



the Advocate

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An Introduction To Prevailing Wage Act

It is the public policy of New Jersey to establish a prevailing wage level for workers engaged in public works. The purpose of this policy is to safeguard worker efficiency and general well being and to protect workers, as well as their employers, from the effects of serious and unfair competition resulting from wage levels detrimental to efficiency and well-being. N.J.S.A. 34:11-56.25.

The term "prevailing wage" is defined under N.J.S.A. 34:11-56.26 (9) as "the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done."

"Public Works" Defined

Employers are required to pay workers prevailing wage rates only in the case of "public works". A "Public work" is construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. N.J.S.A. 34:11-56.26 (5).

"Public work" also is any construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract: (a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and (b) The portion of the

property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet. N.J.S.A. 34:11-56.26 (5).

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions. N.J.S.A. 34:11-56.26 (5).

Prevailing Wage Specified In Contract

The public body or lessor awarding any contract for public work is required to ascertain from the Commissioner of Labor ("commissioner") the prevailing wage rate in the locality in which the public

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Law Firm Briefs

Since Our Last Issue ...

Rosalyn Galvan, a paralegal intern with our firm, received her A.S. degree in paralegal studies from Berkeley College of Business and began working at the firm on a full time basis.

Great Quotations ...

"It is never too late to be what we might have been."

- George Eliot

work is to be performed for each craft or trade needed to perform the contract. In addition, the public body or lessor awarding any contract for public work shall specify in the contract itself what the prevailing wage rate in the locality is for each craft or trade or classification of all workers needed to perform the contract during the anticipated term of the project. Nothing in the Prevailing Wage Act ("PWA"), however, prohibits the payment of more than the prevailing wage rate to any worker employed on a public work. N.J.S.A. 34:11-56.28.

Penalties Imposed for Wage Violations

Every contract subject to the PWA must contain a provision that in the event it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the required prevailing wage, the public body or lessor may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable to the public body or lessor for any excess costs caused by such violations. N.J.S.A. 34:11-56.27.

Also, penalties may be imposed upon any employer who fails to make, keep, and preserve any records as required under the provisions of the PWA, or falsifies any such record. Refusal to make any such record accessible to the commissioner upon demand, or refusal to furnish a sworn statement of such record or any other information required for the proper enforcement of the PWA to the commissioner upon demand, may also result in penalties. And, of course, payment or agreement to pay wages at a rate less than applicable under the PWA shall result in penalties as well. N.J.S.A. 34:11-56.35.

Persons violating of any provision of the PWA or any regulation or order issued under the PWA shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100 nor more than \$1,000 or be imprisoned for not less than 10 days nor more than 90 days, or may be subject to both fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to him and each worker so paid, shall constitute a separate offense. N.J.S.A. 34:11-56.35.

As an alternative to or in addition to those sanctions, the commissioner may, after providing the contractor with notice of any alleged violation, and with an opportunity to request a hearing before the commissioner or his designee: (1) Revoke or suspend the registration (that is, registration of a contractor's eligibility to bid on public works) of a contractor for a period of not more than five years; or (2) Require a contractor, as a condition of initial or continued registration, to provide a surety bond payable to the State for the benefit of workers damaged by any failure of a contractor to pay wages or benefits pursuant to the PWA. The surety bond shall be in the amount and form that the commissioner deems necessary for the protection of the contractor's workers, but shall not exceed \$10,000 per worker. N.J.S.A. 34:11-56.56.

In addition, the PWA requires every contractor and subcontractor to keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by him in connection with a public work. Such records shall be preserved for two years from date of payment. The record shall be open at all reasonable hours to the inspection of the public body awarding the contract, to any other party to the lease or agreement to lease pursuant to which the public work is done, and to the commissioner. N.J.S.A. 34:11-56.29.

The information in this article is intended only as an introduction to some of the more significant portions of the PWA and should not be considered exhaustive.



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