant to article seventy-eight of
52 the civil practice law and rules, within three years after the termi-
53 nation of such review proceeding.

54 7. (a) Any person claimed to be aggrieved by a violation of this arti-
55 cle shall have a cause of action in any court of competent jurisdiction
56 against the entity alleged to have violated this article, any substan-

1 tially-owned affiliated entity, any officer of the covered developer,
2 covered lessee or lessor, or covered employer who knowingly participated
3 in the violation of this article, and any of the partners if the covered
4 developer, covered lessee or lessor, or covered employer is a partner-
5 ship or any of the five largest shareholders of the covered developer,
6 covered lessee or lessor, or covered employer, as determined by the
7 fiscal officer, for the recovery of the difference between the sum, if
8 any, actually paid to him or her by the aforesaid financial officer
9 pursuant to said order and the amount found to be due to him or her as
10 determined by said order. The aggrieved party may seek damages includ-
11 ing punitive damages, injunctive relief, and such other remedies as may
12 be appropriate, unless such person has filed a complaint with the fiscal
13 officer with respect to such claim. In an action brought by a building
14 service employee, if the court finds in favor of the employee, it shall
15 award the employee, in addition to other relief, his or her reasonable
16 attorneys' fees and costs.

17 (b) Investigation by the fiscal officer shall not be a prerequisite
18 to, nor a bar against, a person bringing a civil action under this
19 section. Notwithstanding any inconsistent provision of subdivisions one
20 through six of this section, where a complaint filed with the fiscal
21 officer is dismissed, an aggrieved person shall maintain all rights to
22 commence a civil action pursuant to this action as if no complaint had
23 been filed.

24 (c) No procedure or remedy set forth in this section is intended to be
25 exclusive or a prerequisite for asserting a claim for relief to enforce
26 any rights hereunder in a court of law. This section shall not be
27 construed to limit an employee's right to bring a common law cause of
28 action for wrongful termination.

29 (d) Any judgement or court order awarding remedies under this section
30 shall provide that if any amount remains unpaid upon the expiration of
31 ninety days following issuance of judgement, or ninety days after expi-
32 ration of the time to appeal and no appeal is then pending, whichever is
33 later, the total amount of judgement shall automatically increase by
34 fifteen percent.

35 (e) In any action instituted upon a wage claim by a building service
36 employee in which the employee prevails, the court may allow such
37 employee, in addition to ordinary costs, a reasonable sum not exceeding
38 one hundred dollars for expenses, which may be taxed as costs. No assig-
39 nee of a wage claim shall be benefitted by this provision.

40 (f) Notwithstanding any other provision of law, an action to recover
41 upon liability imposed by this article must be commenced within the
42 greater of six years from the date the cause of action accrued, or two
43 years from the time the plaintiff or the person whom the plaintiff
44 claims discovered the fraud, or could with reasonable diligence have
45 discovered it. The statute of limitations shall be tolled from the date
46 an employee files a complaint with the fiscal officer or the date the
47 fiscal officer commences an investigation, whichever is earlier, until
48 an order to comply issued by the fiscal officer becomes final, or where
49 the fiscal officer does not issue an order, until the date on which the
50 fiscal officer notifies the complainant that the investigation has
51 concluded.

52 8. (a) No person shall take any adverse action against an employee
53 which penalizes an employee for, or is reasonably likely to deter an
54 employee from, exercising or attempting to exercise such employee's
55 rights under this article or interfere with such employee's exercise of
56 rights under this article.

1 (b) Taking an adverse action includes, but is not limited to, threat-
2 ening, intimidating, disciplining, discharging, demoting, suspending, or
3 harassing an employee, reducing the hours of pay of an employee, inform-
4 ing another employer that an employee has engaged in activities
5 protected by this article, discriminating against the employee, includ-
6 ing actions related to perceived immigration status or work authori-
7 zation, and maintenance or application of an absence control policy that
8 counts protected leave as an absence that may lead to or result in an
9 adverse action.

10 (c) An employee need not explicitly refer to a provision of this arti-
11 cle to be protected from an adverse action.

12 (d) A casual connection may be established between the exercise,
13 attempted exercise, or anticipated exercise of rights protected by this
14 article and an employer's adverse action against an employee or a group
15 of employees by indirect or direct evidence.

16 (e) Retaliation is established when it is shown that a protected
17 activity was a motivating factor for an adverse action, whether or not
18 other factors motivated the adverse action.

19 9. (a) When a final determination has been made against a covered
20 employer in favor of a complainant and the covered developer, or covered
21 lessee or lessor, has made payment to the complainant of any wages and
22 interest due the complainant and any civil penalty, and providing that
23 no relevant proceeding for judicial review shall then be pending and the
24 time for initiation of such proceeding shall have expired, the covered
25 developer, or covered lessee or lessor, may file a copy of the order of
26 the fiscal officer containing the amount found to be due with the county
27 clerk of the county of residence or place of business of the covered
28 employer. The filing of such order shall have the full force and effect
29 of a judgment duly docketed in the office of such clerk. The judgment
30 may be docketed in favor of the covered developer, or covered lessee or
31 lessor, who may proceed as a judgment creditor against the covered
32 employer for the recovery of all monies paid by the covered developer,
33 or covered lessee or lessor, under such order.

34 (b) When a covered developer, or covered lessee or lessor, has made
35 payment to a complainant of any wages and interest due to him or her
36 because of a covered employer's violation of this article, the covered
37 developer, or covered lessee or lessor, may bring suit to recover all
38 monies paid by the covered developer, or covered lessee or lessor, from
39 the covered employer.

40 10. (a) When two judgments or final orders pursuant to the provisions
41 of this section have been entered against a body, as defined by para-
42 graph (b) of this subdivision, who knowingly participated in the
43 violation of this article within any consecutive six-year period deter-
44 mining that such body who knowingly participated in the violation of
45 this article has willfully failed to pay the prevailing wages in accord-
46 ance with the provisions of this article, whether such failures were
47 concurrent or consecutive and whether or not such final determinations
48 concerning separate covered leases or awards of financial assistance are
49 rendered simultaneously, such entity who knowingly participated in the
50 violation of this article, or any successor is a corporation, any offi-
51 cer of such corporation who knowingly participated in such failure,
52 shall be ineligible to enter into covered leases with a public agency or
53 receive financial assistance for a period of five years from the date of
54 the second order, provided, however, that where any such final order
55 involves the falsification of payroll records or the kickback of wages,
56 the body who knowingly participated in the violation of this article

1 shall be ineligible to enter into covered leases or to receive financial
2 assistance for a period of five years from the date of the first final
3 order. Nothing in this subdivision shall be construed as affecting any
4 provision of any other law or regulation relating to the awarding of
5 financial assistance or entering into a covered lease with a public
6 agency. The industrial commissioner shall maintain a list of covered
7 developers, covered lessees or lessors, or covered employers, who are
8 ineligible, including their names, address, date, and duration of their
9 ineligibility. Such list shall be updated and published as often as is
10 necessary to keep it current.

11 (b) For the purposes of paragraph (a) of this subdivision, the term
12 "body" shall mean a covered developer, covered lessee or lessor, covered
13 employer, successor, or any substantially-owned affiliated entity of the
14 covered developer, covered lessee or lessor, or covered employer, any of
15 the partners if the covered developer, covered lessee or lessor, or
16 covered employer is a partnership, any of the five largest shareholders
17 of the covered developer, covered lessee or lessor, or covered employer,
18 any officer of the covered developer, covered lessee or lessor, or
19 covered employer.

20 § 7. Subdivision 1 of section 237 of the labor law, as amended by
21 chapter 88 of the laws of 2021, is amended and a new subdivision 5 is
22 added to read as follows:

23 1. Subcontractors engaged for service work by a contractor or its
24 subcontractor and covered employers shall, upon receipt from the covered
25 developer, or covered lessee or lessor, contractor or its subcontractor
26 of the schedule of wages and supplements specified in the contract or
27 the prevailing wage schedule pursuant to this article, provide to the
28 covered developer, covered lessee or lessor, contractor or its subcon-
29 tractor a verified statement attesting that the covered employer or
30 subcontractor has received and reviewed such schedule of wages and
31 supplements, and agrees that it will pay the applicable prevailing wages
32 and will pay or provide the supplements specified therein. Such verified
33 statement shall be filed in the manner described in subdivision three of
34 this section for subcontractors of a contractor or its subcontractor,
35 and in the manner described in subdivision five of this section for
36 covered employers. It shall be a violation of this article for any
37 covered developer, covered lessee or lessor, contractor or its subcon-
38 tractor to fail to provide for its subcontractor a copy of the schedule
39 of wages and supplements specified in the contract or the prevailing
40 wage schedule pursuant to this article.

41 5. Prior to receiving financial assistance or entering into a covered
42 lease, or an extension, renewal, amendment, or modification of a covered
43 lease, and annually thereafter, every covered developer, covered lessee
44 or lessor, or covered employer shall provide to the public agency leas-
45 ing or providing financial assistance and to the fiscal officer an annu-
46 al verified statement that all building service employees employed at a
47 covered development project or at real property subject to a covered
48 lease by the covered developer, covered lessee or lessor, or by a
49 covered employer to perform building service work will be and/or have
50 been paid the prevailing wage. Such verified statement shall include a
51 record of the days and hours worked and the wages paid to each building
52 service employee employed at the covered development project, or at real
53 property subject to a covered lease. Where the wages paid include sums
54 which are not paid directly to the workmen weekly and which are expended
55 for supplements, the statement shall include a record of such hourly
56 payments on behalf of such employees, the supplement for which such

1 payment has been made, and the name and address of the person to whom
2 the payment has been made. Such statement shall be verified by the oath
3 of the chief executive or chief financial officer of the covered devel-
4 oper, or covered lessee or lessor, or the designee of any such person
5 that he or she has read such statements subscribed by him or her and
6 knows the contents thereof, and that the same is true of his or her own
7 knowledge, except with respect to wages and supplements owing by
8 contract which may be certified upon information and belief. A
9 violation of any provision of the statement, or failure to provide such
10 statement, shall constitute a violation of this section. The fiscal
11 officer or a public agency leasing or providing financial assistance may
12 inspect the records maintained pursuant to section two hundred thirty-
13 three of this article to verify these statements.

14 § 8. Subdivision 1 of section 238 of the labor law, as added by chap-
15 ter 777 of the laws of 1971, is amended and a new subdivision 3 is added
16 to read as follows:

17 1. Any contractor, covered developer, covered lessee or lessor,
18 covered employer, or subcontractor who shall upon his oath verify any
19 statement required to be filed under this article which is known by him
20 to be false shall be guilty of perjury and punishable as provided by the
21 penal law.

22 3. In the event of a failure by a covered developer, covered lessee or
23 lessor, or covered employer to comply with the provisions of this arti-
24 cle, the covered developer, covered lessee or lessor, or covered employ-
25 er shall be provided with a written notice of failure to comply by the
26 fiscal officer allowing ten days to cure the failure to comply. If the
27 covered developer, covered lessee or lessor, or covered employer fails
28 to timely cure in addition to any other remedies available at law or in
29 equity, the fiscal officer shall be permitted to seek the following
30 remedies:

31 (a) Suspend the payments of any financial assistance to the covered
32 developer until the date of cure.

33 (b) Failure to provide a required record or statement or to allow work
34 place access may result in liquidated damages to an amount equal to the
35 greater of two percent of the annual value of the financial assistance
36 or covered lease, or two-tenths of a percent of the total value of the
37 financial assistance or covered lease.

38 (c) A material breach of this article that continues for a period of
39 six months or more shall allow the public agency to terminate the finan-
40 cial assistance or covered lease.

41 (d) Late filing of any report required under this article: a payment
42 of one thousand dollars per day for each day the report is late, for up
43 to fourteen days. After fourteen days, the remedy in paragraph (b) of
44 this subdivision shall apply.

45 (e) Where the fiscal officer is the commissioner, the penalty shall be
46 paid to the commissioner for deposit in the state treasury. Where the
47 fiscal officer is a city comptroller or other analogous officer, the
48 penalty shall be paid to said officer for deposit in the city treasury.

49 § 9. The opening paragraph and subdivision 4 of section 239 of the
50 labor law, as amended by chapter 88 of the laws of 2021, are amended to
51 read as follows:

52 ~~[Every]~~ Covered developers and covered lessees or lessors shall comply
53 with the following provisions, and every contract for service work shall
54 contain provisions by which the contractor agrees:

55 (4) that the contract, covered lease, or grant of financial assistance
56 may be cancelled or terminated by the public agency, and all moneys due

1 or to become due thereunder may be forfeited for a second or any subse-
2 quent violation of the terms or conditions of this section of the
3 contract.

4 § 10. Section 239-a of the labor law, as amended by chapter 88 of the
5 laws of 2021, is amended to read as follows:

6 § 239-a. Enforcement of article. If the fiscal officer, as defined
7 herein, finds that any covered developer, covered lessee or lessor, or
8 contractor on service work fails to comply with or evades the provisions
9 of this article, he or she shall present evidence of such noncompliance
10 or evasion to the public agency having charge of such work, or having
11 entered into a covered lease or provided financial assistance for the
12 covered development project, for enforcement. Where such evidence indi-
13 cates a noncompliance or evasion on the part of a subcontractor or
14 covered employer, the contractor or covered developer, or covered lessee
15 or lessor, shall be responsible for such noncompliance or evasion. It
16 shall be the duty of the public agency in charge of such service work,
17 or who has entered into a covered lease or provided financial assistance
18 for the covered development project, to enforce the provisions of this
19 article.

20 § 11. This act shall take effect immediately.