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New Maryland Law Makes Construction GCs Liable for Subcontractors' Wage and Hour Violations

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Under Maryland wage laws, if an employer fails to properly pay its employees, it may be liable for up to three times the wages owed to the employee, plus attorneys' fees and costs. Employees may file a lawsuit against their employer within three years after a violation occurs. Generally, unless a construction general contractor (GC) and its subcontractor are found to be joint employers, that GC would not be liable for a subcontractor's violation of Maryland wage laws. The times they are a changing...

Effective October 1, 2018, under the General Contractor Liability for Unpaid Wages Act (the Act), a general contractor will now be jointly and severally liable for its subcontractors' failure to pay employees in accordance with Maryland wage laws. The Act applies to subcontractors of the subcontractor, and so on – i.e., those not in a direct contract with the general contractor. That means that a GC will now be liable for wage violations at any tier on a project.

The good news, maybe: The Act provides that a subcontractor must indemnify a general contractor for "any wages, damages, interest, penalties, or attorney's fees owed as a result of the subcontractor's violation," unless indemnification is provided for in a contract between the GC and the subcontractor, or if the subcontractor was unable to pay its employees because the GC failed to pay the subcontractor pursuant to the terms of their contract.

The bad news, maybe: This mandatory indemnification provision may be worth nothing if a subcontractor does not have the financial capacity to pay these damages and costs. Further, the Act gives employees the opportunity to sue both the GC and their direct employer.

In light of the Act, GCs should review their contract provisions, consider requiring subcontractors to obtain a bond or insurance to protect against wage claims by a subcontractor's employees, and consider adding contract provisions to allow for review of their subcontractors' pay practices, pay records, and history of wage claims and lawsuits. GCs also should consider requiring a subcontractor's principal or officer to sign certified payrolls, thereby attesting that employees were properly paid.

For more information on this or other matters, please contact [Donna Glover](#) or any of the members of Baker Donelson's [Construction Group](#).