§ 230. Definitions. As used in this article:
1. "Building service employee" or "employee" means any person performing work in connection with the care or maintenance of an existing building, or in connection with the transportation of office furniture or equipment to or from such building, or in connection with the transportation and delivery of fossil fuel to such building, for a contractor under a contract with a public agency which is in excess of one thousand five hundred dollars and the principal purpose of which is to furnish services through the use of building service employees.
"Building service employee" or "employee" includes, but is not limited to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.
"Building service employee" or "employee" also does not include any employee to whom the provisions of articles eight and eight-a of this chapter are applicable.
2. "Building service work" or "service work" means work performed by a building service employee, but does not include work performed for a contractor under a contract for the furnishing of services by radio, telephone, telegraph or cable companies; and any contract for public utility services, including electric light and power, water, steam and gas.
3. "Public agency" means the state, any of its political subdivisions, a public benefit corporation, a public authority or commission or special purpose district board appointed pursuant to law, and a board of education.
4. "Contractor" means any employer who employs employees to perform building service work under a contract with a public agency and shall include any of the contractor's subcontractors.
5. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.
6. "Locality" means the state, a town, city, village or other civil division or area of the state as determined by the fiscal officer. The fiscal officer may fix a different geographic area in determining the
locality for the prevailing basic hourly cash rate of pay and the locality for prevailing supplements.

8. "Fiscal officer" means the industrial commissioner, except for building service work performed by or on behalf of a city, in which case "fiscal officer" means the comptroller or other analogous officer of such city.

9. "Fossil fuel" shall mean coal, petroleum products and fuel gases. "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel gases" shall include but not be limited to methane, natural gas, liquefied natural gas and manufactured fuel gases. "Petroleum products" shall include all products refined or rerefined from synthetic or crude oil or oil extracted from other sources, including natural gas liquids. Provided that nothing in this subdivision shall affect the exclusion for public utility services set forth in subdivision two of this section.

10. "Substantially-owned affiliated entity" shall mean the parent company of the contractor or subcontractor, any subsidiary of the contractor or subcontractor, or any entity in which the parent of the contractor or subcontractor owns more than fifty percent of the voting stock, or an entity in which one or more of the top five shareholders of the contractor or subcontractor individually or collectively also owns a controlling share of the voting stock, or an entity which exhibits any other indicia of control over the contractor or subcontractor or over which the contractor or subcontractor exhibits control, regardless of whether or not the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include: power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

11. "Entity" shall mean a partnership, association, joint venture, company, sole proprietorship, corporation or any other form of doing business.

12. "Parent company" shall mean an entity that directly controls the contractor or subcontractor.

13. "Subsidiary" shall mean an entity that is controlled directly, or indirectly through one or more intermediaries, by a contractor or subcontractor or the contractor's parent company.

14. "Successor" shall mean an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.
§ 231. Prevailing wage. 1. Every contractor shall pay a service employee under a contract for building service work a wage of not less than the prevailing wage in the locality for the craft, trade or occupation of the service employee.

2. The obligation of a contractor to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the fiscal officer.

3. Each contract for building service work shall contain as part of the specifications thereof a schedule of the wages required to be paid to the various classes of service employees on such work, and each such contract shall further contain a provision obligating the contractor to pay each employee on such work not less than the wage specified for his craft, trade or occupation in such schedule.

4. The public agency, or appropriate officer or agent thereof, whose responsibility it is to prepare or direct the preparation of the plans and specifications for a contract for building service work, shall ascertain from such plans and specifications the classifications of employees to be employed on such work and shall file a list of such classifications with the fiscal officer, together with a statement of the work to be performed. The fiscal officer shall determine the crafts, trades and occupations required for such work and shall make a determination of the wages required to be paid in the locality for each such craft, trade or occupation. A schedule of such wages shall be annexed to and form a part of the specifications for the contract prior to the time of the advertisement for bids on such contract and shall constitute the schedule of wages referred to in subdivision three of this section.

5. Upon the award of a contract for building service work by a public agency other than a city, the contracting public agency shall immediately furnish to the commissioner: (a) the name and address of the contractor to whom the contract was awarded; (b) the date when the contract was awarded; and (c) the approximate consideration stipulated for in the contract.

* NB Effective until October 27, 2012

5. Upon the award of a contract for building service work by a public agency other than a city, the contracting public agency shall immediately furnish to the industrial commissioner: (a) the name and address of the contractor to whom the contract was awarded; (b) the date when the contract was awarded; and (c) the approximate consideration stipulated for in the contract.

* NB Effective October 27, 2012

6. No later than the first day upon which work on said contract is performed by any employee, the contractor shall post in a prominent and accessible place on the site of the work a legible statement of the wages to be paid to the workmen employed thereon.

7. (a) An apprentice in a craft or trade may be permitted to work at a wage lower than that established for the journeymen in such craft or trade only if all of the following conditions have been met:

(1) such apprentice has been individually registered in an apprenticeship program which is duly registered with the industrial commissioner in conformity with the provisions of article twenty-three of this chapter;

(2) such apprentice's registration occurred prior to his employment as an apprentice on such service work; and

(3) written proof of such individual registration is submitted to the contracting public agency prior to such apprentice's employment as an
apprentice. The proof submitted shall include evidence of the appropriate ratios and apprentice's wage rates.

(b) In no event shall the ratio of apprentices to journeymen employed on such service work be greater than the lesser of the following ratios:

(1) the ratio permitted in the apprenticeship program approved by the industrial commissioner; or

(2) the ratio prevailing in the locality where the service work will be performed.

(c) The rate of wages established for apprentices shall be the prevailing rate as determined in accordance with this article.
§ 232. Overtime. An employee, employed by a contractor, who works more than eight hours in any one day or more than forty hours in any workweek shall be paid wages for such overtime at a rate not less than one-and-one-half times his prevailing basic cash hourly rate.
§ 233. Record keeping. 1. In all cases where service work is being performed pursuant to a contract therefor, the contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by him as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he was employed, and the wages paid.

2. Where the wages paid include sums which are not paid directly to the workmen weekly and which are expended for supplements, the records required to be maintained shall include a record of such hourly payment on behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom such payment has been made. In all such cases, the contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made.

3. The records required to be maintained shall be kept on the site of the work during all of the time that work under the contract is being performed.

4. All records required to be maintained shall be preserved for a period of three years after the completion of work.
§ 234. Powers of the fiscal officer. 1. In addition to the powers enumerated elsewhere in this article, the fiscal officer shall have the power:

(a) to cause an investigation to be made to determine the wages prevailing in any locality in all crafts, trades and occupations involved in service work; in making such investigation, the fiscal officer may utilize wage and fringe benefit data from various sources including, but not limited to, data and determinations of federal, state or other governmental agencies;

(b) to institute and conduct inspections at the site of the work or elsewhere in aid of the effective administration and enforcement of the provisions of this article;

(c) to examine the books, documents and records pertaining to the wages paid to, and the hours of work performed by, service employees;

(d) to hold the hearings provided for in this article, and in connection therewith to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules;

(e) to make a classification by craft, trade or other generally recognized occupational category of the service employees involved and to determine whether such work has been performed by the employees in such classification;

(f) to require a contractor to file with the fiscal officer a record of the wages actually paid by such contractor to the employees and of their hours of work;

(g) to delegate any of the foregoing powers to his deputy or other authorized representative;

(h) to provide such reasonable limitations from any or all provisions of this article as he may find necessary and proper in the public interest or to avoid serious impairment of the conduct of government business;

(i) to propose, and after public hearing held before him or his designee, to promulgate such rules as he shall consider necessary for the proper execution of the duties, responsibilities and powers conferred upon him by the provisions of this article. Such rules may allow such reasonable variations, tolerances and exemptions to and from any or all provisions of this article as the fiscal officer may find necessary and proper in the public interest, or to avoid serious impairment of the conduct of government business.

2. For all work for which the industrial commissioner is the fiscal officer, the industrial commissioner shall additionally have all the powers granted him elsewhere in this chapter.
§ 235. Investigation and hearing. 1. Whenever the fiscal officer has reason to believe that a service employee has been paid less than the wages stipulated in the contract, or if such contract has no wage schedule attached thereeto and the fiscal officer has reason to believe that a service employee has been paid less than the wages prevailing for his craft, trade or occupation, the fiscal officer may, and upon receipt of a written complaint from an employee employed thereon, shall conduct a special investigation to determine the facts relating thereto.

2. a. At the start of such investigation the fiscal officer may notify the financial officer of the public agency interested who shall, at the direction of the fiscal officer, forthwith withhold from any payment due to the contractor executing the contract sufficient money to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein, or, if there are insufficient moneys still due or earned to the contractor or subcontractor to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein, the financial officer of another civil division which has entered or subsequently enters into a building service work contract with the contractor or subcontractor, who shall withhold from any payment due the contractor or subcontractor executing any building service work, sufficient moneys to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein.

b. If there are still insufficient moneys still due or earned to the contractor or subcontractor to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein, the financial officer shall immediately so notify the fiscal officer, who may issue a notice of withholding to any of the following: any substantially-owned affiliated entity or successor or subsidiary of the contractor or subcontractor; an officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the partners, if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer.

c. The notice of withholding shall provide that the fiscal officer intends to instruct the financial officer, not less than ten days following service of the notice by mail, to withhold sufficient moneys to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein, from any payment due the notified party under any building service work contract pending final determination. The notice of withholding shall provide that within thirty days following the date of the notice of withholding the notified party may contest the withholding on the basis that the notified party is not a partner or one of the five largest shareholders of the subcontractor or contractor, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, a substantially-owned affiliated entity or successor. If the notified party fails to contest the notice of withholding, or if the fiscal officer, after reviewing the information provided by the notified party in such contest, determines that the notified party is a partner or one of the five largest shareholders, a substantially-owned affiliated entity, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, or a successor, the fiscal officer may instruct the financial officer to immediately withhold sufficient moneys to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein from any payment due the notified party under any building service work contract pending the final determination.
d. The financial officer shall immediately implement the notice of withholding and confirm in writing to the fiscal officer the amount of money withheld.

e. If the notified party contests the withholding after a withholding has been effected, and if the fiscal officer determines that the notified party is not a partner or one of the five largest shareholders, a substantially-owned affiliated entity or successor, an officer of the contractor or subcontractor who knowingly participated in the violation of this article the fiscal officer shall immediately notify the financial officer to release all payments being withheld from the notified party.

f. The money shall be held in trust pending completion of the investigation.

3. If, despite the requirements of law, the contract for the service work has been awarded without the annexation thereto of the schedule of wages provided for in this article, the fiscal officer shall determine in the proceeding before him the wages prevailing at the time the work was performed for the crafts, trades or occupations of the employees involved.

4. In an investigation conducted under the provisions of this section, the inquiry of the fiscal officer shall not extend to work performed more than two years prior to: (a) the filing of the complaint, or (b) the commencement of the investigation upon the fiscal officer's own volition, whichever is earlier in point of time.

5. a. The investigation and hearing shall be expeditiously conducted and upon the completion thereof the fiscal officer shall determine the issues raised and shall make and file an order in his office stating such determination and forthwith serve personally or by mail a copy of such order and determination together with a notice of filing upon all parties to the proceeding and upon the financial officer of the public agency involved.

b. In addition to directing payment of wages found to be due, such order of the fiscal officer may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations of the employer, successor or substantially-owned affiliated entity or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, of such underpayment of wages or supplements, and any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and the failure to comply with recordkeeping or other non-wage requirements. Where the fiscal officer is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

c. If the order directs the payment to specified employees of wages found to be due and unpaid, including interest at a rate not less than six per centum per year and not more than the rate of interest then in effect as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law per annum from the time such wages should have been paid, the financial officer of such public agency shall, upon the service to him of such order, pay to such employees from the trust
money withheld the amounts specified in such order and shall pay the
civil penalty as provided herein, provided no review proceeding pursuant
to the provisions of article seventy-eight of the civil practice law and
rules is commenced within thirty days of the date said order was filed
in the office of the fiscal officer. If such review is timely commenced,
the money withheld shall remain in trust pending final disposition of
the review proceeding. In determining the rate of interest to be imposed
the fiscal officer shall consider the size of the employer's business,
the good faith of the employer, the gravity of the violation, the
history of previous violations of the employer, successor or
substantially-owned affiliated entity or any successor of the contractor
or subcontractor, any officer of the contractor or subcontractor who
knowingly participated in the violation of this article, and any of the
partners if the contractor or subcontractor is a partnership or any of
the five largest shareholders of the contractor or subcontractor, as
determined by the fiscal officer, and the failure to comply with
recordkeeping or other non-wage requirements.

6. When a final determination has been made and such determination is
in favor of an employee, such employee may, in addition to any other
remedy provided by this article, institute an action in any court of
appropriate jurisdiction against the person or corporation found to have
violated this article, any substantially-owned affiliated entity or any
successor of the contractor or subcontractor, any officer of the
contractor or subcontractor who knowingly participated in the violation
of this article, and any of the partners if the contractor or subcontractor
is a partnership or any of the five largest shareholders of the contractor or
subcontractor, as determined by the fiscal officer, for the recovery of the
difference between the sum, if any, actually paid to him by the aforesaid financial officer pursuant to said order
and the amount found to be due him as determined by said order. Such
action must be commenced within three years from the date of the filing
of said order, or if the said order is reviewed in a proceeding pursuant
to article seventy-eight of the civil practice law and rules, within
three years after the termination of such review proceeding.

Provided that no proceeding for judicial review as provided in this
section shall then be pending and the time for initiation of such
proceeding shall have expired, the fiscal officer may file with the
county clerk of the county where the employer resides or has a place of
business the order of the fiscal officer containing the amount found to
be due. The filing of such order shall have the full force and effect of
a judgment duly docketed in the office of such clerk. The order may be
enforced by and in the name of the fiscal officer in the same manner,
and with like effect, as that prescribed by the civil practice law and
rules for the enforcement of a money judgment.

7. When, pursuant to the provisions of this section, two final orders
have been entered against a contractor, subcontractor, successor, or any
substantially-owned affiliated entity of the contractor or
subcontractor, any of the partners if the contractor or subcontractor is
a partnership, any of the five largest shareholders of the contractor or
subcontractor, any officer of the contractor or subcontractor who
knowingly participated in the violation of this article within any
consecutive six-year period determining that such contractor or
subcontractor and/or its successor, substantially-owned affiliated
entity of the contractor or subcontractor, any of the partners or any of
the five largest shareholders of the contractor or subcontractor, any
officer of the contractor or subcontractor who knowingly participated in
the violation of this article has willfully failed to pay the prevailing
wages in accordance with the provisions of this article, whether such
failures were concurrent or consecutive and whether or not such final determinations concerning separate public building service contracts are rendered simultaneously, such contractor, subcontractor, successor, and if the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, or any successor is a corporation, any officer of such corporation who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any public building service work for a period of five years from the date of the second order, provided, however, that where any such final order involves the falsification of payroll records or the kickback of wages, the contractor, subcontractor, successor, substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public building service contract or subcontract with the state, any municipal corporation or public body for a period of five years from the date of the first final order. Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts.

8. a. When a final determination has been made in favor of a complainant and the contractor or subcontractor found violating this article has failed to make payment as required by the order of the fiscal officer, and provided that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of any of the following:

(i) any substantially-owned affiliated entity or any successor of the contractor or subcontractor;
(ii) any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer; or
(iii) any officer of the contractor or subcontractor who knowingly participated in the violation of this article; provided, however, that the fiscal officer shall within five days of the filing of the order provide notice thereof to the partner or top five shareholder or successor or substantially-owned affiliated entity. The notified party may contest the filing on the basis that it is not a partner or five largest shareholders, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, successor or substantially-owned affiliated entity. If, after reviewing the information provided by the notified party in support of such contest, the fiscal officer determines that the notified party is not within the definitions described herein, the fiscal officer shall immediately withdraw his filing of the order.

b. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the fiscal officer in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.
9. When a final determination has been made against a subcontractor in favor of a complainant and the contractor has made payment to the complainant of any wages and interest due the complainant and any civil penalty, and providing that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the contractor may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of the subcontractor. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The judgment may be docketed in favor of the contractor who may proceed as a judgment creditor against the subcontractor for the recovery of all monies paid by the contractor under such order.
§ 236. Failure to protest underpayments. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, a service employee shall not be barred from his right to recover the difference between the amount actually paid to him and the amount which should have been paid to him pursuant to an order entered under the provisions of this article because of the prior receipt by him without protest of wages paid or on account of his failure to state orally or in writing upon any payroll or receipt which he is required to sign that the wages received by him are received under protest, or on account of his failure to indicate his protest against the amount, or that the amount so paid does not constitute payment in full of wages due him for the period covered by such payment.
§ 237. Statements showing amounts due for wages. 1. Subcontractors engaged for service work by a contractor or its subcontractor shall, upon receipt from the contractor or its subcontractor of the schedule of wages and supplements specified in the contract, provide to the contractor or its subcontractor a verified statement attesting that the subcontractor has received and reviewed such schedule of wages and supplements, and agrees that it will pay the applicable prevailing wages and will pay or provide the supplements specified therein. Such verified statement shall be filed in the manner described in subdivision three of this section. It shall be a violation of this article for any contractor or its subcontractor to fail to provide for its subcontractor a copy of the schedule of wages and supplements specified in the contract.

2. Before payment is made by or on behalf of a public agency of any sums due on account of a contract for service work, it shall be the duty of the comptroller of the state or the financial officer of such public agency or other officer or person charged with the custody and disbursement of the state or corporate funds applicable to the contract under and pursuant to which payment is made, to require the contractor to file a statement in writing in form satisfactory to such officer certifying to the amounts then due and owing from such contractor filing such statement to or on behalf of any and all service employees for daily or weekly wages on account of labor performed upon the work under the contract, setting forth therein the names of the persons whose wages are unpaid and the amount due to or on behalf of each respectively, which statement so to be filed shall be verified by the oath of the contractor that he or she has read such statement subscribed by him or her and knows the contents thereof, and that the same is true of his or her own knowledge.

3. Before payment is made by or on behalf of a public agency of any sums due on account of a contract for service work and representing the final portion of twenty percent of the total consideration payable under the contract, it shall be the duty of the comptroller of the state or the financial officer of such public agency or other officer or person charged with the custody and disbursement of the state or corporate funds applicable to the contract under and pursuant to which payment is made to require the contractor to file every verified statement required to be obtained by the contractor from its subcontractors pursuant to subdivision one of this section and to file a statement in writing in form satisfactory to such officer setting forth the amounts known by the contractor to be then due and owing from a subcontractor, or from a subcontractor of such subcontractor, for such wages and supplements, or certifying that the contractor has no knowledge of such amounts owing to or on behalf of any service employees of its subcontractors, and that in the event it is determined by the commissioner that the wages or supplements or both of any employees of such subcontractors have not been paid or provided pursuant to the appropriate schedule of wages and supplements, the contractor shall be responsible for payment of such wages or supplements pursuant to the provisions of section two hundred thirty-nine-a of this article. Before final payment is made of any sums due on account of such service work contract, the contractor shall be required to file a supplemental statement setting forth any additional amounts known by the contractor to be then due and owing by each subcontractor for such wages or supplements, or that the contractor has no knowledge of such amounts owing to or on behalf of any employee of its subcontractors. Such statements so to be filed shall be verified by the oath of the contractor that he or she has read such statements subscribed by him or her and knows the contents thereof, and that the same is true of his or her own knowledge, except with respect to wages.
and supplements owing by subcontractors which may be certified upon
information and belief.

4. If any interested person shall have previously filed a protest in
writing objecting to the payment to any contractor or subcontractor to
the extent of the amount or amounts due or to become due to him for
daily or weekly wages for labor performed on the work for which such
contract was entered into, or if for any other reason it may be deemed
advisable, the comptroller of the state or the financial officer of the
public agency or other officer or person charged with the custody and
disbursement of the state or corporate funds applicable to the contract
for such work, may deduct from the whole amount of any payment on
account thereof the sum or sums admitted by any contractor or
subcontractor in such statement or statements as filed to be due and
owing by him or her on account of labor performed on such work before
making payment of the amount certified for payment in any estimate or
voucher, and may withhold the amount so deducted for the benefit of the
service employees whose wages are unpaid as shown by the verified
statements filed by any contractor or subcontractor, and may pay
directly to any person the amount or amounts shown by the statements
filed as hereinbefore required to be due to him or her or his or her
duly authorized collective bargaining labor organization receiving such
payment to the extent of the amount thereof.
§ 238. Penalties. 1. Any contractor or subcontractor who shall upon his oath verify any statement required to be filed under this article which is known by him to be false shall be guilty of perjury and punishable as provided by the penal law.

2. When a contract for service work contains as part thereof a schedule of wages as provided for in this article, any contractor who, after entering into such contract, and any subcontractor of such contractor who fails to pay to any service employee the wages stipulated in such wage schedule is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days or by both fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such contractor shall be entitled to receive any sum, nor shall any officer, agent or employee of the contracting public agency pay any such sum or authorize its payment from the funds under his charge or control to such contractor for work done upon the contract on which the contractor has been convicted of a second offense. If the contractor or subcontractor is a corporation, any officer of such corporation who knowingly permits the corporation to fail to make such payment shall also be guilty of a misdemeanor and the criminal and civil penalties herein shall attach to such officer upon conviction.
§ 239. Provisions in contracts prohibiting discrimination on account of race, creed, color, national origin, age or sex. Every contract for service work shall contain provisions by which the contractor agrees:

(1) that in the hiring of employees for the performance of work under the contract or any subcontract thereunder within the territorial limits of this state, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, national origin, age, sex or disability, discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

(2) that no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, national origin, age, sex or disability;

(3) that there may be deducted from the amount payable to the contractor by the public agency under the contract a penalty of fifty dollars for each person for each day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(4) that the contract may be cancelled or terminated by the public agency, and all moneys due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract.
§ 239-a. Enforcement of article. If the fiscal officer, as defined herein, finds that any contractor on service work fails to comply with or evades the provisions of this article, he shall present evidence of such noncompliance or evasion to the public agency having charge of such work for enforcement. Where such evidence indicates a noncompliance or evasion on the part of a subcontractor, the contractor shall be responsible for such noncompliance or evasion. It shall be the duty of the public agency in charge of such service work to enforce the provisions of this article.