
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 not subject to
8 chapter 104 shall assume and shall be liable for any debt owed
9 to a claimant for wages incurred by a subcontractor at any tier
10 acting under, by, or for the general contractor, for the
11 claimant's performance of labor included in the contract between
12 the general contractor and the owner. The general contractor's
13 liability under this section shall extend only to unpaid wages
14 to the claimant, including any interest owed, but shall not
15 extend to penalties, consequential or liquidated damages, or any
16 benefit, fringe benefit, or contribution claims.



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) against a general
13 contractor; provided that the general contractor's
14 liability shall be limited to unpaid wages, including
15 any interest owed; or

16 (2) A joint labor-management cooperation committee
17 established pursuant to section 175a of the federal
18 Labor Management Cooperation Act of 1978 (29 U.S.C.
19 175a) may bring an action in any court of competent
20 jurisdiction against a general contractor or
21 subcontractor at any tier for unpaid wages owed to a



1 claimant by the general contractor or subcontractor
2 for the performance of private work not subject to
3 chapter 104, including unpaid wages owed by the
4 general contractor, pursuant to subsection (a). The
5 court may award a prevailing party in the action
6 reasonable attorney's fees and costs, including expert
7 witness fees; provided that attorney's fees and costs,
8 including expert witness fees, shall not be awarded
9 against a general contractor for unpaid wages except
10 for those of its direct employees. As a condition
11 precedent to an action against a general contractor to
12 enforce the liability established by subsection (a),
13 the committee shall provide written notice to the
14 general contractor and subcontractor who employed the
15 claimant, within ninety days from the date on which
16 the person did or performed the labor for which claim
17 is made, but no later than forty-five days after the
18 date of completion as defined in section 507-43,
19 stating with substantial accuracy the amount claimed
20 and the name of the party for whom the labor was done
21 or performed. The written notice shall be served by



1 registered or certified mailing of the notice to the
2 general contractor and subcontractor at any place the
3 general contractor or subcontractor maintains an
4 office or conducts their business, or in any manner
5 authorized by law to serve notice. The written notice
6 shall not limit the liability of the general
7 contractor or preclude subsequent amendments of an
8 action to encompass additional claimants employed by
9 the subcontractor.

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

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

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

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



1 (f) Upon request by a general contractor to a
2 subcontractor, the subcontractor and any lower tier
3 subcontractors under contract with the subcontractor shall
4 provide payroll records, which, at a minimum, shall contain the
5 information set forth in section 387-6 of its employees who are
6 providing labor on a private work. The payroll records shall be
7 marked or obliterated only to prevent disclosure of an
8 employee's full social security number, except that the last
9 four digits of the employee's social security number shall be
10 provided. Upon request of a general contractor to a
11 subcontractor, the subcontractor and any lower tier
12 subcontractors under contract with the subcontractor shall
13 provide the general contractor with award information that
14 includes the project name, name and address of the
15 subcontractor, lower-tier subcontractor with whom the
16 subcontractor is under contract, anticipated start date,
17 duration, estimated journeyman and apprentice hours, and
18 contact information for the subcontractors on the project. A
19 subcontractor's failure to comply with this subsection shall not
20 relieve a general contractor from any of the obligations
21 contained in this section.



1 (g) 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 to the claimant, including any interest owed,
6 and shall not extend to penalties, consequential or liquidated
7 damages, or any benefit, fringe benefit, or contribution claims.

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

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

20 (j) For purposes of this section:



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

3 "Subcontractor" means a contractor who does not have a
4 direct contractual relationship with an owner. The term
5 includes a contractor who has a contractual relationship with a
6 general contractor or with another subcontractor."

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

10 "Employer" includes any individual[~~7~~]; partnership[~~7~~];
11 association[~~7~~]; joint-stock company[~~7~~]; trust[~~7~~];
12 corporation[~~7~~]; the personal representative of the estate of a
13 deceased individual or the receiver, trustee, or successor of
14 any of the same[~~7~~]; general contractor, for purposes of wages
15 owed to a subcontractor's employees, as those terms are defined
16 in section 388-___; employing any person, but shall not include
17 the State or any political subdivision thereof or the United
18 States."

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



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2112.



Report Title:

Wages; Timely Payment; General Contractors; Subcontractors;
Liability

Description:

Makes general contractors entering into or under contracts in the State for work on buildings, structures, or other private works liable for debt incurred by subcontractors for wages due to claimants for performance of labor in the contract between the general contractor and owner. Effective 7/1/2112. (SD2)

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