

## ACT 47

S.B. NO. 415

A Bill for an Act Relating to Wages.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 388, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**“§388- Contractor liability; unpaid wages.** (a) A general contractor entering into or under a contract in the State for the erection, construction, alteration, or repair of a building, structure, or other private construction work not subject to chapter 104 shall assume and be liable for any debt owed to a claimant for wages incurred by a subcontractor at any tier acting under, by, or for the general contractor, for the claimant’s performance of labor included in the contract between the general contractor and the owner. The general contractor’s liability under this section shall extend only to unpaid wages to the claimant, including any interest owed, but shall not extend to penalties, consequential or liquidated damages, or any benefit, fringe benefit, or contribution claims.

A general contractor shall not evade or commit any act that negates the requirements of this section; provided that this section does not prohibit a gen-

eral contractor or subcontractor from contracting with or enforcing any lawful remedies against a subcontractor for the liability created by the nonpayment of wages by the subcontractor or by a subcontractor at any tier working under another subcontractor.

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

- (1) The director may enforce liability for unpaid wages established by subsection (a) against a general contractor; provided that the general contractor's liability shall be limited to unpaid wages, including any interest owed; or
- (2) A joint labor-management cooperation committee established pursuant to section 175a of the federal Labor Management Cooperation Act of 1978 (29 U.S.C. 175a) may bring an action in any court of competent jurisdiction against a general contractor or subcontractor at any tier for unpaid wages owed to a claimant by the general contractor or subcontractor for the performance of private construction work not subject to chapter 104, including unpaid wages owed by the general contractor, pursuant to subsection (a). The court may award a prevailing party in the action reasonable attorney's fees and costs, including expert witness fees; provided that attorney's fees and costs, including expert witness fees, shall not be awarded against a general contractor for unpaid wages except for those of its direct employees. As a condition precedent to an action against a general contractor to enforce the liability established by subsection (a), the committee shall provide written notice to the general contractor and subcontractor who employed the claimant, within ninety days from the date on which the person did or performed the labor for which claim is made, but no later than forty-five days after the date of completion as defined in section 507-43, stating with substantial accuracy the amount claimed and the name of the party for whom the labor was done or performed. The written notice shall be served by registered or certified mail to the general contractor and subcontractor at any place the general contractor or subcontractor maintains an office or conducts their business, or in any manner authorized by law to serve notice. The written notice shall not limit the liability of the general contractor or preclude subsequent amendments of an action to encompass additional claimants employed by the subcontractor.

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

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

(d) An action brought pursuant to this section shall be filed within one year from the date on which the person did or performed the labor for which the claim is made, but no later than forty-five days after the date of completion as defined in section 507-43.

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

(f) Upon request by a general contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract with the subcontractor shall provide payroll records, which, at a minimum, shall contain the information set forth in section 387-6 of its employees who are providing labor on a private construction work. The payroll records shall be marked or obliterated only to prevent disclosure of an employee's full social security number,

except that the last four digits of the employee's social security number shall be provided. Upon request of a general contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract with the subcontractor shall provide the general contractor with award information that includes the project name, name and address of the subcontractor, lower-tier subcontractor with whom the subcontractor is under contract, anticipated start date, duration, estimated journey person and apprentice hours, and contact information for the subcontractors on the project. A subcontractor's failure to comply with this subsection shall not relieve a general contractor from any of the obligations contained in this section.

(g) The obligations and remedies in this section shall be in addition to any obligations and remedies otherwise provided by law, except that nothing in this section shall be construed to impose liability on a general contractor for anything other than unpaid wages to the claimant, including any interest owed, and shall not extend to penalties, consequential or liquidated damages, or any benefit, fringe benefit, or contribution claims.

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

(i) The provisions of this section shall be severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(j) For purposes of this section:

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

"Subcontractor" means a contractor who does not have a direct contractual relationship with an owner. "Subcontractor" includes a contractor who has a contractual relationship with a general contractor or with another subcontractor."

SECTION 2. Section 388-1, Hawaii Revised Statutes, is amended by amending the definition of "employer" to read as follows:

"Employer" includes any individual~~;~~; partnership~~;~~; association~~;~~; joint-stock company~~;~~; trust~~;~~; corporation~~;~~; the personal representative of the estate of a deceased individual or the receiver, trustee, or successor of any of the same~~;~~; general contractor, for purposes of wages owed to the employees of a subcontractor, as those terms are defined in section 388- ; employing any person, but shall not include the State or any political subdivision thereof or the United States."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 1, 2023.)

**Note**

1. Edited pursuant to HRS §23G-16.5.