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AB 1701 – General Contractor Liability for Subcontractors’ Unpaid Wages

Contractors will soon find themselves on the frontline of wage disputes on projects if laborers working on behalf of their subcontractors or vendors are unpaid. On October 14, 2017, Governor Jerry Brown signed into law AB 1701, which will allow laborers to seek direct compensation from the general contractors on private projects, if their wages remain unpaid.

The legislative mandate requires direct contractors—defined as contractors who have a direct contractual relationship with an owner—to assume liability for any debt incurred by a subcontractor, at any tier, for a wage claimant’s performance of labor included in the subject of the original contract between the general contractor and the owner. The California bill will apply to all private construction contracts entered into on or after January 1, 2018. Previously, all laborers could maintain a mechanic’s lien claim against private property, without needing to serve a 20-day preliminary notice, but there was no statutory obligation on the “direct contractors” to reimburse the laborers their unpaid wages.

While liability for a subcontractor’s unpaid wages is not groundbreaking and already occurs with many construction projects, it closes one remaining loophole for private construction contracts that are (1) not subject to prevailing wage laws; (2) not subject to a union labor agreement; and (3) not subject to a bond. Since most large construction projects provide for general contractor liability for subcontractors’ unpaid wages, AB 1701 will aim to extend liability against general contractors on private contracts for smaller developments, which include housing and residential construction projects.

The purpose of the bill is to extend liability against general contractors for wages owed to subcontractors and create new wage collection remedies for private non-public work projects. Although a general contractor’s liability does not extend to penalties or liquidated damages, a general contractor is still liable for unpaid wages even if it pays a subcontractor for labor, but the subcontractor does not pay wages to the workers that perform such labor. In other words, a direct contractor would be required to pay twice for labor performed under the contract.

In order to provide greater protection for labor performed at all tiers of a construction contract, the new measure provides a direct link between the payment obligations of a general contractor and its subcontractors, and directs the general contractor to monitor

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payments made by their subcontractors. For instance, upon request by a general contractor, a subcontractor must provide payroll records or other award information and contact information for subcontractors on the project.

Takeaway

Given the recent legislation, it is imperative that general contractors revamp payment structures to reduce risk of liability and avoid double payments. This can be accomplished in a number of ways, including separate payments to subcontractors where only a portion of the payment goes to the subcontractor and the remainder goes to payroll, a payment bond with a four-year tail, certification of payments made by subcontractors to their laborers, and/or hiring a payroll service to provide direct payments to all workers. At the very least, general contractors should regularly request payroll records and subcontractor information to actively monitor every subcontractor's payroll and payment obligations.

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