

California to Hold Direct Contractors Jointly Liable for Subcontractor's Unpaid Wages and Fringe Benefits

Jackson Lewis

Article By

[Cary G Palmer](#)

[Sierra Vierra](#)

[Jackson Lewis P.C.](#)

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Beginning with contracts entered into on or after January 1, 2018, direct (general) contractors in California will be held jointly liable for their subcontractors' unpaid employee wages, fringe benefit or other benefit payments or contributions under Assembly Bill 1701, signed into law by Governor Jerry Brown on October 14th. This joint liability requirement is codified in [Labor Code Section 218.7](#).

The law does not apply to individuals performing work under contracts with the State of California, special districts, municipalities or political subdivisions. Furthermore, the law does *not* provide a private right of action against the direct contractor. Instead, the law may be enforced by the Labor Commissioner, joint labor-management cooperation committees or labor unions. The Commissioner may recover unpaid wages and benefits through an administrative hearing, a citation or a civil suit, while joint labor-management cooperation committees and labor unions may recover damages solely through civil suits. The latter two groups also may recover attorney's fees and costs. The statute of limitations for bringing a claim is one year, which begins to run when the completion of the direct contract is recorded, when cessation of work on the direct contract is recorded or when the actual work covered by the direct contract is completed, whichever is earlier.

As a means of providing some protection to direct contractors, the law implements record-production requirements to assist them in auditing their subcontractors' wage and benefits compliance. At the request of a direct contractor, a subcontractor

must produce payroll records with sufficient information to determine whether the subcontractor is fulfilling its obligation to pay employee wages, fringe benefits and other benefits. Also upon request, the subcontractor must provide contract-specific information, such as the project name; the subcontractor's name and address; identification of the entity for whom the subcontractor is directly working; the anticipated start date, duration and estimated journeymen and apprentice hours of the subcontract; and contact information for its own subcontractors on the project. A subcontractor's failure to provide the requested information does not eliminate the direct contractor's joint liability but does entitle the direct contractor to withhold payment of sums owed to the subcontractor as "disputed" until the requested information is provided.

AB 1701 creates the potential for significant financial exposure to direct contractors, as it will require them to act as guarantors not only of their own employees' wages and benefits, but those of their subcontractors' employees, their sub-subcontractors' employees, and so on.

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