

CHAPMAN GLUCKSMAN

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CALIFORNIA LEGISLATIVE ALERT

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ASSEMBLY BILL 1701 CONTEMPLATES BROADER DUTY TO SUBCONTRACTOR'S EMPLOYEES BY GENERAL CONTRACTOR

AB 1701 recently passed the Assembly and is pending in the Senate's Labor and Industrial Relations and Judiciary Committees. The Bill, if signed by the Governor, would create a new section in the California *Labor Code* (Section 218.7) making "direct contractors" – defined as a contractor "making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work" – liable for wages a subcontractor or sub-subcontractor fails to pay to its employee for work included in the general contractor's contract with the project owner.

Under the new law, direct contractors would be liable for up to one year from the date of completion of the work for unpaid wages, fringe benefits, health and welfare benefits, and pension fund contributions, including interest and state tax payments owed to a subcontractor's employee. The employee, however, would not be able to recover penalties or liquidated damages from the general contractor.

AB 1701 would give the employee, Labor Commissioner, or a joint labor-management cooperation committee the right to enforce the direct contractor's liability through a civil action. It would also extend to third parties who are owed fringe or other benefit payments or contributions on the employee's behalf. Pursuant to the proposed language of the new statute, a prevailing plaintiff in such an action would be entitled to their reasonable attorneys' fees and costs, including expert witness fees.

Although *Labor Code* § 218.7 would impose certain obligations on the subcontractor to provide the direct contractor with relevant project and payroll records, the subcontractor's failure to comply with those obligations does not relieve the direct contractor from liability.

Impact

AB 1701's apparent purpose is to protect employees, an undeniably important legislative goal. However, if passed, the bill could greatly increase general contractors' exposure when subcontracting work and their cost of doing business. Especially because the new law would not impact existing laws requiring a direct contractor to timely pay a subcontractor.

As a result, many coalitions against AB 1701 stress the halting effect this could have on the construction industry as a whole, particularly private construction, which is not as heavily regulated as public works.

CGDRB will continue to monitor this Bill and provide updates as developments occur.