

New York Enacts Labor-Friendly Legislation to Impose Liability on General Contractors for Subcontractors' Employee Wages on Construction Contracts

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On Labor Day 2021, newly appointed New York State Governor Kathy Hochul signed into law several new measures designed to improve and enhance workers' protections, including a bill that combats wage theft by making general contractors on construction projects jointly liable for wages owed to their subcontractors' employees at all tiers. While labor unions throughout New York champion the legislation as a victory for workers, trade groups representing general contractors oppose the legislation due to concerns that it will only increase the risk and costs of construction for contractors.

The new legislation will apply to contracts entered into, renewed, modified or amended on or after January 4, 2022 (120 days after the bill becomes law) and will impose a new source of liability on general contractors for the wages of their subcontractors' employees. While contractors are not currently responsible for their subcontractors' employee wages absent an express contractual provision providing for the assumption of such liability, the new law will expand subcontractor employee wage liability to include the general contractor. In exchange, the bill amends section 756-a of the General Business Law to permit a general contractor to demand payroll information from its subcontractors and withhold payments if such information is not timely provided upon request.

Pursuant to a new section of the Labor Law, section 198-e, the scope of a contractor's liability for subcontractor wages will now include liability for unpaid wages, benefits, damages and attorneys' fees should the nonpayment of wages result in a civil or administrative action on the part of a wage claimant or the Department of Labor. The impact of these changes and the strategies that will be deployed to account for the changed risk profile remain to be seen.

The full text of the legislation can be accessed at: <https://www.nysenate.gov/legislation/bills/2021/s2766>

For more information on this significant change in the risk landscape of construction contracts and how this law will impact rights among general contractors and subcontractors as well as the pricing and other financial aspects of construction contracts, please contact us.

Practices

- Construction Contract Dispute Resolution

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