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AB-1565 Labor-related liabilities: direct contractor. (2017-2018)

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Assembly Bill No. 1565

CHAPTER 528

An act to amend Section 218.7 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 2018. Filed with Secretary of State September 19, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1565, Thurmond. Labor-related liabilities: direct contractor.

Existing law requires, for all contracts entered into on or after January 1, 2018, a direct contractor, as defined, making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other work, to assume, and be liable for, specified debt owed to a wage claimant that is 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 original contract. Existing law authorizes the Labor Commissioner to bring an action under specified statutes or in a civil action to enforce this liability, and authorizes a 3rd party owed fringe or other benefits, or a joint labor-management cooperation committee, as defined, to bring a civil action to enforce the liability against a direct contractor under these provisions, as specified. Existing law provides that the obligations and remedies under these provisions are in addition to any obligations and remedies otherwise provided by law, except that the provisions are not to 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.

This bill would repeal the provisions that state that the obligations and remedies are in addition to existing obligations and remedies provided by law, except that the provisions are not to 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. The bill, for contracts entered into on or after January 1, 2019, would require a direct contractor or a subcontractor to include a specified provision in its contract that lists the specific documents or information that the direct contractor or subcontractor will require a lower tiered subcontractor to produce before the direct contractor or subcontractor is allowed to withhold any disputed payments from the lower tiered subcontractor under these provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 218.7 of the Labor Code is amended to read:

218.7. (a) (1) 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.

(2) The direct contractor's liability under this section shall extend only to any unpaid wage, fringe or other benefit payment or contribution, including interest owed but shall not extend to penalties or liquidated damages.

(3) A direct contractor or any other person shall not evade, or commit any act that negates, the requirements of this section. This section does not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created by the nonpayment of wages, fringe or other benefit payments, or contributions by that subcontractor or by a subcontractor at any tier working under that subcontractor.

(b) (1) The Labor Commissioner may enforce against a direct contractor the liability for unpaid wages created by subdivision (a) pursuant to Section 98 or 1197.1, or through a civil action. The direct contractor's liability shall be limited to unpaid wages, including any interest owed.

(2) A third party owed fringe or other benefit payments or contributions on a wage claimant's behalf may bring a civil action against a direct contractor to enforce the liability created by subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees.

(3) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier for unpaid wages owed to a wage claimant by the direct contractor or subcontractor for the performance of private work, including unpaid wages owed by the direct contractor, pursuant to subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees. Prior to commencement of an action against a direct contractor to enforce the liability created by subdivision (a), the committee shall provide the direct contractor and subcontractor that employed the wage claimant with at least 30 days' notice by first-class mail. The notice need only describe the general nature of the claim and shall not limit the liability of the direct contractor or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor.

(4) No other party may bring an action against a direct contractor to enforce the liability created by subdivision (a).

(c) Unless otherwise provided by law, property of the direct contractor may be attached, after trial, for the payment of any judgment received pursuant to this section.

(d) An action brought pursuant to this section shall be filed within one year of the earliest of the following:

(1) Recordation of the notice of completion of the direct contract, pursuant to Section 8182 of the Civil Code.

(2) Recordation of a notice of cessation of the work covered by the direct contract, pursuant to Section 8188 of the Civil Code.

(3) Actual completion of the work covered by the direct contract.

(e) This section does not apply to work performed by an employee of the state, a special district, a city, a county, a city and county, or any political subdivision of the state.

(f) (1) Upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide payroll records, which, at a minimum, contain the information set forth in subdivision (a) of Section 226, and which are payroll records as contemplated by Section 1174, of its employees who are providing labor on a private work, which payroll records shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. The payroll 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.

(2) Upon request of a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide the direct contractor 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.

(3) A subcontractor's failure to comply with this subdivision shall not relieve a direct contractor from any of the obligations contained in this section.

(g) For purposes of this section, "direct contractor" and "subcontractor" have the same meanings as provided in Sections 8018 and 8046, respectively, of the Civil Code.

(h) Nothing in this section shall alter the owner's obligation to timely pay a direct contractor as set forth in Sections 8800 and 8812 of the Civil Code, or a direct contractor's obligation to timely pay a subcontractor as set forth in Section 7108.5 of the Business and Professions Code and Section 8814 of the Civil Code, or the penalties for failing to do so as set forth in Sections 8800 and 8818 of the Civil Code and Section 7108.5 of the Business and Professions Code, except that the direct contractor may withhold as "disputed" all sums owed if a subcontractor does not timely provide the information requested under paragraphs (1) and (2) of subdivision (f), until that information is provided.

(i) For any contract entered into on or after January 1, 2019, in order to withhold payments as disputed pursuant to subdivision (h), the direct contractor must specify, in its contract with the subcontractor, the specific documents and information that the direct contractor will require that the subcontractor provide under paragraphs (1) and (2) of subdivision (f). Subcontractors may include the same requirements in their contracts with lower tiered subcontractors and may withhold as disputed all sums owed if a lower tiered subcontractor does not provide the information requested under paragraphs (1) and (2) of subdivision (f), until that information is provided.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to eliminate confusion created by subdivision (h) of Section 218.7 of the Labor Code at the earliest possible time, it is necessary for this measure to take effect immediately.