



## Legislation Details (With Text)

|                        |   |                     |          |                    |  |
|------------------------|---|---------------------|----------|--------------------|--|
| <b>File #:</b>         | Int 2318-2021   | <b>Version:</b>     | A        | <b>Name:</b>       | Licensing of construction labor providers.           |
| <b>Type:</b>           | Introduction  | <b>Status:</b>      | Enacted  | <b>In control:</b> | Committee on Consumer Affairs and Business Licensing |
| <b>On agenda:</b>      | 5/27/2021   |                     |          |                    |  |
| <b>Enactment date:</b> | 12/11/2021  | <b>Enactment #:</b> | 2021/150 |                    |  |
| <b>Title:</b>          | A Local Law to amend the administrative code of the city of New York, in relation to the licensing of construction labor providers  |                     |          |                    |  |
| <b>Sponsors:</b>       | Diana I. Ayala, Justin L. Brannan, Francisco P. Moya, Margaret S. Chin, Vanessa L. Gibson, Ben Kallos, Helen K. Rosenthal, Rafael Salamanca, Jr., I. Daneek Miller, Brad S. Lander, Carlos Menchaca, Carlina Rivera, Keith Powers, Kevin C. Riley, Eric Dinowitz, Mark Levine, Karen Koslowitz, Antonio Reynoso, Adrienne E. Adams, Robert F. Holden, Stephen T. Levin, Oswald Feliz, Laurie A. Cumbo, Farah N. Louis, Alicka Ampry-Samuel, Robert E. Cornegy, Jr., Selvena N. Brooks-Powers, Paul A. Vallone, Daniel Dromm, James G. Van Bramer, Inez D. Barron  |                     |          |                    |  |
| <b>Indexes:</b>        | Agency Rule-making Required   |                     |          |                    |  |
| <b>Attachments:</b>    | 1. Summary of Int. No. 2318-A, 2. Summary of Int. No. 2318, 3. Int. No. 2318, 4. May 27, 2021 - Stated Meeting Agenda with Links to Files, 5. Hearing Transcript - Stated Meeting 5-27-21, 6. Minutes of the Stated Meeting - May 27, 2021, 7. Committee Report 9/15/21, 8. Hearing Testimony 9/15/21, 9. Hearing Transcript 9/15/21, 10. Proposed Int. No. 2318-A - 11/3/21, 11. Committee Report 11/10/21, 12. Hearing Transcript 11/10/21, 13. Committee Report - Stated Meeting, 14. November 10, 2021 - Stated Meeting Agenda with Links to Files, 15. Hearing Transcript - Stated Meeting 11-10-21, 16. Minutes of the Stated Meeting - November 10, 2021, 17. Int. No. 2318-A (FINAL), 18. Fiscal Impact Statement, 19. Legislative Documents - Letter to the Mayor, 20. Local Law 150 |                     |          |                    |  |

| Date       | Ver. | Action By  | Action                      | Result |
|------------|------|--|-----------------------------|--------|
| 5/27/2021  | *    | City Council   | Introduced by Council       |        |
| 5/27/2021  | *    | City Council   | Referred to Comm by Council |        |
| 9/15/2021  | *    | Committee on Consumer Affairs and Business Licensing | Hearing Held by Committee   |        |
| 9/15/2021  | *    | Committee on Consumer Affairs and Business Licensing | Laid Over by Committee      |        |
| 11/10/2021 | *    | Committee on Consumer Affairs and Business Licensing | Hearing Held by Committee   |        |
| 11/10/2021 | *    | Committee on Consumer Affairs and Business Licensing | Amendment Proposed by Comm  |        |
| 11/10/2021 | *    | Committee on Consumer Affairs and Business Licensing | Amended by Committee        |        |
| 11/10/2021 | A    | Committee on Consumer Affairs and Business Licensing | Approved by Committee       | Pass   |
| 11/10/2021 | A    | City Council   | Approved by Council         | Pass   |
| 11/10/2021 | A    | City Council   | Sent to Mayor by Council    |        |
| 12/11/2021 | A    | Administration                                       | City Charter Rule Adopted   |        |
| 12/13/2021 | A    | City Council   | Returned Unsigned by Mayor  |        |

Int. No. 2318-A

By Council Members Ayala, Brannan, Moya, Chin, Gibson, Kallos, Rosenthal, Salamanca, Miller, Lander, Menchaca, Rivera, Powers, Riley, Dinowitz, Levine, Koslowitz, Reynoso, Adams, Holden, Levin, Feliz, Cumbo, Louis, Ampy-Samuel, Cornegy, Brooks-Powers, Vallone, Dromm, Van Bramer and Barron

A Local Law to amend the administrative code of the city of New York, in relation to the licensing of construction labor providers

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 37 to read as follows:

### SUBCHAPTER 37

#### CONSTRUCTION LABOR PROVIDERS

§ 20-564 Definitions. For purposes of this subchapter, the following terms have the following meanings:

Construction. The term “construction” has the same meaning as defined in section 3302.1 of the New York city building code and does not include minor alterations and ordinary repairs, as defined in section 28-105.4.2.1 of such code.

Construction labor provider. The term "construction labor provider" means a person who employs and supplies a covered construction worker to a third party client for the performance of construction work or manual labor for a construction project of such client on a site in the city, in exchange for compensation from such third party client, provided that the completion of such project is directed by such client or such client's contractor and not such person. The term “construction labor provider” does not mean:

1. An employment agency or an employee fee paid employment agency, as defined by article 11 of the general business law;

2. A professional employer organization, as defined by article 31 of the labor law;

3. A construction subcontractor that is responsible for and performs all of the following: (i) performing construction work on a project in accordance with a written contract for a defined scope of construction work at a fixed price; (ii) obtaining necessary licenses to perform construction services under the entity's name; (iii) exclusively controlling the subcontractor's workers, including having hiring and firing authority and direction

of methods and means of construction work performed on the construction project; (iv) paying wages and fringe benefits to workers by the subcontractor and not any other person or entity, and maintaining required employment and payroll records by the subcontractor; (v) purchasing the majority of materials, supplies and tools for construction work performed by the subcontractor on the project; and (vi) maintaining workers' compensation and unemployment insurance coverage for periods preceding, during and succeeding the term of the construction project for the type and scope of construction work performed by the subcontractor on the project. The commissioner may promulgate rules requiring additional documentation to establish that an applicant is a construction subcontractor; or

4. A general contractor, as defined in section 28-401.3.

Covered construction worker. The term "covered construction worker" means a person who is employed by a construction labor provider to perform construction work or manual labor on a construction site.

Manual labor. The term "manual labor" means the type of physical work the performance of which classifies a natural person as a "manual worker" in accordance with section 190 of the labor law and the rules and regulations adopted thereunder.

Retaliation. The term "retaliation" means any adverse employment action taken or threat to take adverse employment action by a construction labor provider against any person, or any action to directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence any person because such person has taken an action to enforce, inquire about or inform others about the requirements of this subchapter.

Successor. The term "successor" means a construction labor provider that does or has done two or more of the following:

a. Uses the same facility, facilities or workforce to offer substantially the same services as a predecessor construction labor provider;

b. Shared in the ownership, or otherwise exercised control over, the management of a predecessor

construction labor provider;

c. Employs in a managerial capacity any person who controlled the wages, hours, or working conditions of the affected employees of a predecessor construction labor provider; or

d. Is an immediate family member, including a parent, step-parent, child, or step, foster or adopted child, of any owner, partner, officer, or director of a predecessor construction labor provider, or of any person who had a financial interest in the predecessor construction labor provider.

Third party client. The term "third party client" means any person who contracts with a construction labor provider to obtain the services of a covered construction worker for construction work or manual labor at a construction site in the city.

§ 20-564.1 License. a. It shall be unlawful for any person to engage in business as a construction labor provider without first having obtained a license from the department pursuant to this subchapter. Licenses issued pursuant to this subchapter shall be valid for no more than two years and expire on a date the commissioner prescribes by rule. A license to operate as a construction labor provider shall be granted in accordance with the provisions of this subchapter and any rules promulgated by the commissioner thereunder.

b. There shall be a fee of \$200 to apply for or renew a license issued under this subchapter.

c. In addition to an applicant's name, address, email address, corporate structure and ownership, the names of each principal and officer, and other information as the commissioner may require, an applicant for a license required by this section or renewal thereof shall furnish the following information:

1. If the applicant is a non-resident of the city, the name and address of a registered agent within the city upon whom process or other notifications may be served.

2. A signed statement certifying:

(a) Compliance with all laws, regulations and rules applicable to doing business as a construction labor provider;

(b) That the applicant has no outstanding final judgments or warrants against the applicant in any action

arising out of a violation of this subchapter or any rules promulgated thereunder;

(c) That the applicant maintains a commercial general liability insurance policy in the amount of one million dollars per occurrence and two million dollars in the aggregate; and

(d) That the applicant maintains workers' compensation coverage, unemployment insurance, and disability insurance for covered construction workers employed by such applicant, in compliance with law;

3. For the renewal of such license, the following information on business operations:

(a) The total number of covered construction workers employed during the preceding license term;

(b) The average hourly rate of wage paid to covered construction workers, as of the date of application, disaggregated by workers' compensation classification code;

(c) Types and hourly value of supplemental benefits paid to covered construction workers, as of the date of application, disaggregated by workers' compensation classification code;

(d) The name of each third party client during the preceding license term; and

(e) The address of each site where covered construction workers worked during the preceding license term, disaggregated by third party client for whom the work was performed.

d. Denial, renewal, suspension and revocation of license. In addition to any powers of the commissioner and not in limitation thereof, the commissioner may deny or refuse to renew any license required under this subchapter and may suspend or revoke any such license, after due notice and opportunity to be heard, if it is found that:

1. The applicant has failed to satisfy any fine or civil penalty ordered against such applicant in a judicial or administrative proceeding arising out of a violation of this subchapter or chapter one of this title or any rules promulgated thereunder;

2. An entity to which the applicant is a successor has failed to satisfy any fine or civil penalty ordered against such entity in a judicial or administrative proceeding arising out of a violation of this subchapter or chapter one of this title or any rules promulgated thereunder;

3. The applicant failed to answer a summons, notice of violation, request for records, or subpoena, appear for a hearing, or provide truthful information or documentation to the commissioner in connection with the application or other request for information;

4. The applicant or an entity to which the applicant is a successor committed two or more violations of any provision of this subchapter, chapter one of this title, chapter five of title twenty of this code, or any rules promulgated thereunder in the preceding two years;

5. There has been a final determination of liability against the applicant in a civil, criminal or administrative action involving egregious or repeated nonpayment or underpayment of wages or other illegal acts or omissions bearing a direct relationship to the fitness of the applicant to conduct the business; or

6. The applicant failed to submit the records described in section 20-564.4 for inspection by the department.

§ 20-564.2 Employee notices. a. Notice of rights. Every construction labor provider shall provide to each covered construction worker, in English and in the language identified by each covered construction worker as the primary language of such worker, at the time of hiring, a written notice of the rights of covered construction workers prepared and provided by the commissioner. Such notice shall include information on minimum wage, overtime, safe and sick leave, health and safety in the workplace, protections against employment discrimination, unemployment insurance, workers' compensation, and the rights to notices and to be free from retaliation under this subchapter.

b. Certification notice. Every construction labor provider shall provide to each applicant for employment as a covered construction worker a written notice of any legally required certifications, trainings or other designations required to be completed or acquired by a covered construction worker either:

1. As a condition of hire by such construction labor provider; or

2. As a condition of performing any task performed by other workers hired for roles that are substantially similar to the one for which the covered construction worker was hired by such construction labor

provider, or that such construction labor provider should otherwise reasonably anticipate such covered construction worker would be asked to perform if employed by such construction labor provider for at least one year.

Such written notice shall be provided: (i) before such covered construction worker is asked to sign any employment contract with such provider or to otherwise agree to work for such provider, and (ii) anytime such requirements change, without undue delay. For any certification, training or other designation included on such notice, the construction labor provider shall disclose the expected cost of acquiring such certification, training or other designation, and whether such cost will be borne by such construction labor provider or such covered construction worker.

c. Notice of assignment. 1. For contracts offered by a third party client more than 24 hours prior to the requested time of dispatch, at least 24 hours prior to dispatching a covered construction worker to a worksite for a third party client a construction labor provider shall provide the covered construction worker with a notice in writing containing the following information in a form and manner approved by the commissioner:

(a) The name and business address of the third party client and any other entity responsible for supervising such covered construction worker's work during the assignment;

(b) The address of the worksite;

(c) The nature of the work to be performed and the types of equipment and protective clothing required for the assignment;

(d) The anticipated number of hours of work, per week, or if less than a week, by day;

(e) The anticipated duration of the assignment;

(f) The wages offered, including whether prevailing wages would be owed for work performed, and whether supplemental benefits, including but not limited to health insurance, retirement funds and insurance premiums, would be paid for by the construction labor provider, the third party client or another entity;

(g) The name of the party responsible for providing workers' compensation coverage for such covered

construction worker and the insurance policy number covering such covered construction worker; and

(h) Whether a meal or equipment, or both, are provided, either by the construction labor provider or the third party client, and the expected cost to the covered construction worker of the meal and equipment, if any.

2. For contracts offered by a third party client less than 24 hours prior to the requested time of dispatch, a construction labor provider shall provide a notice of assignment to a covered construction worker within 72 hours. Where such assignment is completed prior to 72 hours from the requested time of dispatch, no such notice is required.

3. If any of the information required to be provided by paragraph one of this subdivision changes, such construction labor provider shall update such covered construction worker in writing within 24 hours of such construction labor provider being informed of the change.

d. Every construction labor provider shall provide to the third party client on each project for which covered construction workers have been contracted to work, and the owner of the property where work is being performed, as applicable, a copy of the information required by subdivisions a and c of this section, no later than seven days after the day on which such construction labor provider first dispatched a covered construction worker to a worksite for a third party client. Such construction labor provider shall additionally furnish such information upon such third party client's request at any time for the duration of the project. The third party client shall provide written acknowledgment of receipt of such information.

e. A construction labor provider shall notify, both by telephone and in writing, each covered construction worker it employs and each third party client with whom it has a contract within 24 hours of any denial, suspension or revocation of its license by the department.

f. A construction labor provider shall notify each covered construction worker it employs and each third party client with whom it has a contract of all final violations or penalties issued against such construction labor provider by the department or the office of administrative trials and hearings for violations of this subchapter, within 90 days of such issuance.



§ 20-564.3 Records. Every construction labor provider shall keep on file in its principal place of business for a period of three years the following records:

a. Statements signed by each covered construction worker, in the language identified by each covered construction worker as their primary language, indicating that the covered construction worker received, read and understood the notices required to be provided to them pursuant to section 20-564.2 of this subchapter;

b. All records necessary to verify the information reported in sections 20-564.1 and 20-564.2 of this subchapter; and

c. Such other records as the commissioner may prescribe by rule.

All records required by this section or by the commissioner by rule shall be made available to the department electronically upon request, consistent with applicable law and in accordance with rules promulgated hereunder and with appropriate notice.

§ 20-564.4 Third party clients. It is unlawful for a third party client to accept the services of a covered construction worker provided by a construction labor provider that is not licensed pursuant to this subchapter, if the provision of such services by such construction labor provider would require such a license. A construction labor provider shall provide each of its third party clients with a copy of their license issued by the department upon such client's request. If a third party client accepts the services of a construction labor provider who is not licensed but demonstrates the receipt of information from the construction labor provider or the department that inaccurately represents such provider as licensed, such client shall be held harmless. Each violation of this section shall subject a third party client to a civil penalty not to exceed \$500. Each day during which a third party client accepts the services of a covered construction worker in violation of this section shall constitute a separate and distinct offense.

§ 20-564.5 Enforcement. a. Any person operating as a construction labor provider without a license issued by the commissioner pursuant to this subchapter shall be liable for a civil penalty of \$500 per day for every calendar day during which the unlicensed construction labor provider operated. A construction labor

provider that violates section 20-564.2 or any rule promulgated thereunder shall be liable for a civil penalty of \$250 for a first violation, and \$500 for each subsequent violation within one year of the first violation. Each covered construction worker or third party client for whom the construction labor provider did not provide a notification in accordance with such section shall constitute a separate and distinct offense. Such penalties shall be in addition to any other civil or criminal penalties that may be applicable under any other law, rule or regulation.

b. Any action or proceeding that may be appropriate or necessary for the correction of any violation issued pursuant to this subchapter, including, but not limited to, actions to secure permanent injunctions, enjoining any acts or practices which constitute such violation, mandating compliance with the provisions of this subchapter, seeking civil penalties for violations of this subchapter, or such other relief as may be appropriate, may be initiated in any court of competent jurisdiction by the corporation counsel or such other persons designated by the corporation counsel.

§ 20-564.6 Private right of action. Any covered construction worker who is aggrieved by a violation of this subchapter may commence an action in a court of competent jurisdiction on their own behalf against a construction labor provider. For each violation of section 20-564.2, the covered construction worker may recover damages of \$500. If such violation of 20-564.2 was committed with intent or recklessness, the covered construction worker may recover damages of \$1,000. Any person who is a victim of retaliation shall be entitled to all relief necessary to make such person whole, including, but not limited to: (i) an injunction to restrain any adverse or retaliatory action; (ii) reinstatement to the position such officer or employee would have had but for such action, or to an equivalent position; and (iii) reinstatement of full benefits and seniority rights including payment of any missed back pay, plus interest. Persons aggrieved by a violation of section 20-564.2 or by retaliation shall be entitled to compensation for any special damages sustained as a result of an action commenced pursuant to this section, including litigation costs and reasonable attorneys' fees; and to relief other than set forth in this section as the court may deem appropriate.

§ 2. Any applicant for a construction labor provider license pursuant to this local law that is engaging in business as a construction labor provider on the date this local law is enacted shall provide the information required in paragraph 3 of subdivision c of section 20-564.1 as part of their initial application for such license. For information that such paragraph requires to be provided with respect to "the preceding licensing term," such construction labor provider shall instead provide such information for the time period from the date this local law is enacted until the date the application for the initial license is submitted.

§ 3. Section 1 of this local law takes effect 180 days after it becomes law. Section 2 of this local law takes effect immediately.

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