

## CHAPTER 95

AN ACT concerning certain penalties for prevailing wage violations and amending P.L.1963, c.150.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to read as follows:

C.34:11-56.35 Penalties.

11. Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to him under this act and each worker so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c.150 (C.34:11-56.25 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999", P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

2. This act shall take effect immediately.

Approved November 11, 2002.