

New Maryland Law Imposes Liability on General Contractor for Subcontractor's Failure to Pay Wages

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Maryland general contractors be alert! **Effective October 1, 2018, Maryland law imposes new liability on general contractors for unpaid wages on a project.** The General Contractor Liability for Unpaid Wages Act (the "Act") is modeled on a recent District of Columbia law. The law is designed to ensure that subcontractors comply with state wage laws and pay their employees in a timely manner. If the subcontractor fails to pay as required, the general contractor will now be jointly and severally liable for such failure in accordance with Maryland wage & hour laws, which can include punitive (treble) damages and attorney's fees. The Act also applies to sub-subcontractors on down, which means a general contractor can be liable for wage violations at any tier of a project.

General Contractor Should Include Indemnification Clause in Subcontract

The Act requires the subcontractor to indemnify the general contractor for "any wages, damages, interest, penalties, or attorney's fees owed as a result of the subcontractor's violation," unless indemnification is provided for in a contract between the general contractor and the subcontractor, or if the subcontractor was unable to pay its employees because the general contractor failed to pay the subcontractor as required. An indemnification clause should be written into the subcontract for added security, although this will only be beneficial if the subcontractor is solvent and has the ability to reimburse the general contractor. If the subcontractor goes out of business or declares bankruptcy, the general contractor is fully on the hook for damages.

General Contractor Should be Selective with Subcontractors

In light of this new risk, the general contractor should be selective in awarding projects to subcontractors. The general contractor would be wise to avoid contracting with unknown companies unless a bond or other security is posted by the subcontractor. Additionally, the subcontract should require the subcontractor to produce on demand its certified payroll records to prove compliance with wage laws.

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