

Client Alert

O'TOOLE SCRIVO

ATTORNEYS AT LAW

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CONTRACTORS TO FACE STRICT LIABILITY FOR SUBCONTRACTOR FAILURE TO PAY WAGES AND BENEFITS

On September 9, 2021, Governor Hochul signed a new wage protection law impacting the construction industry in New York. Newly-enacted New York Labor Law §198-e continues a growing trend of expansion of workers' rights under New York law. Effective January 4, 2022, New York Labor Law §198-e establishes that a contractor assumes liability for the employee wages and benefits that remain unpaid by a subcontractors at any tier acting under, by, or for the contractor or its subcontractors on all construction projects except certain residential projects. A contractor will be considered jointly and severally liable in the case of an action against a subcontractor for unpaid wages and benefits.

The new law applies to construction contracts entered into, renewed, modified, or amended on or after January 4, 2022. New York Labor Law §198-e defines "construction contract" as any 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.

Contractors cannot escape liability under New York Labor Law §198-e as the law prohibits an agreement or release by an employee or subcontractor to waive liability of the contractor. The provisions of New York Labor Law §198-e, however, may be waived through a collective bargaining agreement with a bona fide building and construction trade labor organization.

Additionally, New York Labor Law §198-e makes clear that it does not prohibit a contractor from establishing by contract or enforcing any other lawful remedies against a subcontractor it hires for liability created by violation of the law, provided that such contract or arrangement does not diminish the rights of employees to bring an action under the act. In other words, while a subcontractor's employee may sue the contractor and the subcontractor, and the



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contractor can be held jointly and severally liable, the contractor may still pursue remedies against the subcontractors.

Given the newly enacted New York Labor Law §198-e, it is more important than ever to keep accurate and contemporaneous records. Contractors should require subcontractors to complete daily and weekly logs, sign-in sheets, and other real-time timekeeping records, and to allow contractors access to such records for examination. Similarly, contractors should consider including indemnification provisions in contracts that require subcontractors and/or its principals to personally guarantee compliance with New York Labor Law §198-e. These contracts should also require subcontractors to agree to timely pay wages and benefits to employees.

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