

CHAPTER 276

AN ACT establishing criminal penalties for certain violations of the "New Jersey Prevailing Wage Act" and amending P.L.1963, c.150 and P.L.1999, c.440.

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. (a) 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.

(b) 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.

(c) When the Commissioner of Labor finds that the employer has violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

2. Section 97 of P.L.1999, c.440 (C.2C:21-34) is amended to read as follows:

C.2C:21-34 Penalty for false contract payment claims, representation, for a government contract; prevailing wage violations; grading.

97. a. A person commits a crime if the person knowingly submits to the government any claim for payment for performance of a government contract knowing such claim to be false, fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the claim exceeds \$2,500.00, but is less than \$25,000.00, the

offender is guilty of a crime of the third degree. If the claim is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.

b. A person commits a crime if the person knowingly makes a material representation that is false in connection with the negotiation, award or performance of a government contract. If the contract amount is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the contract amount exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the contract amount is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.

c. An employer commits a crime if the employer knowingly pays one or more employees employed in public work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) at a rate less than the rate required pursuant to that act. If the contract amount is for \$75,000.00 or above, the employer is guilty of a crime of the second degree; if the contract amount exceeds \$2,500.00, but is less than \$75,000.00, the employer is guilty of a crime of the third degree; and if the contract amount is for \$2,500.00 or less, the employer is guilty of a crime of the fourth degree. In addition, the employer shall be deemed to have caused loss to the employees in the amount by which the employees were underpaid and shall be subject to the provisions of N.J.S.2C:43-3 regarding fines and restitution to victims and be subject to other pertinent provisions of Title 2C of the New Jersey Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and 2C:44-1.

3. This act shall take effect immediately.

Approved January 14, 2004.