

Illinois Passes "Wage Protection" Law Targeting General Contractors

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On June 10, Governor J.B. Pritzker signed into law an amendment to the Illinois Wage Payment and Collection Act making general contractors (or trade contractors that themselves have subcontractors) liable for the wages of their subcontractors' employees. The new law is commonly referred to as the "wage protection act." Various labor-related groups lobbied for the change in Illinois law. The law is codified at 820 ILCS 115/13.5.

Interestingly, if a contractor for a project is itself signatory "to a collective bargaining agreement on the project where the work is being performed," that contractor is exempt from the new law. 820 ILCS 115/13.5(h). Put another way, the law as written does not apply to union signatory contractors. The law does not define what it means to have a collective bargaining agreement "on the project," but seemingly as long as a contractor is a signatory to a construction trade union with jurisdiction over the project, the contractor would be exempt from the law. Potentially even if a construction manager is a signatory with any union, that contractor may be able to avoid the law.

The law materially increases the risk of construction in Illinois for construction managers, general contractors, and trade contractors that are not union or not signatory with a union "on the project where the work is performed." Such non-union contractors run the risk that if a subcontractor of any tier (i.e., a subcontractor's subcontractor) fails to pay its employees' wages or benefits, the contractor will be liable for such wages and benefits even though it was not the employer and even if the general contractor fully paid its subcontractor. Specifically, the contractor or construction manager referred to in the law as a "primary contractor," is liable for "unpaid wages or fringe or other benefit payments or contributions, including interest owed" subcontractors' employees. This liability for wages and benefits exists even if the general contractor or construction manager hires only union subcontractors.

While the law seemingly focuses on non-union contractors and construction managers, when union contractors form joint ventures or limited liability companies for specific projects, which is a common occurrence, especially in the Chicagoland area, the law could impact even such union general contractors or trade contractors.

By its terms, the new law seemingly does not give rise to a private right of action. Rather, the law specifies that it will be enforced by the Department of Labor. Because the law does not allow

individuals to sue, its impact may be limited, as the Department of Labor has finite resources and may be more inclined to focus on large-scale wage issues.

The law covers private, as opposed to public governmental, construction projects. It applies to both larger commercial projects and smaller projects.

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