

THE BOTTOM LINE



E X C E L L E N C E I N
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How Will the Latest Wicks Law Reform Affect Your Business?

Earlier this year, Governor Spitzer proposed changes to the Wicks Law. For many years it was felt that this law that require municipal governments to issue multiple contracts (plumbing, HVAC, electrical and general construction) for a construction project costing more than \$50,000 was an antiquated statute. The monetary thresholds had not been increased since the early 1960s.

The governor's original proposal would:

- Increase the threshold to \$1,000,000 for Upstate projects and \$2,000,000 for projects in New York City, and annually index these new thresholds to adjust for inflation.
- Strengthen subcontractor protections to ensure that subcontractors are treated fairly in non-Wicks projects; and
- Authorize the use of project labor agreements, which standardizes the terms and conditions for labor on public work contracts, in lieu of Wicks separate specifications, in certain circumstances.

In June 2007 the legislation agreed to pass the Wicks Law Reform. Under the new legislation, the thresholds for triggering Wicks Law mandates would be increased to \$3,000,000 in the downstate area, \$1,500,000 in the suburbs and \$500,000 upstate. Contracting entities will also be able to avoid the Wicks Law requirement through use of project labor agreements.

According to the Governor's News Release of 6/14/07, "The changes will exempt more than 70 percent of public works projects from Wicks requirements and provide real savings for schools, local governments and other public entities."

When the reform is enacted, how will this affect your business, how you operate and solicit contracts? A project under \$3,000,000 (in the downstate area) will not have multiple contracts issued for the four major trades, but will be issued as one contract with the general contractor being responsible for these trades. That means if you're an electrician, plumber or HVAC contractor looking to bid this job, instead of bidding directly to the owner for your portion, you will now be submitting your proposal to a general contractor.

If you're a trade contractor are you set up to take on a project as a general contractor and manage the entire project? Is your bonding set up to support what would obviously be a larger project with an expanded scope of work? As a subcontractor (in lieu of a prime contractor) you will be farther removed from the source of the project funds. Instead of getting paid directly from the owner, your money will come through the general contractor. Are you financially prepared to handle a change that may occur in the turnover of receivables? As a general contractor, are you prepared for the extra requirement of not just coordinating the trades, but verifying, requisitioning and paying for subcontractor work? What protection will you implement to guarantee the work of these subcontractors? These are questions you will need to address as this reform is implemented on contracts. Determine what the immediate and long-term affect this will have on your business.

The politicians see this reform as a good thing - in a NYC Press Release on the subject, Mayor Michael R. Bloomberg states, "I am pleased that Governor Spitzer, Speaker Silver and Majority Leader Bruno have agreed to reform the Wicks law." The Business Council of NYS, Inc. in an article dated 4/3/07 quoted statistics that analyzes the potential savings to Westchester County and feel the implications are that the savings of 10-20 percent in contract costs are positive for Westchester County and Westchester County property taxpayers. It can have a profound impact on your business.

We have not been able to determine when the new reform will take affect, but you need to be prepared when it does. If you're a trade contractor and not able to undertake all phases of a project, you will need to start networking and making alliances with GCs that would consider using you as a subcontractor that you'd want to work for. Do your homework and align yourself with GCs with good reputations, and a history of prompt payment. If you're a GC or a trade contractor that can handle all phases of a project, you need to start having conversations with your surety broker and underwriter to determine if your bonding will be adequate to accommodate the

Continue on page 3.....

Contributing Staff

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Famous Quotes

The first responsibility of a leader is to define reality. The last is to say thank you.
-Max DePree

Facts do not cease to exist because they are ignored.
-Aldous Huxley

Show me a man who cannot bother to do little things and I'll show you a man who cannot be trusted to do big things.
-Lawrence Bell

Morale and attitude are the fundamental ingredients to success.
-Bud Wilkinson

Workers Compensation Reform Bill Is Putting Some Contractors Under the Microscope

In February of this year, Governor Elliot Spitzer announced an agreement to reform the New York Workers Compensation system, a promise he made in November after winning the gubernatorial election. On March 13th the bill became a reality as it was signed into law. This is the first major workers compensation reform in the state since 1996. Though the 1996 reform saved employers an estimated 25% on costs, the workers compensation system was still burdensome and costly to employers. Spitzer and the co-authors of this bill state that this reform will save employers between 10 percent and 15 percent in the coming years, as well as increasing maximum weekly benefits for workers from its current level of \$400 to \$600 within three years.

Denis Hughes, President of the New York State AFL-CIO, said “The coalition that put the agreement together is a signal that labor, employers and government officials are now working together in New York to improve the state's business climate.”

Kenneth Adams, President of the Business Council of New York, said: “This is a major step toward reducing the cost of doing business in New York State.”

This appears to be a “win-win” for labor and business in the state. To accomplish this common ground between labor, business and the state government, amendments were made to a number of the existing statutory provisions in the law, as well as enacting some new ones. A few of the more notable revisions of the law are:

1) Termination of the Second Injury Fund, which originally was instituted to help entice employers to hire World War II veterans whose wounds might have made them prone to re-injury when they returned to the work force. Incurred losses would be adjusted when a claimant was previously injured through another employer and was subject to relief under the second injury law. Now insured employers will bear the full cost of these claims through their workers compensation carriers, which will ultimately be reflected in their loss experience.

2) A cap was placed on lifetime benefits for Permanent Partial Disability (“PPD”). Unless a worker qualifies for “total industrial disability” or “permanent total disability” the benefits for a permanent partial disability will end after ten years.

3) The law calls for the elimination of the NY Compensation Insurance Rating Board’s duties by stripping the entity’s ability to file rates as of February 1st 2008. Pending the Supt. of Ins., Eric R. Dinallo’s report on the NYCIRB scheduled for September 1st of this year, this entity may be disbanded all together.

A large portion of the reform places a focus on weeding out fraud and employers in the following ways:

A.) Fail to Secure Coverage – Effective 04/13/07

- A failure to secure coverage for five or fewer employees is a misdemeanor and subjects an employer to a fine between \$1,000 and \$5,000.
- Failure to secure coverage for five or more employees is a class E felony and subjects an employer to fines between \$5,000 and \$50,000.
- Subsequent violations, within 5 years, are a class D felony and subjects an employer to additional fines of between \$10,000 and \$50,000.
- Penalties for failure to secure coverage have increased from \$250 to \$1,000 or a sum not to exceed two times the cost of workers compensation insurance for each 10 day period without coverage.

*Note: These sanctions and penalties will apply if the employer is found to have “intentionally and materially misrepresented or concealed the duties of an employee to avoid proper classification for calculation of premium.”

B.) Stop Work Order – Effective 09/13/07

- The Chair may enter and inspect any place of business at any reasonable period of time for the purpose of investigating employer compliance.
- The Chair will be able to institute a Stop Work Order, a complete cessation of all business operations, if an employer is deemed to have failed to secure coverage or failed to pay penalties assessed against the employer as such a failure constitutes an “immediate danger to public health, safety or welfare.”

Continued on Page 3.....

How Will the Latest Wicks Law Reform Affect Your Business?

Continued from page 1

changes. You need to start interviewing subcontractors that will be able to fill certain needs, especially on larger projects. You want to make sure that these subcontractors are bondable, as that will be your protection against loss in the event that they default and protection against nonpayment to subs and wage violations.. Your surety, as a condition of supporting you on larger projects, may also make this a requirement of approval of that larger bond. Typically they may ask that any subcontractor performing more than 10% of the work be bonded back.

tor performing more than 10% of the work be bonded back.

We will keep you informed of any new developments as they occur. We know there are discussions with various contractor trade groups in the works reviewing exactly how the labor agreements would work. I'm sure we're destined to see more changes in this arena. Remember your business partners – Surety Broker, Underwriter, CPA and Attorney – should all be included in any discussions or decisions to make any major changes to your business operations.

Workers Compensation Reform Bill Is Putting Some Contractors Under the Microscope

Continued from page 2...

C.) Failure to Produce Business Records - Effective 09/13/07

- Failure to keep true and accurate business records subjects the employer to a misdemeanor and fines of between \$5,000-\$10,000 plus penalties.
- The required records now include the number of employees, classifications, and information regarding employee accidents, and are added to the requirement that payroll records be kept for four years. Failure to keep these records for the prescribed time subjects the employer to the same fines and penalties as failure to produce payroll records.

D.) Suspension and Debarment – Effective 04/13/07

- Any person subject to final assessment of civil fines or penalties or a stop work order, or who has been convicted of a misdemeanor or felony, shall be ineligible to bid on a public work contract or subcontract for one year from the date of conviction if convicted of a misdemeanor and five years from the date of conviction if convicted of a felony.

Enforcement

The new law contains a number of provisions referencing the need for governmental agencies to share information between each other. Governor Spitzer on numerous occasions has referenced the Workers Compensation Board, Department of Labor and the Department of Insurance in particular. It has yet to be seen the extent of communication or what areas these agencies will be focusing on fully, but the first sign of a unified effort appears to be in the recent prosecution of certain employers misclassification of workers as “independent contractors”. Governor Spitzer is planning to set up a task force to police employers and enforce the new law. Patricia M. Smith, the State Labor Commissioner, was recently quoted in a NY Times article as stating: “We are developing a plan to address this law-breaking practice, which has been left unchecked for 12 years,” adding, “We’re most concerned about the problem in the construction industry right now, all around the state.”

Conclusion

Contractors should stay abreast of this evolving situation to ensure compliance with the new legislation. A representative from the Amerisc Corp. would be glad to assist you with any questions you may have.

Kevin Pugh, Amerisc Corp.

Famous Quotes

Lots of people want to ride with you in the limo, but what you want is someone who will take the bus with you when the limo breaks down.
-Oprah Winfrey

If no one ever took a risk, Michelangelo would have painted the Sistine Floor.
-Author unknown

Profit is not a four letter word, but LOSS is.
-Author unknown

Most of us would rather risk catastrophe than read the directions.
-Mignon McLaughlin

When you have a number of disagreeable duties to perform always do the most disagreeable first.
-Josiah Quincy

Company News

CONTRACTORS for KIDS – Picnic and Raffle

September 15 – Second Annual Family and Fun Day Picnic and Raffle. This year, CFK’s picnic will be held at Smith Point County Park – DARE Area, Shirley, NY from 11am to 6pm. The drawing for a 2007 Chrysler 300 C will be held at 6pm.

For those of you that attended last year’s picnic, you know the tremendous turnout and great fun had that day. This year hopes to be even better.

“Contractors for Kids” is a not-for-profit company founded for the purpose of providing assistance to families in our communities that have been financially devastated due to long-term illness, injury or death. CFK wants to give hope and reassurance for their futures. Their pledge is that “We will be there”.

Please visit the organization’s website at www.contractorsforkids.org or call them at 1-800-208-KIDS for more details, including how to obtain raffle tickets, tickets to the picnic and sponsorship opportunities. Consider making this event your company’s annual picnic.

Louis J. Spina, our firm’s CEO and a founding board member of CFK, wants to thank everyone that has supported the group and its events for their generosity.

OCTOBER IS BREAST CANCER AWARENESS MONTH

Once again Atlynx/Amerisc will have a team of walkers at the 2007 Making Strides for Breast Cancer Walk on Sunday Oct. 21, 2007 at Jones Beach, Long Island New York. Contact Denese Thompson if you’re interested in supporting our team by walking or donating to a walker. If you’re not in the Long Island area there will be walks taking place all over the country during the month of October. Visit <http://makingstrides.acevents.org> for a walk in your area. Remember Participate, Volunteer and/or Donate. It’s for a good cause.

NEW HIRE

Atlynx is pleased to announce the hiring of Lydia Baker to the Atlynx family. Lydia joined us in July, 2007, coming from the company to the agency side of the business. Lydia will be working in the Garden City office where she will be working with Contract and Commercial customers.

Letter from the Editorial Staff

This newsletter is designed with our readers in mind. All inquires and ideas regarding this or future newsletters are appreciated. Please send all inquires to me at denese@esuretybond.com. If you know anyone who you feel would like a copy of our newsletter, please let us know so that we can include them in our mailing list. Please let us know if you would like to receive this newsletter via e-mail. Check our website at www.atlynx.com for past editions of our newsletter.

Disclosure

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