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## **Court Rules That ERISA Preemption Bars Recovery of Union Benefit Fund Payments Pursuant to New York's Wage Theft Statute From a General Contractor Where a Subcontractor Failed to Fund Payments**

### **Summary**

In 2022 the State of New York passed a Wage Theft statute<sup>1</sup> that includes authorizing suits against contractors to recover the unpaid employee wages and benefits of their subcontractors. In 2023 a union benefit fund sued a general contractor under the Wage Theft statute in New York State, seeking payment of nearly three million dollars resulting from the subcontractor's failure to remit benefit fund contributions pursuant to its collective bargaining agreement.<sup>2</sup>

On April 29, 2025, a United States District Court ruled that the Wage Theft Law cannot authorize such a suit. Following the arguments raised on behalf of the general contractor, the court concluded that such claims are the subject of federal law and therefore cannot be controlled by a state statute. The suit by the benefit fund was therefore dismissed against the contractor.

More specifically, the court held that ERISA (the Early Retirement Income Security Act) preempts New York's Construction Industry Wage Theft Statute (New York Labor Law § 198-e). In other words, where both federal and state law address an issue, federal law prevails, or "preempts," the state law from operating. In this case, ERISA barred a union benefit fund from seeking payment from a general contractor for the delinquent benefit fund contributions owed by a subcontractor pursuant to a collective bargaining agreement.

As a result of the preemption, a benefit fund cannot utilize New York Labor Law § 198-e as a basis to collect the unpaid fund contributions of a delinquent subcontractor owed pursuant to a collective bargaining agreement from its general contractor.

### **Case Facts**

Suit was brought by the Chairperson of certain benefit funds for Union Local 3 of the International Brotherhood of Electrical Workers, seeking payment of unpaid benefit fund contributions and related statutory damages from a general contractor in the amount of \$2,826,416. The unpaid benefits were allegedly owed pursuant to a collective bargaining agreement by the general contractor's subcontractor. New York Labor Law Section 198-e, if enforced as the fund contended, would have rendered contractors jointly and severally liable for all wages and benefits that a lower-tiered subcontractor fails to pay to its employees.

The case, which was initially filed in the Supreme Court for the State of New York, was removed to the United States District Court for the Southern District of New York. The basis for the removal to federal court was that the funds, and related collection rights, were governed by ERISA, a federal law, which therefore established federal question jurisdiction.

Motions were brought by both the benefit fund and the general contractor. The fund sought to remand the case back to state court and the general contractor cross-moved to dismiss the case. As discussed, the general contractor argued that ERISA is the prevailing law, and under that law, the fund could not seek recovery of the subcontractor's alleged unpaid benefit fund contributions because it was not a signatory to any agreement extending such liability.

## The Court's Decision

In its decision, the court agreed with the Defendant general contractor that ERISA preempted New York Labor Law Section 198-e and dismissed the contractor from the case. The court ruled that ERISA was controlling law over the state Wage Theft Law. When applying ERISA, the court agreed that no suit could be sustained because there existed no contractual obligation that required the general contractor to remit contributions to the fund on behalf of the delinquent subcontractor.

## Conclusion

This decision is surely a welcome one for contractors that perform work through subcontractors. The holding applies to all situations where a benefit fund established pursuant to ERISA seeks payment from a contractor under New York's Wage Theft Law based on a subcontractor's delinquent benefit fund contributions owed pursuant to a collective bargaining agreement.

While this is a case of first impression under New York's Wage Theft Law, the preemption doctrine relied upon by the Court could potentially apply to statutes in other states holding contractors liable for the unpaid ERISA covered benefits of their lower tiered subcontractors.

The decision does not, however, address wage payments, and applies only to benefit fund payments or contributions. The decision also does not relieve a contractor or subcontractor from its own failure to pay wages or other types of benefits on behalf of its employees as required by New York Labor Law.

Prudent contractors should consider due diligence background checks on potential subcontractors and remain alert to possible instances of subcontractors failing to make wage and/or benefit payments.

Given the complexities of federal preemption and the newness of the Wage Theft Law, contractors should consider seeking legal advice when related issues arise.

This case was handled by [Aaron Schlesinger](#), a Partner with Peckar & Abramson who works out of the firm's New Jersey and New York offices. Please feel free to contact Aaron at [aschlesinger@pecklaw.com](mailto:aschlesinger@pecklaw.com) with any questions.

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<sup>1</sup> NY Labor Law § 198-e

<sup>2</sup> [Dr. Gerald R. Finkel as Chairman of the Joint Industry Board of the Electrical Industry](#), 23-CV-1269 (VSB), Judge Vernon S. Broderick of the United States District Court for Southern District of New York.

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