

Wage and Hour Defense Blog

Insight and Commentary on Wage and Hour Law Developments Affecting Employers

California Passes New Law Making Contractors Jointly Liable for Their Subcontractors' Failure to Pay Wages

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On October 14, 2017, California Governor Jerry Brown signed **Assembly Bill 1701**, which will make general contractors liable for their subcontractors' employees' unpaid wages if the subcontractor fails to pay wages due. The new law will go into effect on January 1, 2018.

Specifically, section 218.7 has been added to the Labor Code. Subdivision (a)(1) provides the following:

For contracts entered into on or after January 1, 2018, a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, shall assume, and is liable for, any debt owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contractor and the owner.

Under section 218.7, the direct contractor's liability will extend only to any unpaid wage, fringe benefit or other benefit payments or contributions – including interest – but will not extend to penalties or liquidated damages.

Section 218.7 makes clear that nothing in it “shall be construed to impose liability on a direct contractor for anything other than unpaid wages and fringe or other benefit payments or contributions including interest owed.”

Notably, employees will not have standing to enforce section 218.7 on their own. That is, AB 1701 gives the California Labor Commissioner, labor-management cooperation committees, and unions the right to bring an action against the direct contractor, but it does not provide any private right of action to potentially unpaid employees themselves to bring a claim against the direct contractor for unpaid wages.

For labor-management cooperation committees and unions who prevail in an action against a direct contractor for unpaid wages, they will be entitled to their reasonable attorney's fees and costs, including expert witness fees.

For judgments rendered against direct contractors, their property may be attached to satisfy judgment.

Direct contractors will now be provided the right to request from their subcontractors their employees' wage statements under **Labor Code section 226(a)** and payroll records that must be maintained under **section 1174**. Such “records must contain information sufficient to apprise the requesting party of the subcontractor's payment status in making fringe or other benefit payments or contributions to a third party on the employee's behalf.”

Direct contractors and subcontractors also have the right to request from subcontractors below them “award information that includes the project name, name and address of the subcontractor, contractor with whom the subcontractor is under contract, anticipated start date, duration, and estimated journeymen and apprentice hours, and contact information for its subcontractors on the project.”

Significantly, a direct contractor may withhold as “disputed” all sums owed if a subcontractor fails to timely provide the payroll or project information referenced above, until that information is provided.

The new statute will make it more important than ever for contractors in California to ensure that they are doing business with reputable subcontractors. As part of those efforts, they will want to consider taking steps to ensure that their subcontractor agreements include adequate indemnification provisions and assurances that the subcontractors will comply with wage-hour laws, and perhaps even a term requiring subcontractors to provide periodic statements ensuring compliance with the law. Of course, there will be a delicate balance to strike to avoid “joint employer” status.

Additionally, the Labor Commissioner, labor-management cooperation committees, and unions may argue that the term “wages” extends to meal and rest period premiums for missed, short, or non-compliant meal and rest periods. Accordingly, contractors in California may want to include specific assurances that subcontractors have compliant meal and rest period policies and practices, in addition to compliant wage and overtime policies and practices.

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