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

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 claim pursuant to this section 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, benefits, wage supplements, and any other remedies available pursuant to the requirements of section one hundred ninety-eight of this article.

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. A contractor or any other person shall not evade, or commit any act that negates, the requirements of this section, provided, however, that

this section shall not be deemed to prohibit a contractor or subcontractor from establishing by contract or enforcing any other lawful remedies against a subcontractor it hires for liability created by violation of this section, provided that such contract or arrangement does not diminish the right of employees to bring an action under the provisions of this section.

8. 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; a home improvement contract for the performance of a home improvement between a home improvement contractor and the owner of an owner-occupied dwelling; and a home construction contract for one- or two-family dwelling units except where such contract or contracts results in the construction of more than ten one- or two-family owner-occupied dwellings at one project site annually.

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 party to a contract with the contractor's subcontractors at any tier 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.

9. A contractor's liability pursuant to the provisions of this section shall be applicable only for claims occurring no 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. 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.