



Free Enterprise The Future of Construction

Memo in Opposition S.2762 (Ramos) / A.766 (Rosenthal L)

RE: An act to amend the lien law, in relation to employee liens; to amend the labor law, in relation to creating a right for victims of wage theft to hold the ten members with the largest ownership interests in a company personally liable for wage theft

The Empire State Chapter of Associated Builders and Contractors (“ABC”), which represents hundreds of merit-shop contractors and subcontractors, employing hundreds of thousands of workers throughout the State of New York, opposes this legislation.

This bill would amend sections of the Lien Law, Labor Law, Civil Practice Law and Rules, Business Corporations Law, and Limited Liability Company Law to permit an employee to file an employee's lien against an employer's interest in real and personal property for an alleged wage claim. While the ABC Empire State Chapter supports employees being paid their proper wages, and takes wage theft very seriously, this bill has significant flaws which would harm small businesses that have done nothing wrong. Allowing employees to place liens on mere allegations would pose significant additional costs on businesses and is not an appropriate or effective solution.

This bill ignores the myriad State and Federal laws that give employees methods to recover unpaid wages, including New York's Wage Theft Prevention Act which allows for both civil and criminal penalties to be placed on an employer guilty of wage theft. Additionally, four separate Labor Law definitions of employer are used, which results in an expansive definition of “employer.” Many parties – including an employer's agents, supervisors, and low-level managers and subordinates, who have no control over a business' pay practices, would be subject to personal liens.

Moreover, the bill does not require a court to review the lien, nor does it require a notice of the lien to be provided to the employer before the lien is filed. As a result, the lien could remain on the property for up to one year after the filing of the notice and be further extended by following the process outlined in the bill without filing the underlying case in court. Enforcement of the lien could happen post-judgment, or could occur pre-judgment, which raises serious due process concerns by upending centuries old legal standards. The ABC Empire State Chapter has consistently fought to make New York State a better place to work and do business.

This bill will make it more difficult for business owners to continue doing business in the State; as well as make it harder to attract new business to the State. Wage theft is a crime, and we already have mechanisms in place to assist those who are affected by it. In fact, the Department of Labor is a national leader in recovering and returning wages to workers, recovering eighty-two percent of the wages found to be owed to workers and returning more than \$310 million in wages to workers since 2011.

For these reasons, the ABC Empire State Chapter opposes the enactment of this legislation.

If you have any questions related to this issue, please contact Brian Sampson, President of the Empire State Chapter of Associated Builders and Contractors, Inc. at (585) 967-2133.

