

# One Minute Memo®



## Warning to General Contractors: New California Law Makes Them Liable for Unpaid Subcontractor Wages

*By Gregg Dulik*

The California legislature has just enacted a new law that places a significant additional burden on general contractors performing private work in the state. The new law, codified as California Labor Code Section 218.7, makes a general contractor jointly liable for the failure of a subcontractor of any tier to pay the wages or fringe benefits owed to or on behalf of its workers. The new law applies to all construction contracts for private work entered into on or after January 1, 2018.

The key features of Labor Code Section 218.7 are:

- General contractors are liable for their subcontractors' (and all lower-tier subcontractors') failure to pay wages, fringe benefits or any other benefit payment or contributions, including any interest owed on such unpaid amounts.
- However, this liability does not extend to any penalties or liquidated damages.
- While wage claimants do not have a direct right of action against a general contractor, the State Labor Commissioner and Joint Labor-Management Corporation Committees may bring a direct civil action against a general contractor to recover unpaid wages on behalf of wage claimants. The Labor Commissioner may also initiate administrative hearings for the same purpose.
- In addition, Union Trust Funds owed fringe or other benefit payments on behalf of wage claimants may bring a direct civil action against a general contractor on behalf of the unpaid claimants.
- If either a Joint Labor-Management Corporation Committee or a Union Trust Fund prevails in its direct action against a general contractor, it shall be entitled to recover its reasonable attorneys' fees and costs (including expert witness fees) from the general contractor; however, if the general contractor prevails, it is not entitled to recover its attorneys' fees and costs.

While there is no way for a general contractor to totally avoid the new law, there are several best practices and procedures that general contractors should follow in order to try and insulate themselves from the law's full force. These best practices

and procedures include adding subcontract provisions that enable a general contractor to better monitor its subcontractors' wage payment practices; that allow a general contractor to withhold payments based upon a good faith concern over the non-payment of wages and benefits; and that expressly require subcontractors to indemnify and defend a general contractor against non-payment claims of this type.

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