

# Impacts and Considerations for Dealing with Section 13.5 to the Wage Payment & Collection Act

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## Primary Contractors –

- ▶ **Adjust Contract Price for Risk:** General contractors may be taking on additional liability on some projects with multiple subcontractor tiers, and they should price accordingly.
- ▶ **Weigh Cost to Self-perform:** Some general contractors may decide to perform more work themselves to avoid the potential liability of having to pay employees of lower tier subcontractors.
- ▶ **Use of Union Labor:** Some general contractors might employ union workers directly to fit within the “union exception” to the new law.
- ▶ **Hire Financially Sound Subcontractors:** Smaller and under-capitalized subcontractors present an additional risk to prime contractors.
- ▶ **Contractual Indemnification:** Some general contractors may request that their subcontract agreements include an indemnification provision covering potential claims by subcontractors’ workers.
- ▶ **Payment Bond for Labor Claims:** Some general contractors may request a payment bond with surety from subcontractors to cover any claims for unpaid amounts due subcontractors’ workers.
- ▶ **Closer Monitoring of Payments:** To reduce risk of claims by subcontractors’ workers, general contractors may require more detailed time records and contractors’ affidavits before paying for work.
- ▶ **Slower Payments:** All of the above might slow down the payment process for everyone.

## Subcontractors –

- ▶ **All of the above.**
- ▶ **Statutory Indemnification:** Though it is unclear which subcontractor is obligated to indemnify under the new law, all subcontractors should be cautious of both statutory and contractual indemnification obligations.
- ▶ **Contractual Indemnification:** Higher tier subcontractors should consider requesting contractual indemnification from lower tier subcontractors, especially if it is required of them by the general contractor.
- ▶ **Union Primary Contractor:** Subcontractors might prefer working for general contractors subject to the “union exemption,” so they too are exempted from the law’s additional liabilities.
- ▶ **Proof of Payments to Workers:** Accurate and detailed record keeping should be maintained by subcontractors of all tiers to procure prompt payment and to defend against claims under the new law.
- ▶ **Joint Venturing:** Financially insecure subcontractors might find it advantageous to partner with others to demonstrate less risk to general contractors of a claim for unpaid workers’ wages under the new law.

