
A BILL FOR AN ACT

RELATING TO WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 388, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:
4 "§388- Contractor liability; unpaid wages. (a) A
5 general contractor entering into or under a contract in the
6 State for the erection, construction, alteration, or repair of a
7 building, structure, or other private work shall assume and is
8 liable for any debt owed to a claimant for wages incurred by a
9 subcontractor at any tier acting under, by, or for the general
10 contractor, for the claimant's performance of labor included in
11 the contract between the general contractor and the owner. The
12 general contractor's liability under this section shall extend
13 only to unpaid wages to the claimant, including any interest
14 owed, but shall not extend to penalties, liquidated damages, or
15 any wage, benefit, or contribution claims that result from or is
16 caused by retainage by the general contractor.



1 A general contractor shall not evade or commit any act that
2 negates the requirements of this section; provided that this
3 section does not prohibit a general contractor or subcontractor
4 from contracting with or enforcing any lawful remedies against a
5 subcontractor for the liability created by the nonpayment of
6 wages by the subcontractor or by a subcontractor at any tier
7 working under another subcontractor.

8 (b) Notwithstanding any law to the contrary, actions to
9 enforce a general contractor's liability for unpaid wages may
10 include the following:

11 (1) The director may enforce liability for unpaid wages
12 established by subsection (a) pursuant to chapter 387,
13 chapter 388, or a civil action against a general
14 contractor. The general contractor's liability shall
15 be limited to unpaid wages, including any interest
16 owed; or

17 (2) A joint labor-management cooperation committee
18 established pursuant to 29 United States Code, section
19 175a of the federal Labor Management Cooperation Act
20 of 1978 may bring an action in any court of competent
21 jurisdiction against a general contractor or



1 subcontractor at any tier for unpaid wages owed to a
2 claimant by the general contractor or subcontractor
3 for the performance of private work, including unpaid
4 wages owed by the general contractor, pursuant to
5 subsection (a). The court shall award a prevailing
6 plaintiff in such an action reasonable attorney's fees
7 and costs, including expert witness fees. Prior to
8 commencement of an action against a general contractor
9 to enforce the liability established by subsection
10 (a), the committee shall provide the general
11 contractor or subcontractor who employed the claimant,
12 with at least a thirty-day notice by first class mail.
13 The notice need only describe the general nature of
14 the claim and shall not limit the liability of the
15 general contractor or preclude subsequent amendments
16 of an action to encompass additional claimants
17 employed by the subcontractor.

18 No other party may bring an action against a general contractor
19 to enforce the liability established in this section.



1 (c) Unless otherwise provided by law, property of the
2 general contractor may be attached for the payment of any
3 judgment received after trial and pursuant to this section.

4 (d) An action brought pursuant to this section shall be
5 filed within two years after actual completion of the work
6 covered by the direct contract between the owner and general
7 contractor.

8 (e) This section does not apply to work performed by an
9 employee of the State or any political subdivision of the State.

10 (f) Upon request by a general contractor to a
11 subcontractor, the subcontractor and any lower tier
12 subcontractors under contract with the subcontractor shall
13 provide payroll records, which, at a minimum, shall contain the
14 information set forth in section 387-6 of its employees who are
15 providing labor on a private work. The payroll records shall be
16 marked or obliterated only to prevent disclosure of an
17 employee's full social security number, except that the last
18 four digits of the employee's social security number shall be
19 provided. Upon request of a general contractor to a
20 subcontractor, the subcontractor and any lower tier
21 subcontractors under contract with the subcontractor shall



1 provide the general contractor with award information that
2 includes the project name, name and address of the
3 subcontractor, lower-tier subcontractor with whom the
4 subcontractor is under contract, anticipated start date,
5 duration, and estimated journeyperson and apprentice hours, and
6 contact information for the subcontractors on the project. A
7 subcontractor's failure to comply with this subsection shall not
8 relieve a general contractor from any of the obligations
9 contained in this section.

10 (g) For purposes of this section:

11 "General contractor" means a contractor who has a direct
12 contractual relationship with an owner.

13 "Retainage" means a percentage of what a general contractor
14 withholds from payment to a subcontractor until construction of
15 the project has been satisfactorily completed in all aspects
16 according to contract.

17 "Subcontractor" means a contractor who does not have a
18 direct contractual relationship with an owner. The term
19 includes a contractor who has a contractual relationship with a
20 general contractor or with another subcontractor.



1 (h) The obligations and remedies in this section shall be
2 in addition to any obligations and remedies otherwise provided
3 by law, except that nothing in this section shall be construed
4 to impose liability on a general contractor for anything other
5 than unpaid wages, including any interest owed.

6 (i) Nothing in this section shall alter an owner's
7 obligation to pay a general contractor, or the general
8 contractor's obligation to pay a subcontractor, in a timely
9 manner; provided that a general contractor may withhold all sums
10 owed to a subcontractor if the subcontractor does not provide
11 the information requested under subsection (f) in a timely
12 manner and until such time that the information is provided.

13 (j) The provisions of this section are severable. If any
14 provision of this section or its application is held invalid,
15 that invalidity shall not affect other provisions or
16 applications that can be given effect without the invalid
17 provision or application."

18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act shall take effect on March 15, 2094.



Report Title:

Wages; Timely Payment; General Contractors; Subcontractors;
Liability

Description:

Makes general contractors entering into or under contracts in Hawaii for work on buildings or structures liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner. Takes effect 3/15/2094. (SD2)

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