

Client Alert

General Contractor Responsible to Pay Subcontractor Wages?

“Under New York’s Amended Wage Theft Law, subcontractor employees who are unpaid can recover those wages from the general contractor – and general contractors cannot contractually require subcontractors to waive this right.”

New York contractors face a greater liability risk effective January 4, 2022. On that date, New York amended wage theft laws became effective and a subcontractor’s employees can now obtain judgments for unpaid wages directly against a contractor that hired their employer. This new law applies to contracts executed, modified, extended or renewed from January 4, 2022 forward.

The goal of the new law is so that employees have deeper pockets to target for non-payment of wages and benefits, and it forces general contractors to more closely monitor their subcontractors. The statute places an increased risk and increased costs on general contractors who can take very few steps to protect themselves as a waiver of this liability can only occur via a collective bargaining agreement. This law extends full and complete liability to the prime contractor or construction manager on a project for any deviation of proper payment of wages by any subcontractor, no matter how far down the subcontractor chain the wage theft occurs.

The statute’s most significant change is that a contractor is required to assume liability for any wage claim incurred by a subcontractor “at any tier”. It also adds

that no agreement or release to waive this liability is valid unless it is done through “a collective bargaining agreement with a bona fide building and construction trade labor organization”. Importantly, the statute does not “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.”

The revised law also includes reporting duties for a subcontractor, requiring that, upon a contractor’s request, it provide certified payroll records for all of its employees on the project, as well as (1) names of each of a subcontractor’s employees, and those of any sub-subcontractors working on the project, including all those designated as independent contractors; (2) the name of each sub-subcontractor; (3) the anticipated contract start date of each sub-subcontractor; (4) the scheduled duration of work of each sub-subcontractor; (5) the name of the local union(s) with whom the subcontractor and each sub-subcontractor is a signatory contractor; and (6) the name, address, and phone number of a contact for

each sub-subcontractor. A contractor can withhold payments to a subcontractor if it fails to timely comply with a request. This also applies to subcontractors in their relationship with their sub-subcontractors.

As a general contractor, what should you do now? First, your subcontract agreements should contain provisions that require indemnification from a subcontractor and all of its sub-subcontractors for violation of this statute. You should also include provisions requiring that, upon signing the contract, and monthly throughout the project, the subcontractor and its sub-subcontractors provide the contractor with all payroll records and information required by N.Y. Gen. Bus. Law § 756-f. While more costly, it is likely prudent to investigate the financial health of each subcontractor prior to accepting any bids for work.

If you are a contractor or subcontractor operating in New York, these changes have dramatic implications on the scope of your liability related to employee wage claims. It is important to revise your contract forms and talk to your lawyer about how this law will affect you. If you have any concerns about this law, the attorneys at Clark Guldin can help you navigate these changes.

For More Information

If you have any questions about this Client Alert or any questions concerning construction law, please contact:

author of this Alert,
Janesa Urbano
973-314-1907
jurbano@clarkguldin.com

John E. Clark
973-206-5788
jclark@clarkguldin.com

Jonathan T. Guldin
973-206-5789
jguldin@clarkguldin.com

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