

**SELECTED
NEW JERSEY STATE
LABOR LAWS
AND REGULATIONS**



New Jersey Department of Labor and Workforce Development
Division of Wage and Hour Compliance
PO Box 389
Trenton, New Jersey 08625-0389

www.nj.gov/labor

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Notes

Effective July 1, 2004, the formal name of the Department changed to the “Department of Labor and Workforce Development.” All references to the “Department of Labor and Industry,” the “Department of Labor,” the “Commissioner of Labor and Industry,” or the “Commissioner of Labor,” should be understood to mean “Department of Labor and Workforce Development” and “Commissioner of Labor and Workforce Development,” respectively.

For additional information about selected labor laws and regulations, visit the Department of Labor and Workforce Development’s web site at www.nj.gov/labor and click on Wage & Hour.

This booklet is for ready reference only. For updated official information, consult the New Jersey Statutes Annotated and the New Jersey Administrative Code.

**SELECTED LABOR LAWS
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SELECTED LABOR LAWS

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N.J.S.A. 34:11-4.1 et seq.

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N.J.S.A. 34:11A-16 et seq.

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N.J.S.A. 34:56.58 et seq.

N.J.S.A. 34 :20-1 et seq.

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CHAPTER 11

WAGES

ARTICLE 1. REGULATION IN GENERAL

- 34:11-4.1. Definitions
- 34:11-4.2. Time and mode of payment; paydays
- 34:11-4.2a. Payment by deposit in financial institution; consent by employee; cancellation; notice
- 34:11-4.3. Termination or suspension of employment
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- 34:11-4.14. Purchase of salary, wages, commissions or other pay for services

34:11-4.1. Definitions

As used in this act:

a. "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State.

For the purposes of this act the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

b. "Employee" means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

c. "Wages" means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

d. "Commissioner" means the Commissioner of Labor.

34:11-4.2. Time and mode of payment; paydays

Except as otherwise provided by law, every employer shall pay the full amount of wages due to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States or with checks on banks where suitable arrangements are

made for the cashing of such checks by employees without difficulty and for the full amount for which they are drawn. An employer may establish regular paydays less frequently than semimonthly for bona fide executive, supervisory and other special classifications of employees provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule.

If a regular payday falls on a nonwork day, that is, a day on which the workplace of an employee is not open for business, payment shall be made on the immediately preceding workday, except where it is otherwise provided for in a collective bargaining agreement.

The end of the pay period for which payment is made on a regular payday shall be not more than 10 working days before such regular payday, provided that if the regular payday falls on a nonwork day payment shall be made on the preceding work day.

34:11-4.2a. Payment by deposit in financial institution; consent by employee; cancellation; notice

In lieu of paying wages directly to employees as provided by P.L.1965, c. 173, s. 2 (C. 34:11-4.2), an employer may, with the consent of some or all his employees, arrange with a financial institution or financial institutions to pay the wages of each employee so consenting by causing the amount of such employee's wages to be deposited in an account maintained in any such financial institution in the name of such employee, subject to withdrawal and other disposition by such employee to the same extent and in the same manner as if such deposit were made directly by such employee. Any such employee may, on timely notice to the employer, elect not to have his wages deposited as provided herein, and to be paid such wages directly in the manner otherwise provided by law. Financial institution as used herein means any State-chartered or Federally-chartered institution authorized to accept deposits in New Jersey.

34:11-4.3. Termination or suspension of employment

Whenever an employer discharges an employee, or when the work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, or whenever an employee quits, resigns, or leaves employment for any reason, the employer shall pay the employee all wages due not later than the regular payday for the pay period during which the employee's termination, suspension or cessation of employment (whether temporary or permanent) took place, as established in accordance with section 2 of this act; or in the case of employees compensated in part or in full by an incentive system, a reasonable approximation of all wages due, until the exact amounts due can be computed; provided, however, that when any employee is suspended as a result of a labor dispute and such labor dispute involves those employees who make up payrolls, the employer may have an additional 10 days in which to pay such wages. Such payment may be made either through the regular pay channels or by mail if requested by the employee.

34:11-4.4. Withholding or diverting wages

No employer may withhold or divert any portion of an employee's wages unless:

- a. The employer is required or empowered to do so by New Jersey or United States law; or
- b. The amounts withheld or diverted are for:

(1) Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408 (b) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 408(b)), or individual retirement accounts at any State or federally chartered bank, savings bank, or

savings and loan association, as defined by section 408 (a) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 408(a)), for the employee, his spouse or both.

(2) Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.

(3) Payments authorized by employees for payment into employee personal savings accounts such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.

(4) Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; and payments to correct payroll errors; provided all such deductions are approved by the employer.

(5) Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.

(6) Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided the deductions for such payments are approved by the employer.

(7) Labor organization dues and initiation fees, and such other labor organization charges permitted by law.

(8) Contributions authorized in writing by employees, pursuant to a collective bargaining agreement, to a political committee, continuing political committee, or both, as defined in section 3 of P.L.1973, c. 83 (C. 19:44A-3), established by the employees' labor union for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to the conditions specified in section 2 of P.L.1991, c. 190 (C. 34:11-4.4a).

(9) Contributions authorized in writing by employees to any political committee or continuing political committee, other than a committee provided for in paragraph (8) of this subsection, for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to the conditions specified in section 2 of P.L.1991, c. 190 (C. 34:11-4.4a); in making a payroll deduction pursuant to this paragraph the administrative expenses incurred by the employer shall be borne by such committee, at the option of the employer.

(10) Payments authorized by employees for employer-sponsored programs for the purchase of insurance or annuities on a group or individual basis, if otherwise permitted by law.

(11) Such other contributions, deductions and payments as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of this act, if such deductions are approved by the employer.

34:11-4.4a. Conditions for withholding or diversion of employee contributions to political committees or continuing political committees

In the case of contributions withheld or diverted pursuant to paragraph (8) or (9) of subsection b. of section 4 of P.L.1965, c. 173 (C. 34:11-4.4), the contribution shall be withheld or diverted only after compliance with the following conditions:

a. The payroll deduction authorization must be signed by the employee and contain the following explanatory statement:

I recognize that my/any contribution through payroll deduction is completely voluntary and in compliance with State law. It shall be unlawful for any person soliciting an employee for contribution to such a fund to fail to inform such employee of his or her right to refuse to contribute without reprisal.

Any questions relative to compliance with election law may be directed to the Election Law Enforcement Commission, 28 West State Street, Trenton, New Jersey 08625, (609) 292-8700.

b. Any political action committee or continuing political committee which elects to solicit employees under the provisions of section 4 of P.L.1965, c. 173 (C. 34:11-4.4) shall file with the Election Law Enforcement Commission a statement of registration which identifies the title of the committee and the general category of entity or entities, including, but not limited to, business organizations, labor organizations, professional or trade associations, candidates for or holders of public offices, political parties, ideological groups, or civic associations, the interests of which are shared by the leadership, members or financial supporters of the committee.

The statement of registration shall include: (1) the names and mailing addresses of the persons having control over the management of the affairs of the committee; (2) in the case of any person identified under paragraph (1) of this subsection b. who is an individual, the occupation of that individual, and the name and mailing address of the individual's employer, or, in the case of any such entity which is a corporation, partnership, unincorporated association or other organization, the name and mailing address of the organization; and (3) an explanatory statement as to the process utilized for the selection of recipients of funds raised by committee.

c. The political action committee or continuing political committee shall provide space on the payroll deduction authorization document to allow the employee to direct his or her contributions to specific candidates.

d. No employee may elect to contribute more than \$5 per week by means of payroll deduction. No employee may have wages withheld or diverted for more than one political action committee or continuing political committee.

e. No solicitation shall be made for employee contributions on the job or at the workplace.

f. Any political action committee or continuing political committee which elects to solicit employees under the provisions of this act shall annually provide each employee participant with a financial statement indicating disbursement of funds including administrative charges.

34:11-4.5. Death of employee

a. In the event of the death of an employee all wages due the deceased employee may, upon proper demand on the employer, be paid, in the absence of actual notice of the pendency of probate proceedings, without requiring letters testamentary or of administration in the following order of preference to decedent's:

- (1) surviving spouse,
- (2) children 18 years of age and over in equal shares, or to the guardian of children under 18 years of age,
- (3) father and mother or survivor,
- (4) sisters and brothers,

or to the person who pays the funeral expenses.

b. Payments under subsection a. of this section made after presentation of proof of relationship shall be a release and discharge of the employer to the amount of such payment.

34:11-4.6. Dissemination of information; records

Every employer shall:

a. Notify his employees at the time of hiring, of the rate of pay, and of the regular payday designated by the employer in accordance with section 2 of this act.

b. Notify his employees of any changes in the pay rates or paydays prior to the time of such changes.

c. Furnish each employee with a statement of deductions made from his wages in accordance with section 4 of this act for each pay period such deductions are made.

d. Keep posted in a place accessible to his employees an abstract of this act furnished by the commissioner, and

e. Make such records as to the persons employed by him, including wage and hour records and preserve such records for such periods of time, as the commissioner shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act, provided that records of the number of hours worked shall not be required as to any person employed in a bona fide executive, administrative or professional capacity or in the capacity of outside salesman 18 years of age or older where the wages of such person or persons are not determined by the number of hours worked.

34:11-4.7. Agreements by employer with employee

It shall be unlawful for any employer to enter into or make any agreement with any employee for the payment of wages of any such employee otherwise than as provided in this act, except to pay wages at shorter intervals than as herein provided, or to pay wages in advance. Every agreement made in violation of this section shall be deemed to be null and void, and the penalties in this act provided may be enforced notwithstanding such agreement; and each and every employee with whom any agreement in violation of this section shall be made by any such employer, or the agent or agents thereof, shall have a right of civil action against any such employer for the full amount of his wages in any court of competent jurisdiction in this State.

34:11-4.8. Dispute over amount of wages

a. In case of a dispute over the amount of wages, the employer shall pay, without condition and within the time set by this act, all wages, or parts thereof, conceded by him to be due, leaving to the

employee all remedies to which he might otherwise be entitled, including those provided under this act, as to any balance claimed.

b. The acceptance by an employee of a payment under this section shall not constitute a release as to the balance of his claim and any release required by an employer as a condition to payment shall be in violation of this act and shall be null and void.

34:11-4.9. Administration of act; hearings; investigations; actions for penalties

a. The commissioner shall enforce and administer the provisions of this act and the commissioner or his authorized representatives are empowered to investigate charges of violations of this act.

b. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

c. The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.

d. If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

e. The commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer 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 to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

f. The commissioner or his designee is authorized to enter into a reciprocal agreement with the labor department or other corresponding agency of any other state or with a person or body authorized to act on behalf of that agency, for the collection of claims and judgments for wages, administrative fees or penalties based on claims arising in each others' states.

To the extent provided for by the laws of the other state or by any reciprocal agreement entered into with an agency of the other state as provided in this subsection, the commissioner or his designee may: (1) maintain actions in the courts of the other state for the collection of claims and judgments for wages, administrative fees and penalties; and (2) assign the claims and judgments to the agency in the other state for collection.

Upon the written consent of the agency in the other state, or the person or body authorized to act on behalf of that agency, the commissioner or his designee may maintain actions in the courts of this State upon assigned claims and judgments for wages, administrative fees and penalties arising in the other state

in the same manner and to the same extent that such actions by the commissioner or his designees are authorized when arising in this State, but only if the other state extends, by law or agreement, a like comity to cases arising in this State.

34:11-4.10. Violations

Any employer who knowingly and willfully violates any provision of P.L.1965, c. 173 (34:11-4.1 et seq.) shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100 nor more than \$1,000. Each day during which any violation of this act continues shall constitute a separate and distinct offense.

As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1965, c. 173 (C. 34:11-4.1 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 \$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 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” (N.J.S. 2A:58-1 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.

34:11-4.11. Rules and regulations

The commissioner is authorized to propose and issue, from time to time, rules and regulations to implement the provisions of this act. Such proposed rules and regulations shall be published and made available to the public with notice that the same shall become effective on a specified date, not earlier than 60 days from publication thereof, and that a public hearing on the proposed rule or regulation shall be held at a place, date and time specified, on a date not earlier than 15 days from the date published copies are made available to the public. At any public hearing held under this section, all interested parties shall have the right to present testimony either orally or in writing, and the commissioner shall consider all testimony offered before promulgating a final rule or regulation.

34:11-4.12. Construction of act

Nothing in this act shall be deemed to require any employer to amend, change, revise or suspend any pay practice, procedure, policy or system that is authorized or permitted under any provision of this act.

34:11-4.13. Repeal

The following sections of the Revised Statutes are repealed: 34:11-4, 34:11-6, 34:11-7, 34:11-23, 34:11-24 and 34:11-27 to 34:11-30, inclusive.

34:11-4.14.

Purchase of salary, wages, commissions or other pay for services

a. It shall be unlawful for any person to purchase or have assigned to him, other than by order of court, any salary, wages, commissions, pay or other compensation for services, or any part thereof, due or to become due to any employee and any purchase or assignment, whenever executed, shall be void. It shall also be unlawful for any person to withhold or to pay to any other person on the basis of any assignment or purchase prohibited by this section any salary, wages, commissions, pay or other compensation due to any employee.

b. Any person who violates this section, or attempts to do so, shall be liable to the employee for the amount of the salary, wages, commissions, or other compensation for services withheld from the employee.

c. Nothing contained in this section shall be construed to make unlawful the withholding or diverting of wages by any employer in accordance with section 4 of P.L.1965, c. 173 (C.34:11-4.4).

CHAPTER 11

WAGES

ARTICLE 3. WAGE COLLECTION DIVISION

- 34:11-57. Definitions
- 34:11-58. Investigation of wage claims; testimony; award and judgement
- 34:11-59. Claim docketed; summons; service
- 34:11-60. Process to run throughout state; by whom served
- 34:11-61. Commissioner may administer oaths, take testimony, etc.; process in name of commissioner
- 34:11-62. Set-off; dismissal where balance due defendant exceeds \$1,000.00
- 34:11-63. Appeals; bonds; procedure
- 34:11-64. Repealed
- 34:11-65. Evidence on appeal
- 34:11-66. Jury trial; other remedies
- 34:11-67. Fees and costs

34:11-57. Definitions

As used in this article:

“Commissioner” means the Commissioner of Labor and Industry or any person or persons in the department designated in writing by him for the purposes of this article.

“Employee” means any natural person who works for another for hire.

“Employer” means any person, partnership, firm or corporation employing another for hire.

“Wages” means any moneys due an employee from the employer whether payable by the hour, day, week, semimonthly, monthly or yearly and shall include commissions, bonus, piecework compensation and any other benefits arising out of an employment contract.

34:11-58. Investigation of wage claims; testimony; award and judgment

The commissioner is authorized and empowered to investigate any claim for wages due an employee and in such investigation may summon the defendant, subpoena witnesses, administer oaths, take testimony and shall upon such proceeding make a decision or award when the sum in controversy, exclusive of costs, does not exceed \$30,000.00.

Such decision or award shall be a judgment when a certified copy thereof is filed with the Superior Court.

Such judgment shall be entered in the same manner and have the same effect and be subject to the same proceedings as are judgments rendered in suits duly heard and determined by courts of competent jurisdiction.

The commissioner is authorized to supervise the payment of amounts due to employees under an award made pursuant to this section, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the

commissioner directly to the employee or employees affected. The employer 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 to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

34:11-59. Claim docketed; summons; service

An employee may file a written claim for wages against an employer in the wage collection division of the department which shall be entered in a book to be called the wage collection docket.

Upon the filing of claim, the department shall issue a summons returnable between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, both inclusive, which shall also specify a certain time and place for the appearance of the defendant, not less than five nor more than fifteen days from the date of such process, which summons shall be served at least five days before the time of appearance mentioned therein, by reading the same to the defendant and delivering to him a copy thereof if he shall be found and if not found by leaving a copy thereof in his house or with some other person of his family over the age of fourteen years. Such persons being served with summons and complaint shall be informed of the contents thereof and the person serving the summons shall indorse thereon a return of the time and manner he executed the same, and sign his name thereon. At the time and place specified in the summons, the commissioner shall inquire in a summary way into the merits of the employee's claim and defenses of the defendant, if any.

34:11-60. Process to run throughout state; by whom served

Process of the wage collection division shall run throughout the state. Service of process shall be made either by a constable or a process server of the department.

34:11-61. Commissioner may administer oaths, take testimony, etc.; process in name of commissioner

The commissioner shall have power to administer oaths, hear testimony and take or cause to be taken depositions of witnesses residing within or without the state. The summonses, subpoenas, and orders to take testimony and for production of documents, emanating from the wage collection division shall issue in the name of the commissioner and under the seal of the department.

34:11-62. Set-off; dismissal where balance due defendant exceeds \$1,000.00

If the defendant files a set-off against the plaintiff for more than \$1,000.00 and at the trial it shall be proved that the balance exceeding \$1,000.00 is due the defendant then suit shall be dismissed unless the defendant consents to accept judgment for \$1,000.00 and costs in full settlement of this claim, but in no event shall a counterclaim for unliquidated damages be set up against plaintiff for wages in the wage collection section.

34:11-63. Appeals; bonds; procedure

From any judgment which may be obtained in the wage collection division, except such as shall be given by confession, either party may, upon filing a notice of appeal with the wage collection division within twenty days after judgment shall be given, appeal to the Superior Court. The appellant shall give a bond in every case, except where the judgment appealed from is partially in his favor and no set-off against his demand has been allowed by the division, or where the court otherwise orders. The bond shall

be secured by one sufficient surety, either a freeholder in the county or a surety company authorized to do business in New Jersey, and shall be in double the amount of such judgment or of any off-set allowed by the division, conditioned that the appellant shall prosecute his appeal in the Superior Court, stand to and abide the judgment of the court, and pay such costs as shall be taxed against him if the judgment be affirmed. The wage collection division shall then prepare a transcript of the record to be filed in the Superior Court.

34:11-64. Repealed by L.1991, c. 91, § 533, eff. April 9, 1991

34:11-65. Evidence on appeal

Upon the trial of any appeal either party may produce any witness not produced or sworn in the court below, or any documentary evidence not offered or admitted in the court below, if otherwise legal and competent, without notice to the opposite party.

34:11-66. Jury trial; other remedies

Nothing in this article shall prevent the claimant from instituting an action for his claim in any court of competent jurisdiction or be construed to deny or limit the right of the plaintiff or defendant to a trial by jury. Where either party demands a trial by jury, he shall pay, at least two days before the return date or the adjourned date of hearing of his cause, the statutory jury fee to the wage collection division and thereupon the wage collection division of the department shall file the entire record, in the cause, in the Superior Court, for trial by jury of the issues presented by the claimant and defendant. The jury fee so received shall be paid to the court wherein the cause is to be tried by the judge and jury. The judgment shall be docketed in the Superior Court as are other judgments of the wage collection division.

34:11-67. Fees and costs

No filing fee shall be charged by the wage collection division, for accepting a wage claim, and no advance fees shall be charged by constables making service of process on wage claims the wage collection division, nor shall any fee be charged by any county clerk for filing of any award or determination of the wage collection division or sheriff for execution and levy but the collection of any wage claim either by execution or otherwise shall carry taxed costs of service, filing, recording fees, executions, and similar items, in accordance with the schedule of costs as prescribed for the Superior Court, Law Division, Special Civil Part. All moneys received by way of taxed costs shall be retained by the wage collection division and at the end of each calendar year shall be paid into the State treasury for the use of the State.

CHAPTER 11

WAGES

ARTICLE 2A. DISCRIMINATION IN WAGES

34:11-56.1.	Definitions
34:11-56.2.	Discrimination in pay based on sex prohibited
34:11-56.3.	Enforcement of act
34:11-56.4.	Inspection of records; obtaining of information
34:11-56.5.	Regulations, power to make
34:11-56.6.	Violations of act
34:11-56.7.	Failure to furnish records; interference with commissioner in performance of duties
34:11-56.8.	Actions by or on behalf of employees; damages
34:11-56.9.	Notice of alleged violation; hearing
34:11-56.10.	Partial invalidity
34:11-56.11.	Effective date

34:11-56.1. Definitions

As used in this act:

a. "Employee" includes any person, either male or female, employed by an employer, but shall not include persons performing volunteer service for nonprofit organizations or corporations nor persons employed on a farm, or in domestic service in a private home, or in a hotel.

b. "Employer" includes any person acting directly or indirectly in the interest, or as agent, of an employer in relation to an employee and further includes one or more individuals, partnerships, corporations, associations, legal representatives, trustees, trustees in bankruptcy, or receivers, but such term shall not include nonprofit hospital associations or corporations.

c. "Employ" includes to suffer or permit to work.

d. "Occupation" includes any industry, trade, business or branch thereof, or any employment or class of employment.

e. "Commissioner" means the Commissioner of Labor and Industry of the State of New Jersey.

34:11-56.2. Discrimination in pay based on sex prohibited

No employer shall discriminate in any way in the rate or method of payment of wages to any employee because of his or her sex. A differential in pay between employees based on a reasonable factor or factors other than sex shall not constitute discrimination within the meaning of this section.

34:11-56.3. Enforcement of act

The Commissioner of Labor and Industry shall have the power and it shall be his duty to carry out and enforce the provisions of this act.

34:11-56.4. Inspection of records; obtaining of information

The commissioner, or his authorized representative, shall have the power to enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and skills on which persons employed by the employer are engaged, to question such persons under subpoena, if necessary, and to obtain such other information as is reasonably necessary to the administration and enforcement of this act.

34:11-56.5. Regulations, power to make

The commissioner shall have the power to issue such regulations, not inconsistent with the purpose and provisions of this act, as he deems necessary or appropriate for the efficient administration thereof.

34:11-56.6. Violations of act

Any employer who willfully violates any provision of this act, or who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, the commissioner, or any other person, or instituted, or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceedings, shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200.00), or by imprisonment for not less than ten days nor more than ninety days, or by both fine and imprisonment.

34:11-56.7. Failure to furnish records; interference with commissioner in performance of duties

Any employer who willfully fails to furnish required records and information to the commissioner upon request, or who falsifies such records or who hinders, delays, or otherwise interferes with the commissioner, or his authorized representative, in the performance of his duties in the enforcement of this act, or refuses such official entry into any place of employment which he is authorized by this act to inspect, shall be guilty of a misdemeanor and, upon conviction be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00).

34:11-56.8. Actions by or on behalf of employees; damages

If any employee, because of his or her employer's violation of the provisions of section two of this act, is discriminated against in the payment of wages, such employee may recover in a civil action the full amount of the salary or wages due from the employer plus an additional equal amount as liquidated damages, together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such employee and employer to work for less than such salary or wages shall be no defense to the action. At the request of any employee paid less than the wage to which she may be entitled under this act, the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, including the liquidated damages provided by this section without cost to the employee. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The commissioner shall not be required to pay the filing fee, or other costs, in connection with such action. The commissioner shall have power to join various claimants against the employer in one cause of action.

34:11-56.9. Notice of alleged violation; hearing

If complaint shall be made to the commissioner, or if he shall have reason to believe that any provision of this act has been violated, he may cause notice of such alleged violation to be given to the alleged violator, giving the party so notified the opportunity to answer such complaint. The alleged violator shall be given an opportunity, at his request, to be heard with regard to such alleged violation, under such rules and regulations as may be prescribed by the commissioner provided that the complaining party and all interested persons shall be notified of such hearing and given an opportunity to be present. If, as the result of such hearing, it shall appear that the purposes of this act may be served and any violation corrected without the institution of any prosecution, the commissioner shall not be obligated to institute any prosecution for any such violation.

34:11-56.10. Partial invalidity

The provisions of this act shall be construed as severable and if any part be held unconstitutional, or for any other reason invalid, the remaining parts shall not be affected thereby.

34:11-56.11. Effective date

This act shall take effect July first, one thousand nine hundred and fifty-two.

CHAPTER 11A

FRINGE BENEFITS

PART II. HEALTH BENEFITS

- 34:11A-16. Findings, declarations relative to notification with regard to health benefits plans
- 34:11A-17. Notice by employer of termination, change of benefits
- 34:11A-18. Violations, penalties
- 34:11A-19. Regulations

34:11A-16. Findings, declarations relative to notification with regard to health benefits plans

The Legislature finds and declares that:

- a. Many employers in this State offer health benefits coverage to their employees under a health benefits plan as an incentive to attract and retain qualified employees.
- b. Health benefits coverage is very important to employees and their families and the availability of such coverage through an employer can be the determining factor as to whether an individual accepts employment with a particular employer.
- c. According to data tabulated by the Urban Institute based on the 1999 National Survey of America's Families, approximately 5.5 million New Jersey residents, which includes employees and their dependents, were covered by an employer-sponsored health benefits plan in 1999.
- d. In certain instances, an employer may make a business decision not to continue an employee health benefits plan, due to rising health care costs and other economic factors, and may not always notify the employees beforehand of its decision.
- e. It is a disservice to the working people of this State not to require that an employer provide prior notification to its employees when the employee health benefits plan will be terminated, for whatever reason.

34:11A-17. Notice by employer of termination, change of benefits

An employer that provides a health benefits plan as defined in section 2 of P.L.1997, c.192 (C.26:2S 2) to its employees in this State shall provide, in writing, 30 days' prior notice to those employees before the health benefits plan is terminated; except that, in the case of an employer that changes a health benefits plan, the employer shall immediately notify its employees in writing of the change upon receipt by the employer of notification from the health insurer that its employees will be covered by the new plan.

34:11A-18. Violations, penalties

The Commissioner of Labor shall enforce and administer the provisions of sections 1 through 4 of this act, and the commissioner or his authorized representatives are empowered to investigate violations of those provisions.

b. When the commissioner finds that an employer has violated this act by failing to provide the notice required pursuant to section 2 of this act, the commissioner is authorized to assess and collect administrative penalties specified in a schedule of penalties to be promulgated by the commissioner by regulation. The penalty amount shall be based on the number of employees covered under the health benefits plan and shall not exceed \$200 an employee.

c. 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 his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon that 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.

d. 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.).

34:11A-19. Regulations

The Commissioner of Labor shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of sections 1 through 4 of this act.

TITLE 17B-INSURANCE

CHAPTER 30

17B:30-40. Definitions, construction, regulations on notice of premium increase to employers.

17B:30-40. Definitions, construction, regulations on notice of premium increase to employers

a. As used in this section:

"Carrier" means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner of Banking and Insurance, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company authorized to issue health insurance, a health maintenance organization, a hospital service corporation, medical service corporation and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. The term "carrier" shall not include a joint insurance fund established pursuant to State law.

"Health benefits plan" means a health benefits plan as defined in section 2 of P.L.1997, c.192 (C.26:2S-2).

b. For the renewal of a health benefits plan for which the premium rate will increase, a carrier shall provide, in writing, 60 days' prior notice of the amount of the increase, to the employer that purchased that plan.

c. The provisions of this section shall not be construed to diminish the right of a carrier to negotiate with an employer that purchased a health benefits plan over the amount of any proposed increase in the premium rate for the renewal of that plan.

d. The Commissioner of Banking and Insurance shall promulgate regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this section.

CHAPTER 11

WAGES

ARTICLE 2B. WAGES ON PUBLIC WORKS

This law should not be confused with the "Prevailing Wage Act" N.J.S.A. 34:11-56.25 et seq., that applies to construction-related public works contracts performed by construction workers.

- 34:11-56.58. Prevailing wage levels for employees furnishing State building services.
- 34:11-56.59. Definitions relative to prevailing wage levels for employees furnishing State building services.
- 34:11-56.60. Contract to contain provision for prevailing wage, building services rates.
- 34:11-56.61. Record of employee wages, benefits.
- 34:11-56.62. Civil action to recover prevailing wage for building services.
- 34:11-56.63. Authority of commissioner.
- 34:11-56.64. Violations; fines, penalties.
- 34:11-56.65. Alternative, additional sanctions.
- 34:11-56.66. Retaliation against complaining employer, disorderly persons offense.
- 34:11-56.67. Collective bargaining rights unaffected.
- 34:11-56.68. Severability.
- 34:11-56.69. Rules, regulations.
- 34:11-56.70. Special license authorizing employment at less than prevailing wage for building service rates.

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

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 wellbeing 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.

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

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.

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

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.

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

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.

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

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.

34:11-56.63. Authority of commissioner.

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.

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

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.

34:11-56.65. Alternative, additional sanctions.

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.

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

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.

34:11-56.67. Collective bargaining rights unaffected.

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.

34:11-56.68. Severability.

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.

34:11-56.69. Rules, regulations.

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.

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

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.

This act shall take effect on the 60th day following enactment and apply to contracts entered or renewed on or after that date.^[1]

^[1]This act was approved on January 12, 2006. It will take effect on March 13, 2006.

CHAPTER 20

CONSTRUCTION INDUSTRY INDEPENDENT CONTRACTOR ACT

34:20-1.	Short title
34:20-2.	Findings, declarations relative to classification of construction employees
34:20-3.	Definitions relative to classification of construction employees
34:20-4.	Certain services deemed employment; exceptions
34:20-5.	Improper classification of construction employees, degree of offense, crime; penalties
34:20-6.	Penalty for knowingly improperly classifying construction employee; debarment
34:20-7.	Suspension of contractor's registration; notification, hearing, appeal; stop-work order, civil penalty for continued violation
34:20-8.	Improper classification of construction worker, civil action by employee
34:20-9.	Discrimination, retaliation prohibited
34:20-10.	Severability
34:20-11.	Rules, regulations

34:20-1. Short title

This act shall be known and may be cited as the "Construction Industry Independent Contractor Act."

34:20-2. Findings, declarations relative to classification of construction employees

The Legislature finds that employers in the construction industry who improperly classify employees as independent contractors deprive these workers of proper Social Security benefits and other benefits, while reducing the employers' State and federal tax withholdings and related obligations. Moreover, this practice puts businesses that bear higher costs for complying with the law at a competitive disadvantage.

34:20-3. Definitions relative to classification of construction employees

For purposes of this act:

"Employer" means a partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who is primarily engaged in the business of, or enters into a contract for, making improvements to real property and includes any subcontractor or lower tier contractor.

"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.

"Public work" means construction, reconstruction, demolition, alteration, custom fabrication, 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. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, 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.

34:20-4. Certain services deemed employment; exceptions

For purposes of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the "unemployment compensation law," R.S.43:21-1 et seq., the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or other applicable State tax laws, P.L.1965, c.173 (C.34:11-4.1 et seq.) and the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), services performed in the making of improvements to real property by an individual for remuneration paid by an employer shall be deemed to be employment unless and until it is shown to the satisfaction of the Department of Labor and Workforce Development that:

a. the individual has been and will continue to be free from control or direction over the performance of that service, both under his contract of service and in fact; and

b. the service is either outside the usual course of the business for which the service is performed, or the service is performed outside of all the places of business of the employer for which the service is performed; and

c. the individual is customarily engaged in an independently established trade, occupation, profession or business.

The failure to withhold federal or State income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section.

34:20-5. Improper classification of construction employees, degree of offense, crime; penalties

a. An employer, or any officer, agent, superintendent, foreman, or employee of the employer who fails to properly classify an individual as an employee in accordance with section 4 of this act, for purposes of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the "unemployment compensation law," R.S.43:21-1 et seq., the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., P.L.1965, c.173 (C.34:11-4.1 et seq.) or other applicable State tax laws, and the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), and fails to pay wages, benefits, taxes or other contributions required by any of those acts, shall be:

(1) Guilty of a disorderly persons offense and shall, upon conviction, be fined not less than \$100 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or both. Each week, in any day of which an employee is misclassified and each employee so misclassified, shall constitute a separate offense.

(2) If the failure is done knowingly, guilty of a crime of the second degree if the contract amount is for \$75,000 or above; guilty of a crime of the third degree if the contract amount exceeds \$2,500, but is less than \$75,000; and guilty of a crime of the fourth degree if the contract amount is for \$2,500 or less. In addition, the violator shall be deemed to have caused loss to the employees in any amount by which the employees were underpaid in connection with the misclassification 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.

b. As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, when the Commissioner of Labor and Workforce Development finds that an employer has violated this 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 by 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 and Workforce Development 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 that 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.).

c. Any sum collected as a 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.

d. When the Commissioner of Labor and Workforce Development finds that the employer has violated provisions of this act, 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.

e. A complaint or indictment under the provisions of subsection a. or subsection d. of this section may be brought in Superior Court in accordance with the Rules of Court of the State of New Jersey.

34:20-6. Penalty for knowingly improperly classifying construction employee; debarment

If the Commissioner of Labor and Workforce Development determines, after investigation, that an employer or any officer, agent, superintendent, foreman, or employee of the employer has knowingly failed to properly classify an individual as an employee in accordance with section 4 of this act and failed to pay required wages, benefits, taxes or other contributions, or if a final conviction and disposition of a violation of this act is made pursuant to section 5 of this act in which the violator is found to be guilty of a crime of the second, third or fourth degree, then the commissioner shall place the employer on a list of employers who are prohibited from contracting, directly or indirectly, with any public body for the construction of any public building or other public work projects, or from performing any work on the same, for a period of three years. The commissioner shall give notice by mail of that list to any public body who shall request the commissioner so to do.

In the case of a determination by the commissioner, if the person responsible denies that a failure to properly classify an employee has occurred, he shall have the right to apply to the commissioner for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which shall be afforded and a decision shall be rendered within 48 hours of the request for a hearing. The commissioner may bring an action in Superior Court to enjoin or invalidate any contract award made in violation of this section.

34:20-7.

**Suspension of contractor's registration; notification, hearing, appeal;
stop-work order, civil penalty for continued violation**

a. If the Commissioner of Labor and Workforce Development determines, after investigation, that an employer failed to properly classify an individual as an employee in accordance with section 4 of this act, the commissioner may order the immediate suspension of a contractor's registration issued pursuant to section 7 of P.L.1999, c.238 (C.34:11-56.54), if the commissioner also determines that ordering an immediate suspension is in the public interest, and provided that the contractor is afforded an opportunity to contest the immediate suspension in the following manner:

(1) The commissioner shall notify the contractor in writing of the immediate revocation and the contractor's rights under this subsection.

(2) The contractor may notify the commissioner of its request for an opportunity to be heard and contest the immediate suspension in writing within 72 hours of its receipt of immediate suspension notification.

(3) Within seven business days of receipt of the notification from the contractor pursuant to paragraph (2) of this subsection, the commissioner shall grant the contractor a hearing to contest the immediate suspension. The commissioner shall permit the contractor to present evidence at the hearing.

(4) The commissioner shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's immediate suspension. The decision shall include the grounds for upholding or reversing the contractor's immediate suspension.

(5) If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. If the commissioner orders the immediate suspension of a contractor's registration pursuant to subsection a. of this section, the violation shall have no effect on the registration of any contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor.

c. For a second violation of the provisions of this act, the commissioner shall issue a stop-work order requiring the cessation of all business operations at every site at which the violation occurred within 72 hours of that determination. The order shall take effect when served upon the employer, or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has properly classified the individual as an employee and has paid any penalty assessed under this section. As a condition of release from a stop-work order, the commissioner may require an employer who is found to have failed to properly classify an individual as an employee to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's continued compliance with this section. The department shall promulgate rules and regulations to determine filing times and report requirements.

d. For a third or any subsequent violation of the provisions of this act, the commissioner shall issue a stop-work order requiring the cessation of all business operations of the violator within 72 hours of that determination. The order shall take effect when served upon the employer. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has properly classified the individual as an employee and has paid any penalty assessed under this section. As a condition of release from a stop-work order, the commissioner may require an employer who is found to have failed to properly classify an individual as an employee, to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's

continued compliance with this section. The department shall promulgate rules and regulations to determine filing times and report requirements.

e. Stop-work orders and penalty assessment orders issued pursuant to this section against an employer shall be in effect against any successor corporation or business entity that has one or more of the same principals or officers as the employer against whom the stop-work order was issued and which is engaged in the same or equivalent trade or activity.

f. The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of a stop-work order issued pursuant to this section.

g. In addition to any other penalties provided for in this section, the commissioner may assess against an employer a civil penalty of \$5,000 for each individual who the employer failed to properly classify as an employee.

h. If the employer denies that a failure to properly classify an employee has occurred, the employer shall have the right to apply to the commissioner to request a hearing, which shall be afforded and a decision rendered within 48 hours of the request for the hearing.

i. The penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34:20-8. Improper classification of construction worker, civil action by employee

a. No employer shall require or request that any individual enter into an agreement or sign a document which results in the misclassification of the individual as an independent contractor or otherwise does not accurately reflect the employment relationship with the employer.

b. An individual employed as a construction worker who has not been properly classified as an employee may bring a civil action for damages against the employer or any other employer who was in contract with the employee, for failing to properly classify the employee if the employer had knowledge of the misclassification. An individual representative, including a labor organization, may bring the action on behalf of the individual or as a class action. The court may award attorneys fees and other costs of the action in addition to damages to an individual or class of individuals who have not been properly classified as employees in accordance with section 4 of this act.

34:20-9. Discrimination, retaliation prohibited

It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this act. Rights protected under this act include, but are not limited to: the right to file a complaint or inform any person about an employer's noncompliance with this act; the right to inform any person of his potential rights and to assist him in asserting those rights. Any person who in good faith alleges noncompliance with this act shall be afforded the rights provided by this act, notwithstanding his failure on the merits. Taking adverse action against a person within 90 days of the person's exercise of rights protected under this act shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights.

34:20-10. Severability

The provisions of this act shall be deemed to be severable and if any section, subsection, paragraph, sentence or other part of this act is declared to be unconstitutional, or the applicability thereof to any

person is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional or invalid.

34:20-11. Rules, regulations

The commissioner shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), make and promulgate rules and regulations necessary to implement the purposes of this act.

TITLE 2C – THE NEW JERSEY CODE OF CRIMINAL JUSTICE

CHAPTER 40A

- 2C.40A-1. Employer requiring lie detector test
- 2C.40A-2. Violation of contract to pay employees

2C:40A-1. Employer requiring lie detector test

Any person who as an employer shall influence, request or require an employee or prospective employee to take or submit to a lie detector test as a condition of employment or continued employment, commits a disorderly persons offense. The provisions of this section shall not apply if: (1) the employer is authorized to manufacture, distribute or dispense controlled dangerous substances pursuant to the provisions of the “New Jersey Controlled Dangerous Substances Act,” P.L.1970, c. 226 (C. 24:21-1 et seq.); (2) the employee or prospective employee is or will be directly involved in the manufacture, distribution, or dispensing of, or has or will have access to, legally distributed controlled dangerous substances; and (3) the test, which shall cover a period of time no greater than 5 years preceding the test, and except as provided in this section, shall be limited to the work of the employee or prospective employee and the individual's improper handling, use or illegal sale of legally distributed controlled dangerous substances.

The test may include standard baseline questions necessary and for the sole purpose of establishing a normal test pattern. Any employee or prospective employee who is required to take a lie detector test as a precondition of employment or continued employment shall have the right to be represented by legal counsel. A copy of the report containing the results of a lie detector test shall be in writing and be provided, upon request, to the individual who has taken the test. Information obtained from the test shall not be released to any other employer or person. The employee or prospective employee shall be informed of his right to present to the employer the results of an independently administered second lie detector examination prior to any personnel decision being made in his behalf by the employer.

2C:40A-2. Violation of contract to pay employees

a. An employer who has agreed with an employee or with a bargaining agent for employees to pay wages, compensation or benefits to or for the benefit of employees commits a disorderly persons offense if the employer:

- (1) fails to pay wages when due; or
- (2) fails to pay compensation or benefits within 30 days after due.

b. If a corporate employer violates subsection a., any officer or employee of the corporation who is responsible for the violation commits a disorderly persons offense.

CHAPTER 2

CHILD AND FEMALE LABOR; MERCANTILE ESTABLISHMENTS

ARTICLE 3. FEMALE LABOR

- 34:2-29. Seats to be provided
- 34:2-30. Inspections
- 34:2-30.1. Penalty; notice to offender

34:2-29. Seats to be provided

Every employer of one or more employees in any manufacturing, mechanical or mercantile establishment or in the services and operations incident to any commercial employment shall provide and maintain suitable seats conveniently situated and shall permit the use of such seats by employees at all times except when necessarily engaged in the discharge of duties that cannot properly be performed in a sitting position.

34:2-30. Inspections

The commissioner shall see that the provisions of R.S. 34:2-29 of this title are carried out in all mercantile establishments, and shall, at reasonable intervals, examine and inspect all such mercantile establishments to see that the seats required to be provided by R.S. 34:2-29 are fully maintained and that employees are permitted to use them freely and without hindrance.

34:2-30.1. Penalty; notice to offender

Any individual, firm or corporation owning or managing an establishment of the kind mentioned in section 34:2-29 of this title, who shall fail to comply with the requirements of said section 34:2-29 within ten days after the date on which notice to do so has been served by the commissioner or one of his deputies shall be liable to a penalty of twenty-five dollars for each offense, and a failure to comply within the period of ten days, with such repetition of such notice as may be necessary, shall each constitute a separate offense.

CHAPTER 11

WAGES

ARTICLE 1. REGULATION IN GENERAL

- 34:11-24.1. Medical examinations requested by employers; imposition of cost on employees prohibited
34:11-24.2. Penalty for violation

34:11-24.1. Medical examinations requested by employers; imposition of cost on employees prohibited

No employer or prospective employer shall deduct from the wages of any employee or from the wages to be paid to a prospective employee any sum, or in any manner require payment of any sum from such employee or prospective employee, to defray the cost of any medical examination of such employee or prospective employee when such examination is made at the request or direction of the employer, by a physician designated by said employer, as a condition of entering or continuing employment, and in the event that the employee or prospective employee pays for any such medical examination, the employer or prospective employer shall reimburse the employee or prospective employee for the amount of any such payment.

34:11-24.2. Penalty for violation

Every person who shall violate any of the provisions of this act shall be liable to a penalty of one hundred dollars (\$100.00), to be recovered by and in the name of the Department of Labor and Industry for the use of the State.

**SELECTED
NEW JERSEY STATE
LABOR REGULATIONS**

N.J.A.C. 12:55	Wage Payments
N.J.A.C. 12:61	Wage Collection
N.J.A.C. 12:63	Notification Concerning Health Benefits Plans
N.J.A.C. 12:64	Prevailing Wages for Building Services
N.J.A.C. 12:65	Construction Industry Independent Contractor Act Rules



CHAPTER 55
WAGE PAYMENTS

**SUBCHAPTER 1. GENERAL PROVISIONS; VIOLATIONS; FEES AND PENALTIES;
HEARINGS**

- 12:55-1.1 Purpose and scope
- 12:55-1.2 Definitions
- 12:55-1.3 Powers of the Commissioner
- 12:55-1.4 Violation; punishment
- 12:55-1.5 Administrative fee
- 12:55-1.6 Administrative penalty
- 12:55-1.7 Interest
- 12:55-1.8 Hearings

SUBCHAPTER 2. PAYROLL DEDUCTIONS

- 12:55-2.1 Payroll deductions; general
- 12:55-2.2 Payroll deductions for mass transportation commuter tickets
- 12:55-2.3 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey
- 12:55-2.4 Time and mode of payment
- 12:55-2.5 Withholding of income tax for foreign jurisdictions

**SUBCHAPTER 1. GENERAL PROVISIONS; VIOLATIONS; FEES AND PENALTIES;
HEARINGS**

12:55:1.1 Purpose and scope

(a) The purpose of this chapter is to establish rules to effectuate N.J.S.A. 34:11-41 et seq., an act regarding the payment of wages.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act;
2. Wages paid to an employee for services rendered; and
3. Time and mode of payment.

(c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:55-1.2

Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Act” means N.J.S.A. 34:11-4.1 et seq., an act regarding the payment of wages.

"Check-deposit-return fee" means a charge which results from a payroll check having been returned due to insufficient or uncollected funds.

“Commissioner” means the Commissioner of Labor and Workforce Development or his or her designee.

"Direct deposit" means payment of the wages of an employee by causing the amount of such employee's wages to be deposited in an account or accounts maintained in a financial institution or financial institutions in the name of the employee.

“Employee” means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

“Employer” means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of the Act and this chapter, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

"Financial institution" means any State-chartered or Federally-chartered institution authorized to accept deposits in New Jersey.

“Mass transportation” means railroads operated by steam, electricity or other power, rapid transit lines and ferries, buses or other vehicles which possess a certificate of public convenience and necessity issued by the New Jersey Department of Transportation.

"Payroll debit card" means a magnetically encoded card issued by a financial institution, which provides an employee with the means of obtaining the full amount of all wages earned in a pay period in a form that is equivalent to payment in lawful money of the United States, payment by check or payment by direct deposit.

“Wages” means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

12:55-1.3

Powers of the Commissioner

(a) The Commissioner shall enforce and administer the provisions of the Act and the Commissioner or his or her authorized representatives are empowered to investigate charges of violations of the Act.

(b) The Commissioner or his or her authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of the Act or this chapter or which may aid in the enforcement of the provisions of the Act or this chapter.

(c) The Commissioner or his or her authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the Commissioner.

(d) If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the Commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(e) The Commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employees, and paid on order of the Commissioner directly to the employee or employees affected. The employer shall also pay the Commissioner an administrative fee equal to not less than 10 percent or more than 25 percent of any payment made to the Commissioner pursuant to this section. The amount of the administrative fee is specified in N.J.A.C. 12:55-1.5. The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

12:55-1.4 Violation; punishment

Any employer who knowingly and willfully violates any provision of P.L. 1965, c.173 (N.J.S.A. 34:11-4.1 et seq.) shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100.00 nor more than \$1,000. Each day during which any violation of the Act continues shall constitute a separate and distinct offense.

12:55-1.5 Administrative fee

(a) The employer shall pay the Commissioner an administrative fee on all payments of gross amounts due employees pursuant to N.J.S.A. 34:11-4.1 et seq.

(b) A schedule of fees is as follows:

1. First violation...10 percent of the amount due the employee;
2. Second violation...18 percent of the amount due the employee;
3. Third and subsequent violations...25 percent of the amount due the employee.

(c) All payments shall be made payable to the Commissioner of Labor and Workforce Development Wage Payment Trust Fund by certified check or money order, or in the form suitable to the Commissioner of Labor and Workforce Development.

12:55-1.6 Administrative penalty

(a) As an alternative or in addition to any other sanctions provided for in N.J.S.A. 34:11-4.1 et seq. when the Commissioner finds that an employer has violated the Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

1. First violation...not more than \$250.00;
2. Second and subsequent violations...not less than \$25.00 nor more than \$500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 working days following the receipt of the notice.

1. The notice shall become the Final Order upon the expiration of the 15 working day period following receipt of the notice if a hearing is not requested.

2. If a hearing is requested the Commissioner shall issue a Final Order upon such hearing and a finding that the violation has occurred.

3. All fees and penalties shall be paid within 30 days of the Final Order. Failure to pay such fees and/or penalty shall result in a Judgment being obtained in a court of competent jurisdiction.

4. All payments shall be payable to the Commissioner of Labor and Workforce Development Wage Payment Trust Fund in the form of a certified check or money order, or such other form suitable to the Commissioner of Labor and Workforce Development.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. The seriousness of the violations;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer's business; and
5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

12:55-1.7 Interest

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

12:55-1.8**Hearings**

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:55-1.6, the employer shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for formal hearing must be received within 15 working days following the receipt of the notice. All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(e) Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.

(g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.

(h) Payment of the penalty is due when a final agency determination is issued.

(i) Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

SUBCHAPTER 2. PAYROLL DEDUCTIONS**12:55-2.1 Payroll deductions; general**

(a) No employer may withhold or divert any portion of any portion of an employee's wages unless:

1. The employer is required or empowered to do so by New Jersey or United States law; or
2. The amounts withheld or diverted are for:

i. Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408(b) of the Federal Internal Revenue Code of 1954 as amended (26 U.S.C. 408(b)), or individual retirement accounts at any State or Federally chartered bank, savings bank, or savings and loan association, as defined by section 408(a) of the Federal Internal Revenue Code of 1954, as amended (26 U.S.C. 408(a)), for the employee, his or her spouse or both.

ii. Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or security option or security purchase

plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.

iii. Payments authorized by employees for payment into employee personal savings accounts, such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.

iv. Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United State Government bonds; and payments to correct payroll errors; provided all such deductions are approved by the employer.

v. Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.

vi. Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided to the employee at his or her discretion by an outside vendor or the employer and, provided the deductions for such payments are approved by the employer.

vii. Labor organization dues and initiation fees, and such other labor organization charges permitted by law.

viii. Such other contributions, deductions and payment as the Commissioner of Labor and Workforce Development may authorize by regulation as proper and in conformity with the intent and purpose of the Act, if such deductions are approved by the employer.

12:55-2.2 Payroll deductions for mass transportation commuter tickets

(a) Each employer may use a payroll deduction as a means of providing mass transportation commuter tickets only if the payroll deduction has been authorized by the employee in writing or in a collective bargaining agreement.

(b) Each employer that uses a payroll deduction as set forth in (a) above shall make this method of payment for mass transportation commuter tickets available to all of its employees.

(c) When an employer provides transportation to a work site, the employer may deduct the actual cost, exclusive of profit to the employer, of such transportation, provided such deduction is in accordance with (a) above.

12:55-2.3 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey

(a) Each employer may institute a system whereunder a portion of an employee's salary is withheld as an installment payment against any financial obligation by that employee to the State of New Jersey.

(b) Any employer who institutes such a repayment plan pursuant to (a) above shall withhold on a periodic basis from an employee's salary only such an amount as that employee shall have expressly authorized in writing.

(c) Any employer who withholds any sum from an employee's salary for repayment of a financial obligation by the employee to the State shall forthwith pay the amount of such withheld salary to the appropriate State officer or agent to whom such obligation is made payable.

(d) Nothing in this section shall be construed as mandating participation by an employer or employee in such an installment repayment program.

12:55-2.4 Time and mode of payment

(a) All final payment of wages following the termination or voluntary leaving of employment shall be completed within 10 days from the end of the work period for which such wages are earned, in compliance with N.J.S.A. 34:11-4.2.

(b) When any employee is suspended as a result of a labor dispute and such labor dispute involves those employees who make up payrolls, the employer may have an additional 10 days in which to pay such wages.

(c) The employer shall:

1. Pay the employee on the regular scheduled pay date; or
2. Mail such payment of wages to the last known address of the employee.

(d) Except under the circumstances set forth in (h) and (i) below, payment of wages shall be in lawful money of the United States or with checks drawn on financial institutions where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they were drawn.

(e) When a fee is charged for the cashing of a payroll check at the banking institution on which the check is drawn, the employer shall bear the burden of the fee.

(f) Where suitable arrangements are not made for the cashing of payroll checks as set forth in (d) above, the employer shall bear the burden of any fee charged to the employee for the cashing of such payroll check.

(g) The employer shall be responsible for payment of check-deposit-return fees.

1. When an employee with direct deposit has his or her account debited with a check-deposit-return fee, the employer shall reimburse the employee as soon as possible, but no later than the next regularly scheduled payday.

2. Reimbursement by the employer under (g)1 above shall be for the full amount of the check-deposit-return fee and shall not be paid to the employee as wages.

(h) In lieu of paying wages directly to an employee in the manner prescribed in (d) above, an employer may arrange with a financial institution or financial institutions to pay the wages of an employee by direct deposit, provided that all of the following conditions are met:

1. The employee shall first consent in writing to the direct deposit of his or her wages;
2. Consent under (h)1 above shall be obtained by the employer without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the direct deposit arrangement;
3. Consent under (h)1 above shall not be a condition of hire or continued employment;

4. The employee's wages so deposited shall be subject to withdrawal and other disposition by the employee to the same extent and in the same manner as if such deposit had been made directly by the employee under (d) above;

5. The employee shall be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made; and

6. The employee shall, on timely notice to the employer, be permitted by the employer to elect not to have his or her wages deposited in the manner prescribed in this subsection and to be paid his or her wages directly in the manner provided under (d) above or as provided under (i) below.

(i) In lieu of paying wages directly to an employee in the manner prescribed in (d) above, an employer may pay the wages of an employee by causing the amount of such employee's wages to be deposited in a payroll debit card account, provided that all of the following conditions are met:

1. The employee shall first consent in writing to the deposit of his or her wages in a payroll debit card account;

2. Consent under (i)1 above shall be obtained by the employer without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card account deposit arrangement;

3. Consent under (i)1 above shall not be a condition of hire or continued employment;

4. The employee's wages so deposited in a payroll debit card account shall be subject to withdrawal and other disposition by the employee to the same extent and in the same manner as if such deposit had been made directly by the employee under (d) above into an account maintained in a financial institution in the name of the employee.

i. On at least one occasion per pay period, the employee shall be permitted, using the payroll debit card, to withdraw his or her wages in full, in lawful money of the United States, without any fee to the employee and without difficulty;

5. The employee shall be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made;

6. Prior to obtaining consent from the employee under (i)1 above, the employer shall disclose in writing to the employee each of the features of the payroll debit card (for example, withdrawal at any ATM or point-of-sale use), including any fee(s), which may be charged to the card holder for the use of each of those features. The written disclosure required under this paragraph shall also include an explanation of the specific means by which the employee may, on at least one occasion per pay period, use the payroll debit card to withdraw his or her wages in full, in lawful money of the United States, without any fee to the employee and without difficulty; and

7. The employee shall, on timely notice to the employer, be permitted by the employer to elect not to have his or her wages deposited in the manner prescribed in this subsection and to be paid his or her wages directly in the manner provided under (d) above or in the manner provided under (h) above.

(j) Except under the circumstances set forth in (k) below, an employer shall pay the full amount of wages due his employees at least twice during each calendar month, on regular paydays designated in advance by the employer.

(k) An employer may establish regular paydays less frequent than semimonthly for employees who are exempt from overtime under N.J.A.C. 12:56-7, provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule.

12:55-2.5**Withholding of income tax for foreign jurisdictions**

(a) For purposes of this section, a foreign jurisdiction means a sister state or any municipality or other subdivision of a sister state which imposes a tax on the income or wages of nonresidents employed in New Jersey.

(b) Each New Jersey employer who employs nonresidents may, for each pay period, deduct and withhold an amount, computed in accordance with (d) below, from the salary or wages of an employee whose salary or wages are subject to the income or wage tax of a foreign jurisdiction, for the purpose of crediting such amount on account of the income or wage tax due or to become due from the employee to the foreign jurisdiction.

(c) An employer shall not deduct and withhold an employee's salary or wages under (b) above unless it has obtained the expressed written authorization of the employee.

(d) The amount of the employee's salary or wages deducted and withheld shall be computed in such a manner as to result in withholding from the employee's salary or wages, during each calendar year, an amount substantially equivalent to the tax reasonably estimated to be or become due from such employee to the foreign jurisdiction as taxes upon his or her salary or wages received from the employer during the calendar year.

(e) The employer shall hold the amounts deducted and withheld in a trust fund for payment to the foreign jurisdiction.

(f) The employer shall furnish to the foreign jurisdiction a statement of the name, place of residence, amount of salary or wages earned by, and amount of salary or wages so deducted or withheld from the employee.

(g) Nothing in this section shall eliminate, reduce or replace an employer's wage reporting and recordkeeping requirements under N.J.S.A. 34:11-1 et seq. and N.J.A.C. 12:56-4.1, or an employer's gross income tax withholding requirements under N.J.S.A. 54A:7-1 et seq. and N.J.A.C. 18:35-1.10 for an employee who authorizes the employer to withhold the income or wage tax of a foreign jurisdiction.

CHAPTER 61
WAGE COLLECTION

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:61-1.1 Purpose; scope
- 12:61-1.2 Definitions
- 12:61-1.3 Powers of the Commissioner
- 12:61-1.4 Administrative fees
- 12:61-1.5 Interest
- 12:61-1.6 Wage settlement agreements

SUBCHAPTER 1. GENERAL PROVISIONS

12:61-1.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-57 et seq., the New Jersey State Wage Collection Law, to empower the Commissioner of Labor and Workforce Development means of collecting wages due.

(b) The chapter is applicable to:

1. Wages and hours subject to the New Jersey State Wage Collection Law;
2. Wages paid to an employee for services rendered; and
3. Time and mode of payment.

(c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:61-1.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Commissioner” means the Commissioner of Labor and Workforce Development or any person or persons in the Department designated in writing by him or her for the purposes of this article.

“Employee” means any natural person who works for another for hire.

“Employer” means any person, partnership, firm or corporation employing another for hire.

“Service” means proper legal service of a summons, subpoena, or any other legal document referred to in this subchapter. Service shall be in accordance with the New Jersey Civil Court Rules.

“Wages” means any monies due an employee from the employer, pursuant to laws administered by the Commissioner, whether payable by the hour, day, week, semi-monthly, monthly or yearly and shall

include commissions, bonuses, piecework compensation and any other benefits arising out of an employment contract.

12:61-1.3 Powers of the Commissioner

(a) The Commissioner of Labor and Workforce Development or his or her representative is authorized and empowered to investigate any claim for wages due an employee. In conducting such investigation, the Commissioner or his or her representative may do the following:

1. Summon the defendant;
2. Subpoena witnesses;
3. Administer oaths; and
4. Take testimony.

(b) The Commissioner of Labor and Workforce Development or his or her duly authorized representative shall upon such proceeding make a decision or award when the sum in controversy, exclusive of costs, does not exceed \$10,000.^[1]

(c) Such decision or award as mentioned in (b) above shall be a judgment when a certified copy thereof is filed with the Superior Court.

(d) The Commissioner of Labor and Workforce Development is authorized to supervise payments of amounts due to employees.

(e) The Commissioner or his or her representative shall make the final decision of the Department.

(f) Appeals of the final decision of the Department shall be made to the Superior Court of New Jersey, Law Division pursuant to N.J.S.A. 34:11-63 and Rule 4:74-8 of the New Jersey Rules of Court.

^[1] P.L. 2006, c.24 increasing jurisdictional amounts to \$30,000 was signed June 22, 2006 and became effective September 20, 2006.

12:61-1.4 Administrative fees

(a) The employer shall pay the Commissioner an administrative fee on all payment of gross amounts due employees pursuant to N.J.S.A. 34:11-58. Although the administrative fee is not collected by the Commissioner until the actual payment of wages due, the duty to pay the fee attaches immediately upon the filing of a claim for wages.

(b) A schedule of fees are as follows:

1. First violation—10 percent of the amount due an employee;
2. Second violation—18 percent of the amount due an employee;
3. Third and subsequent violations—25 percent of the amount due an employee.

(c) All payments shall be made payable to the Commissioner of Labor and Workforce Development, Wage Collection Trust Fund by certified check or money order in a form suitable to the Commissioner of Labor and Workforce Development.

(d) All fees shall become part of the judgment as mentioned in 12:61-1.3(d).

12:61-1.5 Interest

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

12:61-1.6 Wage settlement agreements

(a) The terms of any settlement agreement entered into between an employer and employee(s) subsequent to the initiation of the wage collection process shall be conveyed to the Commissioner or his or her designee for review.

(b) The Commissioner or his or her designee shall thereupon determine if the settlement agreement comports with the applicable wage statutes and rules of the State of New Jersey.

(c) Any settlement agreement entered into in violation of the wage laws of the State shall be deemed by the Commissioner or his or her designee to be null, void and unenforceable.

CHAPTER 63

NOTIFICATION CONCERNING HEALTH BENEFITS PLANS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:63-1.1 Purpose
- 12:63-1.2 Scope
- 12:63-1.3 Definitions

SUBCHAPTER 2. EMPLOYER RESPONSIBILITIES

- 12:63-2.1 Notice of health benefits plan termination
- 12:63-2.2 Notice of health benefits plan change

SUBCHAPTER 3 INVESTIGATIONS

- 12:63-3.1 Right to enter and investigate

SUBCHAPTER 4 PENALTIES AND HEARINGS

- 12:63-4.1 Penalties
- 12:63-4.2 Hearings

SUBCHAPTER 1. GENERAL PROVISIONS

12:63-1.1 Purpose

The purpose of this chapter is to ensure that employees receive adequate notification from their employers of changes to or termination of employer-sponsored health benefits plans.

12:63-1.2 Scope

This chapter shall apply to employers and employees as those terms are defined within N.J.A.C. 12:63-1.3.

12:63-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Carrier" or "health insurer" means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner of Banking and Insurance, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company authorized to issue health insurance, a health maintenance organization, a hospital service corporation, medical service corporation and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. The term "carrier" or "health insurer" shall not include a joint insurance fund established pursuant to State law.

"Change" means any modification to a health benefits plan, including any modification to the level of benefits within an existing health benefits plan, whether that modification results in an increase or

diminution in the level of benefits, or a change in the identity of the carrier or health insurer, whether that change in carrier or health insurer results in an increase, diminution or zero-net-effect in the level of benefits.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development or his or her designee.

"Compliance Officer" means the person authorized by the Commissioner of the New Jersey Department of Labor and Workforce Development to conduct investigations under this chapter.

"Employee" means any person suffered or permitted to work by an employer.

"Employer" means any individual, partnership, association, joint-stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of the same, employing any person in this State. For the purposes of this chapter, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

"Establishment" means a single physical location where business is conducted or where services or operations are performed, such as a regional office, area office, installation or facility.

"Field site" means a physical location where an employer performs services or operations, but does not maintain an office or facility.

"Health benefits plan" means a health benefits plan as defined in *N.J.S.A. 26:2S-2*.

SUBCHAPTER 2. EMPLOYER RESPONSIBILITIES

12:63-2.1 Notice of health benefits plan termination

(a) Where an employer who provides a health benefits plan to its employees in this State is terminating the health benefits plan, the employer shall provide notice of the plan termination to all employees covered by the health benefits plan at least 30 calendar days prior to the date upon which coverage under the health benefits plan is scheduled to cease.

(b) Notice under (a) above shall:

1. Be in writing;
2. Include the effective date of the plan termination; and
3. Provide the name and contact information of an individual to whom the employee may direct questions pertaining to statutory rights to continuation of coverage.

(c) The employer shall deliver notice under (a) above in such a manner that there is verifiable proof that such delivery has occurred.

12:63-2.2 Notice of health benefits plan change

(a) Where an employer who provides a health benefits plan to its employees in this State is changing the health benefits plan, the employer shall provide notice of the plan change to all employees covered by the health benefits plan on or before the end of the first scheduled work day following receipt by the employer of notification from the health insurer that its employees will be covered by the new plan.

(b) Notice under (a) above shall:

1. Be in writing;
2. Include the effective date of the plan change;
3. Include a description of the plan change;
4. Include the name of the new health insurer, if any; and
5. Provide the name and contact information of an individual to whom the employee may direct questions regarding administration or management of the changed health benefits plan.

(c) The employer shall deliver notice under (a) above in such a manner that there is verifiable proof that such delivery has occurred.

SUBCHAPTER 3. INVESTIGATIONS

12:63-3.1 Right to enter and investigate

(a) The Compliance Officer shall enter without delay and at reasonable times any establishment or field site of any employer where work is performed by an employee if there is reason to believe that a violation of this chapter has occurred or is occurring and to conduct such investigations as the Compliance Officer shall deem to be necessary.

(b) Employers shall permit the Compliance Officer to question privately any employee or managerial executive and review all records relating to the requirements in N.J.A.C. 12:63-2.

SUBCHAPTER 4. PENALTIES AND HEARINGS

12:63-4.1 Penalties

(a) Any violations of any of the provisions of this chapter shall be punishable by a monetary penalty in the following amounts:

1. First violation - Not more than \$200.00 per employee covered by the health benefits plan; and
2. Second and subsequent violations - \$200.00 per employee covered by the health benefits plan.

(b) Penalties imposed under this section may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under the Penalty Enforcement Law, *N.J.S.A. 2A:58-1* et seq.

(c) The Commissioner may compromise and settle any claim for penalties under this section in such amount as the Commissioner may deem appropriate and equitable under all of the circumstances, including, but not limited to:

1. The past record of compliance with the provisions of the chapter by the person cited;
2. The degree of cooperation afforded to the Commissioner's representatives by the person cited in securing compliance with the provisions of the chapter; and
3. Whether the violation was willful in nature.

12:63-4.2**Hearings**

(a) No penalty shall be levied pursuant to N.J.A.C. 12:63-4.1 unless the alleged violator is provided with:

1. Notification of the violation;
2. Notification of the amount of the penalty to be imposed; and
3. An opportunity to request a formal hearing.

(b) A request for a formal hearing shall be made in writing and received by the Commissioner within 15 calendar days following the employer's receipt of the notice of violation.

(c) All hearings shall be conducted pursuant to the Administrative Procedures Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(d) If a hearing is not requested within the 15-day time limit set forth in (b) above, the notice of violation shall become a final order of the Commissioner.

(e) The alleged violator may request the initiation of a settlement conference at the time that the request for a formal hearing is made. If a settlement conference is requested, or the Department determines that a settlement conference would be useful, the settlement conference shall be scheduled and conducted by the Department within 30 days of the date upon which the Department receives the request for a formal hearing.

(f) If a settlement is not agreed upon, or no settlement conference is scheduled, a request for a formal hearing shall be transmitted to the Office of Administrative Law (OAL).

(g) Payment of the penalty shall be due when a final agency determination is issued or when a notification of violation becomes a final decision as the result of no appeal having been filed by the violator.

(h) All payments shall be made payable to the Department of Labor and Workforce Development in the form of a certified check or money order, or such other form as the Department deems suitable.

CHAPTER 64

PREVAILING WAGES FOR BUILDING SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:64-1.1 Purpose
- 12:64-1.2 Scope
- 12:64-1.3 Definitions

SUBCHAPTER 2 CONTRACTOR AND CONTRACTING STATE AGENCY RESPONSIBILITIES

- 12:64-2.1 Contract provisions
- 12:64-2.2 Multiple classes of work
- 12:64-2.3 Collective bargaining rights
- 12:64-2.4 Records

SUBCHAPTER 3. INSPECTIONS

- 12:64-3.1 Right to enter and inspect

SUBCHAPTER 4. VIOLATIONS, PENALTIES AND FEES

- 12:64-4.1 Violations of the Act
- 12:64-4.2 Administrative penalties
- 12:64-4.3 Administrative fees
- 12:64-4.4 Interest
- 12:64-4.5 Hearings
- 12:64-4.6 Discharge or discrimination against worker making complaint

SUBCHAPTER 1. GENERAL PROVISIONS

12:64-1.1 Purpose

The purpose of this chapter is to establish prevailing wage levels for workers employed or engaged by contractors 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 workers and to protect them and the contractors for whom they work from the effects of serious and unfair competition, which is based on low wage levels that are detrimental to efficiency and well-being.

12:64-1.2 Scope

(a) This chapter shall apply to contractors who have contracted with the State to furnish building services for any property or premises owned or leased by the State.

(b) This chapter shall apply to building services workers who are employed or engaged by contractors who have contracted with the State to furnish building services for any property or premises owned or leased by the State.

(c) This chapter shall apply to contracts to furnish building services for any property or premises owned or leased by the State that are entered into or renewed by the State on or after March 13, 2006.

(d) This chapter shall not apply to contracts to furnish building services for any property or premises owned or leased by the State that were entered into prior to March 13, 2006 and extended on or after March 13, 2006.

12:64-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the State Building Service Contracts Act, P.L. 2005, c. 379, *N.J.S.A. 34:11-56.58* et seq., and the rules promulgated in accordance therewith, this chapter.

"Building" includes everything within the outer walls of the building structure, as well as the exterior of those walls, and any front, rear or side portico attached to the building itself.

"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. "Building services" shall not include any maintenance work or other public work for which a contractor is required under the New Jersey Prevailing Wage Act, *N.J.S.A. 34:11-56.25* et seq., to pay the "prevailing wage," as that term is defined in *N.J.S.A. 34:11-56.26*.

"Building services worker" or "worker" means any individual employed or engaged by a contractor to perform building services, pursuant to a State contract, for any property or premises owned or leased by the State.

1. "Building services worker" or "worker" shall include full-time workers, part-time workers, temporary workers and independent contractors.

2. "Building services worker" or "worker" shall not include any employee, including a learner, apprentice, or student, whose earning capacity is impaired by age or physical or developmental disability or injury, to whom the Commissioner has issued 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.

"Certified payroll record" means a payroll record that is attested to by the contractor or the owner of the company doing business as the contractor, or a corporate officer of such company, or an authorized agent of the contractor.

"Commissioner" means the Commissioner of Labor and Workforce Development or his or her duly authorized designee.

"Contract" means those agreements entered into by the State for the principal purpose of furnishing building services. Where building space is leased by the State and the building owner furnishes general janitorial or other building services, the Act does not apply.

"Contracting State agency" means the particular State department, bureau, board, commission, agency or instrumentality, including a State institution of higher education, which enters into a contract with a contractor for the furnishing of building services for any property or premises owned or leased by the State.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof, that enters into a contract for the furnishing of building services for any property or premises owned or leased by the State and includes any subcontractor or lower-tier subcontractor of a contractor, as defined in this section.

"Department" means the Department of Labor and Workforce Development.

"Engineering" means the functions ordinarily performed by a "janitor" as that term is defined within the United States Department of Labor's Service Contract Act Directory of Occupations, namely, one who cleans and keeps in an orderly condition factory working areas and washrooms, or premises of an office, apartment house, or commercial or other establishment. Duties involve a combination of the following: sweeping, mopping or scrubbing, and polishing floors; removing chips, trash, and other refuse; dusting equipment, furniture, or fixtures; polishing metal fixtures or trimmings; providing supplies and minor maintenance services; and cleaning lavatories, showers, and restrooms. Excluded from the definition of the term "engineering" are workers who specialize in window washing, housekeeping staff who make beds and change linens as a primary responsibility, workers required to disassemble and assemble equipment in order to clean machinery, and workers who receive additional compensation to maintain sterile facilities or equipment. Also excluded from the definition of the term "engineering" are workers who maintain building infrastructure equipment and machinery, such as, but not limited to, heating, ventilation and air conditioning (HVAC), elevators, boilers, plumbing and electrical systems.

"Extended" means prolonging the duration of an existing contract as provided for and in accordance with the terms of that contract.

"Fringe benefit" means "fringe benefit" as that term is defined and used within the Federal Service Contract Act of 1965, *41 U.S.C. §§ 351 et seq.*, incorporated herein by reference, as amended and supplemented, and the regulations promulgated by the Secretary of Labor in accordance therewith, 29 CFR Part 4, incorporated herein by reference, as amended and supplemented.

"Leased by the State" means that not less than 55 percent 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.

"Monetary wage" means "monetary wage" as that term is defined and used within the Federal Service Contract Act of 1965, *41 U.S.C. §§ 351 et seq.*, incorporated herein by reference, as amended and supplemented, and the regulations promulgated by the Secretary of Labor in accordance therewith, 29 CFR Part 4, incorporated herein by reference, as amended and supplemented.

"Renewed" means a new contract entered into by the parties upon expiration or termination of an existing contract.

"Payroll record" means a form satisfactory to the Commissioner, wherein is shown worker information, such as name, address, social security number, and job classification, together with actual hourly rate of pay, actual daily, overtime and weekly hours worked in each job classification, gross pay, itemized deductions, and net pay paid to the worker; such record shall also include:

1. Any fringe benefits paid to approved plans, funds or programs on behalf of the worker; and
2. Fringe benefits paid in cash to the worker.

"Prevailing wage for building services" means the monetary wage and fringe benefit rates designated by the Commissioner based on the determinations made by the United States General Services

Administration pursuant to the Federal Service Contract Act of 1965, *41 U.S.C. §§ 351 et seq.*, for the appropriate localities and classifications of building services workers.

"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 of the State.

"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.

"Subcontractor" means any subcontractor or lower-tier subcontractor of a contractor.

SUBCHAPTER 2. CONTRACTOR AND CONTRACTING STATE AGENCY RESPONSIBILITIES

12:64-2.1 Contract provisions

(a) The contractor and the contracting State agency shall ensure that each contract entered into between a contractor and a contracting State agency to furnish building services for any property or premises owned or leased by the State shall contain the following provisions:

1. A provision setting forth the prevailing wages for building services that are applicable to the workers employed or engaged in the performance of the contract;
2. A provision stating that the workers employed or engaged in the performance of the contract shall be paid not less than the applicable prevailing wages for building services, as set forth in the contract;
3. A provision requiring annual adjustments to the prevailing wages for building services set forth in the contract; and
4. A provision stating that if any worker employed or engaged by the contractor to furnish building services under the contract has been paid less than the prevailing wages for building services set forth in the contract, the State Treasurer may terminate the contractor's right to proceed with the work and the contractor and its sureties shall be liable to the State for any excess costs occasioned by the termination.

(b) For the purpose of requiring annual adjustments to the prevailing wages for building services in a contract under (a)3 above, the contract shall require that those adjustments be made on the anniversary date of the effective date of the contract.

12:64-2.2 Multiple classes of work

(a) Where, during a given workweek, a worker performs work in multiple job classifications and two or more "prevailing wages for building services" are applicable to the separate classes of work performed, the contractor must pay the worker the highest of such "prevailing wages for building services" for all hours worked in the workweek, unless the contractor's records clearly delineate which hours of work for the given worker in the given workweek were spent engaged in each separate class of work.

(b) Where a worker is employed or engaged for a portion of a given workweek in work not subject to the Act, which work would otherwise be compensated at a rate lower than the "prevailing wage for building services" to which a worker is entitled for covered work performed during the workweek, the

contractor must pay the worker the higher "prevailing wage for building services" for all work performed during the workweek, including work not subject to the Act, unless the contractor's records clearly delineate which hours of work for the given worker in the given workweek were spent engaged in covered work and which hours were spent engaged in work not subject to the Act.

12:64-2.3 Collective bargaining rights

Where a collective bargaining agreement has established a higher rate of compensation than the applicable "prevailing wage for building services," the affected worker or workers shall receive the higher rate of compensation set forth in the collective bargaining agreement.

12:64-2.4 Records

(a) Each contractor shall keep an accurate payroll record for each worker performing building services pursuant to a State contract.

(b) Each contractor shall preserve the records maintained under (a) above for a period of two years from the date of payment of the monetary wages or fringe benefits.

(c) The records maintained under (a) above shall be open at all reasonable hours to inspection by the Commissioner and the Director of the Division of Purchase and Property within the Department of the Treasury.

SUBCHAPTER 3. INSPECTIONS

12:64-3.1 Right to enter and inspect

(a) The Commissioner shall have the authority to:

1. Inspect and copy books, registers, payrolls or other records that relate to or affect monetary wages, fringe benefits, hours and other conditions of work for building services workers;

2. Question, privately, any employee or managerial executive of the contractor, including building services workers, to determine whether they are aware of violations of the Act; and

3. Require contractors to submit written statements, including sworn statements, concerning monetary wages, fringe benefits, hours, names, addresses, and other information pertaining to the contractor's workers and their work as the Commissioner may deem necessary or appropriate.

(b) If, within 10 days of a request by the Commissioner, a contractor fails to file the material listed in (a)1 or 3 above, sworn as to its validity and accuracy, the Commissioner may direct the State Treasurer to withhold from the contractor up to 25 percent of the amount, not to exceed \$ 100,000, to be paid to the contractor under the terms of the contract pursuant to which the building services work is being performed.

1. When the contractor complies with the request for records, the Commissioner shall notify the State Treasurer, who shall immediately release the withheld funds.

(c) The contractor shall submit to the contracting State agency, in a form satisfactory to the Commissioner, a certified payroll record on each building services contract.

1. Such record shall be submitted each payroll period within 10 days of the payment of monetary wages or fringe benefits.

2. The contracting State agency shall receive, file, store and make available for inspection by the Commissioner during normal business hours the certified payroll records.

SUBCHAPTER 4. VIOLATIONS, PENALTIES AND FEES

12:64-4.1 Violations of the Act

(a) Violations of the Act shall occur when a contractor:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of the Act;

2. Fails to make, keep and preserve any records as required under the provisions of the Act;

3. Falsifies any such record;

4. Refuses to make any such record accessible to the Commissioner upon demand;

5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of the Act to the Commissioner on demand;

6. Pays or agrees to pay monetary wages or fringe benefits at a rate less than the prevailing wage for building services applicable under the Act;

7. Requests, demands, or receives, either for himself or herself or any other person, either before or after a worker is employed or engaged in the performance of building services at a specified rate of wages, the following:

i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her monetary wages, fringe benefits, or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining engagement or employment; or

8. Otherwise violates any provision of the Act or of any order issued under the Act.

(b) A contractor who violates any provision of the Act shall be guilty of a disorderly persons offense and shall, upon conviction therefor:

1. Be fined not less than \$ 100.00, nor more than \$ 1,000;

2. Be imprisoned for not less than 10, nor more than 90 days; or

3. Be subject to both the fine and imprisonment.

(c) Each week, in any day of which a worker is paid less than the rate applicable to that worker under the Act and each worker so paid, shall constitute a separate offense.

12:64-4.2 Administrative penalties

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:64-4.1, when the Commissioner finds that a contractor has violated the Act, the Commissioner may assess and collect administrative penalties in the amounts that follow:

1. First violation -- not more than \$ 250.00.
2. Second and subsequent violations -- not more than \$ 500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 working days following the receipt of the notice.

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15-working day period following receipt of the notice.

2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.

3. All penalties and fees, along with monetary wages and/or fringe benefits due, shall be paid within 30 days of the date of the final order. Failure to pay such monetary wages and/or fringe benefits, fees and/or penalties shall result in a judgment being obtained in a court of competent jurisdiction.

4. All payments shall be made payable to the "Commissioner of Labor and Workforce Development." All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation(s).

1. The seriousness of the violation;
2. The past history of previous violations by the contractor;
3. The good faith of the contractor;
4. The size of the contractor's business; and
5. Any other factors which the Commissioner deems to be appropriate in determining the penalty to be assessed.

12:64-4.3 Administrative fees

(a) The Commissioner may supervise the payment of amounts due to workers under the Act, and the contractor may be required to make these payments to the Commissioner to be held in a special account in trust for the worker, and paid on order of the Commissioner directly to the worker or workers affected.

(b) The contractor shall pay the Commissioner an administrative fee on all payments due to workers pursuant to *N.J.S.A. 34:11-56.65*.

(c) A schedule of the administrative fees is set forth in Table 4.3(c) below:

Table 4.3(c)

Schedule of Administrative Fees

1. First violation -- 10 percent of the amount of any payment made to the Commissioner pursuant to the Act.

2. Second violation -- 18 percent of the amount of any payment made to the Commissioner pursuant to the Act.

3. Third and subsequent violations -- 25 percent of the amount of any payment made to the Commissioner pursuant to the Act.

12:64-4.4 Interest

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When a contractor has unreasonably delayed compliance with an order of the Commissioner to pay monetary wages or fringe benefits owed to a worker;

2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the contractor over an extensive period of time; or

3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to a worker shall be calculated at the annual rate as set forth in *New Jersey Court Rules, R.4:42-11*.

12:64-4.5 Hearings

(a) No assessment of monetary wages, fringe benefits, fees or penalties shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the monetary wages, fringe benefits, fees and/or penalties, and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice of assessment. All contested cases shall be heard pursuant to the Administrative Procedures Act, *N.J.S.A. 52:14B-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*. The filing of a request for a hearing regarding monetary wages, fringe benefits, fees or penalties shall not preclude the Commissioner from pursuing other remedies under the Act.

(b) All requests for a hearing shall be reviewed by the Office of Wage and Hour Compliance to determine if the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached or if the review indicates that no settlement conference is warranted, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(e) If the contractor, or a designated representative thereof, fails to appear at a requested hearing, the Commissioner may, for good cause shown, reschedule a hearing.

(f) If the Commissioner does not authorize such a rescheduled hearing, then the Commissioner shall issue a final agency determination.

(g) Payment of the monetary wages, fringe benefits, fees and/or penalties is due when a final agency determination is issued.

(h) Upon final determination, the monetary wages, fringe benefits, fees and penalties may be recovered with costs in a summary proceeding commenced by the Commissioner.

12:64-4.6 Discharge or discrimination against worker making complaint

(a) A contractor who discharges or in any other manner discriminates against any worker because such worker has made any complaint to the contractor, to the contracting State agency, the State Treasurer, or to the Commissioner that the worker has not been paid monetary wages or fringe benefits in accordance with the provisions of the Act, or because such worker has caused to be instituted, or is about to cause to be instituted, any proceeding under or related to the Act, or because such worker has testified or is about to testify in any such proceeding, shall be guilty of a disorderly persons offense and shall, upon conviction therefore, be fined not less than \$ 100.00, nor more than \$ 1,000.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner may under *N.J.S.A. 34:11-56.66* assess and collect administrative penalties as provided for in N.J.A.C. 12:64-4.2.

CHAPTER 65

CONSTRUCTION INDUSTRY INDEPENDENT CONTRACTOR ACT RULES

SUBCHAPTER 1. STOP-WORK ORDERS

- 12:65-1.1. Purpose
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SUBCHAPTER 1. STOP-WORK ORDERS

12:65-1.1. Purpose

The purpose of this subchapter is to set forth both the standard and procedure for the issuance by the Commissioner of a stop-work order and the release of same under N.J.S.A. 34:20-7c through 7f.

12:65-1.2. Scope

The provisions of this subchapter shall apply to each "employer" as that term is defined in N.J.A.C. 12:65-1.3.

12:65-1.3. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means N.J.S.A. 34:20-1 et seq., the Construction Industry Independent Contractor Act.

"Commissioner" means the Commissioner of Labor and Workforce Development or his or her designee.

"Department" means the Department of Labor and Workforce Development.

"Employer" means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who is primarily engaged in the business of, or enters into a contract for, making improvements to real property and includes any subcontractor or lower tier contractor.

"Employment relationship" or "employment" means "employment" as that term is defined within N.J.S.A. 34:20-4 (commonly referred to as "the ABC Test").

"Final order" means either a final administrative determination of the Commissioner issued following adjudication of a matter as a contested case pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, or where the Department has made a finding regarding a violation of law or rule and/or regarding the levying of a penalty pursuant to law or rule, has notified the violator of same and where the violator has either expressly waived the

right to a hearing or has waived the right to a hearing by virtue of having failed to request same within the appropriate time limit established by either law or rule.

"Properly classify" means that with regard to an individual with whom an employer has an employment relationship the employer keeps records, pays wages, benefits, taxes and other contributions required by an employer relative to those with whom the employer has an employment relationship under N.J.S.A. 34:11-56.25 et seq. (the New Jersey Prevailing Wage Act), N.J.S.A. 43:21-1 et seq. (the Unemployment Compensation Law), N.J.S.A. 43:21-25 et seq. (the Temporary Disability Benefits Law), N.J.S.A. 54A:1-1 et seq. (the New Jersey Gross Income Tax Act), and N.J.S.A. 34:11-4.1 et seq. (New Jersey Wage Payment law), or N.J.S.A. 34:11-56a et seq. (the New Jersey Wage and Hour Law).

"Violation of the provisions of the Act" means that a final order(s) has been issued by the Commissioner indicating that the employer has failed to properly classify an individual and, with regard to that individual, that the employer has failed to pay wages, benefits, taxes or other contributions required by N.J.S.A. 34:11-56.25 et seq. (the New Jersey Prevailing Wage Act), N.J.S.A. 43:21-1 et seq. (the Unemployment Compensation Law), N.J.S.A. 43:21-25 et seq. (the Temporary Disability Benefits Law), N.J.S.A. 54A:1-1 et seq. (the New Jersey Gross Income Tax Act), and N.J.S.A. 34:11-4.1 et seq. (New Jersey Wage Payment law), or N.J.S.A. 34:11-56a et seq. (the New Jersey Wage and Hour Law).

12:65-1.4. Stop-work order--second violation of the provisions of the Act

(a) For a second violation of the provisions of the Act, the Commissioner shall, within 72 hours of the violation of the provisions of the Act, issue a stop-work order requiring the cessation of all business operations of the violator at every site at which the violation of the provisions of the Act occurred.

(b) The stop-work order under (a) above shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite.

(c) The stop-work order under (a) above shall remain in effect until the Commissioner issues an order releasing the stop-work order under N.J.A.C. 12:65-1.6.

12:65-1.5. Stop-work order--third violation or subsequent violations of the provisions of the Act

(a) For a third or subsequent violation of the provisions of the Act, the Commissioner shall, within 72 hours of the violation of the provisions of the Act, issue a stop-work order requiring the cessation of all business operations of the violator.

(b) The stop-work order in (a) above shall take effect when served upon the employer.

(c) The stop-work order in (a) above shall remain in effect until the Commissioner issues an order releasing the stop-work order under N.J.A.C. 12:65-1.6.

12:65-1.6. Release of stop-work order

(a) The Commissioner shall issue an order releasing the stop-work order upon a showing by the employer against whom the stop-work order has been issued under either N.J.A.C. 12:65-1.4 or 1.5 that:

1. The employer against whom the stop-work order has been issued is properly classifying the individual(s); and

2. The employer against whom the stop-work order has been issued has paid any penalty assessed against it by the Department under the Act.

(b) As a condition of release of a stop-work order under this section, the Commissioner may require the employer against whom the stop-work order had been issued to file with the Department periodic reports, the requirements of which are set forth in N.J.A.C. 12:65-1.7, for a probationary period of two years.

12:65-1.7. Periodic reports—requirements

(a) Where the Commissioner has conditioned the release of a stop-work order upon the filing of periodic reports for a two-year probationary period under N.J.A.C. 12:65-1.6(b), the periodic report shall consist of the following, which shall be filed by the employer with the Division of Wage and Hour Compliance, within the Department, on a quarterly basis pursuant to the schedule set forth at N.J.A.C. 12:16-5.2(a):

1. A copy of the payroll records required to be kept by each employer under N.J.A.C. 12:16-2.1.

If you need this document in Braille or large print, call (609) 292-2305. TTY users can contact this department through New Jersey Relay: 7-1-1.



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