

## **Contractors Will Soon Be Liable For Unpaid Wages Owed to a Subcontractor's Employees**

*By Raymond A. Myer, Construction Law Attorney*

A direct (prime, general) contractor will soon be liable for a subcontractor's debt to a worker for "wages, fringe, and other benefit payments" on a private work project. This liability applies to all contracts entered into on or after January 1, 2018. Although the direct contractor is not liable for penalties or liquidated damages assessed for wage claim violations, it will be liable for interest. The Labor Commissioner, Labor-Management Cooperation Committees and unions owed fringe or other benefit payments or contributions on a wage claimant's behalf can bring a legal action against the direct contractor, but the wage claimant may not. Labor-Management Cooperation Committees or labor unions who file these actions can recover attorney's fees and costs, including expert witness fees. These actions must be filed within one year after the recordation of a notice of completion or notice of cessation, or one year after actual completion of the project (whichever occurs first). To protect itself, a contractor can require its subcontractors (and their sub-subcontractors) to provide payroll records or other evidence of wage payments. If the subcontractor (or its sub-subcontractor) fails to provide these documents, the contractor can withhold "disputed" sums owed to the subcontractor. The best way to avoid liability for subcontractor wage claims is to sign subcontracts before January 1. Otherwise, you should insert the following provisions in subcontracts: (a) subcontractors and sub-subcontractors must provide payroll records and evidence of payment to workers; (b) subcontractors must defend and indemnify the general contractor for claims arising from labor performed by employees for subcontractors and sub-subcontractors; (c) subcontractors must include a similar defense and indemnity provision in their contracts with sub-subcontractors; (d) subcontractors must provide a bond or letter of credit to satisfy these claims; (e) owners and other key subcontractor personnel must personally guarantee the subcontractor's defense and indemnity obligations to the contractor; and (f) the contractor can backcharge subcontractors for disputed amounts incurred to defend against or pay labor claims or for failure to provide the required evidence of payment, or the bond or guarantee. Before the project starts, develop a method to verify payments by, for example, obtaining statements signed by all subcontractor's (and sub-subcontractor's) employees acknowledging payment of wages and, if applicable, by unions acknowledging receipt of benefit payments.

Myer Law attorneys Raymond A. Myer and Ariana A. Vugrek have nearly 50 years of combined experience representing contractors, suppliers, owners, architects and engineers in construction-related matters ranging from the preparation and negotiation of contracts to litigation in state and federal courts. Myer Law provides this information as a service and it does not establish an attorney-client relationship with the reader. This article is not a substitute for legal advice. Since laws change frequently, you should contact an attorney to before using this information. Raymond A. Myer and/or Ariana A. Vugrek can be reached by phone at 805.962.0083, or by email at [mmyer@myerlawpc.com](mailto:mmyer@myerlawpc.com) or [avugrek@myerlawpc.com](mailto:avugrek@myerlawpc.com), or visit our website ([www.myerlawpc.com](http://www.myerlawpc.com)).