

[CORRECTED COPY]
CHAPTER 379

AN ACT establishing prevailing wage standards for State building service contracts and supplementing chapter 11 of Title 34 of the Revised Statutes.

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

C.34:11-56.58 Prevailing wage levels for employees furnishing State building services.

1. It is declared to be the public policy of this State to establish prevailing wage levels for the employees of contractors and subcontractors furnishing building services for any property or premises owned or leased by the State in order to safeguard the efficiency and general well-being of those employees and to protect them and their employers from the effects of serious and unfair competition based on low wage levels which are detrimental to efficiency and well-being.

C.34:11-56.59 Definitions relative to prevailing wage levels for employees furnishing State building services.

2. As used in this act:

"Commissioner" means the Commissioner of Labor and Workforce Development or the commissioner's duly authorized representatives.

"Building services" means any cleaning or building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling, or other work in connection with the care, securing, or maintenance of an existing building, except that "building services" shall not include any maintenance work or other public work for which a contractor is required to pay the "prevailing wage" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

"Leased by the State" means that not less than 55% of the property or premises is leased by the State, provided that the portion of the property or premises that is leased by the State measures more than 20,000 square feet.

"Prevailing wage for building services" means the wage and benefit rates designated by the commissioner based on the determinations made by the General Services Administration pursuant to the federal "Service Contract Act of 1965" (41 U.S.C. s.351 et seq.), for the appropriate localities and classifications of building service employees.

"The State" means the State of New Jersey and all of its departments, bureaus, boards, commissions, agencies and instrumentalities, including any State institutions of higher education, but does not include political subdivisions.

"State institutions of higher education," means Rutgers, The State University of New Jersey, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology, and any of the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, but does not include any county college established pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

C.34:11-56.60 Contract to contain provision for prevailing wage, building services rates.

3. Every contract to furnish building services for any property or premises owned or leased by the State shall contain a provision stating the prevailing wage for building services rates that are applicable to the workers employed in the performance of the contract and shall contain a stipulation that those workers shall be paid not less than the indicated prevailing wage for building services rates. The contract shall provide for annual adjustments of the prevailing wage for building services during the term of the contract, and shall provide that if it is found that any worker employed by the contractor or any subcontractor covered by the contract, has been paid less than the required prevailing wage, the State Treasurer may terminate the contractor or subcontractor's right to proceed with the work, and the contractor and his sureties shall be liable to the State for any excess costs occasioned by the termination.

C.34:11-56.61 Record of employee wages, benefits.

4. Each contractor and subcontractor shall keep an accurate record showing the name, classification, and actual hourly rate of wages and any benefits paid to each worker employed by him to perform building services pursuant to a State contract or subcontract, and shall preserve those records for two years after the date of payment. The record shall be open at all

reasonable hours to inspection by the Director of the Division of Purchase and Property and the commissioner.

C.34:11-56.62 Civil action to recover prevailing wage for building services.

5. Any worker paid less than the prevailing wage for building services to which the worker is entitled by the provisions of this act may recover in a civil action the full amount of the prevailing wage for building services less any amount actually paid to the worker by the employer together with any costs and reasonable attorney's fees allowed by the court, and an agreement between the worker and the employer to work for less than the prevailing wage for building services shall not be a defense to the action. The worker shall be entitled to maintain an action for and on behalf of the worker or other workers similarly situated and the worker or workers may designate an agent or representative to maintain such actions for and on behalf of all workers similarly situated. At the request of any worker paid less than the prevailing wage for building services required under the provisions of this act, the commissioner may take an assignment of the wage claim in trust for the assigning worker or workers and may bring any legal action necessary to collect the claim, and the employer shall be required to pay any costs and such reasonable attorney's fee as are allowed by the court.

C.34:11-56.63 Authority of commissioner.

6. The commissioner shall have the authority to:

a. investigate and ascertain the wages of any employees of a contractor or subcontractor furnishing building services for any property or premises owned or leased by the State;

b. enter and inspect the place of business or employment of any contractor or subcontractor furnishing building services for any property or premises owned or leased by the State, for the purpose of examining and inspecting any or all books, registers, payrolls, and other records of any such contractor or subcontractor that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any employees of such contractor or subcontractor; copy any or all of such books, registers, payrolls, and other records as the commissioner may deem necessary or appropriate; and question the employees of such contractor or subcontractor for the purpose of ascertaining whether the provisions of this act have been and are being complied with;

c. require from such contractor or subcontractor full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and other information pertaining to the contractor or subcontractor's workers and their employment as the commissioner may deem necessary or appropriate; and

d. require any contractor or subcontractor to file, within 10 days of receipt of a request, any records enumerated in subsections b. and c. of this section, sworn as to their validity and accuracy. If the contractor or subcontractor fails to provide the requested records within 10 days, the State Treasurer may immediately withhold from payment to the employer up to 25% of the amount, not to exceed \$100,000, to be paid to the employer under the terms of the contract pursuant to which the building services work is being performed. The amount withheld shall be immediately released upon receipt by the State Treasurer of a notice from the commissioner indicating that the request for records has been satisfied.

C.34:11-56.64 Violations; fines, penalties.

7. Any contractor or subcontractor who willfully hinders or delays the commissioner in the performance of the commissioner's 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 that worker 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 this act, if the commissioner finds that a contractor or subcontractor has violated the act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 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 contractor or subcontractor, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the contractor's or subcontractor's business. No administrative penalty shall be levied pursuant to this section unless the commissioner 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 the commissioner's 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 shall be 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 and Workforce Development.

C.34:11-56.65 Alternative, additional sanctions.

8. As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to workers under this act, and the contractor or subcontractor may be required to make these payments to the commissioner to be held in a special account in trust for the workers, and paid on order of the commissioner directly to the worker or workers affected. The contractor or subcontractor shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

C.34:11-56.66 Retaliation against complaining employer, disorderly persons offense.

9. Any contractor or subcontractor who discharges or in any other manner discriminates against any worker because the worker has made any complaint to the worker's employer, to the State Treasurer or to the commissioner that the worker has not been paid wages in accordance with the provisions of this act, or because the worker has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because the worker has testified or is about to testify in any such proceeding shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100 nor more than \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, if the commissioner finds that a contractor or subcontractor has violated the act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 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 contractor or subcontractor, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the contractor's or subcontractor's business. No administrative penalty shall be levied pursuant to this section unless the commissioner 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 the commissioner's 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 shall be 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 and Workforce Development.

C.34:11-56.67 Collective bargaining rights unaffected.

10. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of workers to bargain collectively through representatives of their own choosing in order to establish wages in excess of any applicable minimum under this act.

C.34:11-56.68 Severability.

11. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

C.34:11-56.69 Rules, regulations.

12. The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

C.34:11-56.70 Special license authorizing employment at less than prevailing wage for building service rates.

13. For any occupation for which prevailing wage for building services rates are established by or pursuant to this act, the commissioner or the Director of Wage and Hour Compliance in the Department of Labor and Workforce Development may cause to be issued to any employee, including a learner, apprentice, or student, whose earning capacity is impaired by age or physical or developmental disability or injury, a special license authorizing employment at wages less than the prevailing wage for building services for a period of time as shall be fixed by the commissioner or the Director of Wage and Hour Compliance and stated in the license.

Nothing in this section is intended to undermine the purposes of this act.

14. This act shall take effect on the 60th day following enactment and apply to contracts entered or renewed on or after that date.

Approved January 12, 2006.