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VOLUME 39, ISSUE 1

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**RULE PROPOSALS**

**LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF WAGE AND HOUR COMPLIANCE**

*39 N.J.R. 18(a)*

**Proposed New Rules: N.J.A.C. 12:64**

**Prevailing Wages for Building Services**

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:11-56.58* et seq., specifically 34:11-56.69.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2007-8.

A **public hearing** on the proposed new rules will be held on the following date at the following location:

Thursday, February 1, 2007  
10:00A.M. to 12:00 Noon  
New Jersey Department of Labor and Workforce Development  
John Fitch Plaza  
13th Floor Auditorium  
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by March 3, 2007 to:

David Fish, Regulatory Officer  
Office of Legal and Regulatory Services  
P.O. Box 110, 13th Floor  
Trenton, New Jersey 08625-0110  
Fax: (609) 292-8246

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The agency proposal follows:

**Summary**

The Department is proposing new rules at N.J.A.C. 12:64 in order to implement *N.J.S.A. 34:11-56.58* through 56.70 (the State Building Service Contracts Act), which establishes prevailing wage levels for workers employed or engaged by contractors furnishing building services for any property or premises owned or leased by the State.

A summary of the proposed new subchapters follows:

N.J.A.C. 12:64-1 would set forth general provisions which apply to Chapter 64, including the purpose and scope of the chapter, and definitions of the terms used throughout the chapter. The proposed definitions for the terms "fringe benefit" and "monetary wage" would consist of cross references to the Federal Service Contract Act of 1965, *41 U.S.C. § § 351 et seq.*, incorporated within the chapter by reference, and the regulations promulgated by the Secretary of Labor in accordance therewith, 29 CFR Part 4, incorporated within the chapter by reference. The meaning of each term would be identical to the meaning attributed to it in by the Federal government in the aforementioned law and regulations.

N.J.A.C. 12:64-2 would address the responsibilities of contractors and contracting State agencies under the State Building Service Contracts Act, P.L. 2005, c. 379, *N.J.S.A. 34:11-56.58 et seq.* Specifically, the subchapter would require the inclusion of certain provisions within a contract between a State contracting agency and a contractor to furnish building services for a property or premises owned or leased by the State. Each of the required contract provisions under N.J.A.C. 12:64-2.1 would reflect a requirement contained within the State Building Service Contracts Act. In addition, the subchapter would address the manner in which contractors are required to compensate workers who perform multiple classes of work, the manner in which contractors are required to compensate workers who are covered by a collective bargaining agreement, the type of records that contractors are required to keep with regard to workers performing building services pursuant to a State contract, and the manner in which those records are to be kept. Each of these requirements would be consistent with the State Building Service Contracts Act.

N.J.A.C. 12:64-3 would address the Department's right to inspect records of the contractor, privately question employees or managerial executives of the contractor, including building services workers, and require the contractor 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. Subchapter 3 would also address the sanctions that may be imposed against a contractor who refuses to file material requested of the contractor pursuant to the Commissioner's statutory inspection powers. Each of these requirements would be consistent with the State Building Service Contracts Act.

N.J.A.C. 12:64-4 would address what constitutes a violation of the State Building Service Contracts Act by a contractor. The subchapter would also address the levying of penalties by the Department for violations of the State Building Service Contracts Act or N.J.A.C. 12:64 and would set forth the procedures to be followed when an alleged violator requests a formal hearing with regard to the imposition of a penalty. Furthermore, Subchapter 4 would address the remitting of administrative fees to the Department by contractors on all payments due to workers, pursuant to *N.J.S.A. 34:11-56.65*, and would also address the payment by contractors, under certain circumstances, of interest on awards of back pay. Finally, N.J.A.C. 12:64-4.6 would address the situation where a contractor discharges, or in any other manner discriminates against a worker because that worker has made a complaint to the contractor, to the contracting State agency, to the State Treasurer or to the Commissioner of Labor and Workforce Development, that he or she has not been paid monetary wages or fringe benefits in accordance with the provisions of the State Building Service Contracts Act.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

### **Social Impact**

The proposed new rules at N.J.A.C. 12:64 would have a positive social impact in that they would assist the Department in its efforts to ensure that workers receive the wages and benefits to which they are entitled under the State Building Service Contracts Act. The proposed new chapter would also provide employers, workers and other concerned parties with a ready reference to mechanisms by which the Department will be enforcing the State Building Service Contracts Act. It is anticipated that the proposed new chapter would increase the potential for workers to receive the wages and benefits to which they are entitled by law for services performed and, thereby, enable them to maintain a reasonable standard of living for themselves and their families.

### **Economic Impact**

The proposed new rules at N.J.A.C. 12:64 would have a positive economic impact upon affected building services workers and their families in that the rules would assist the Department in ensuring that such workers are paid the prevailing wage levels established under the State Building Service Contracts Act. According to the Legislative Fiscal Es-

timate [Second Reprint] for Assembly Bill No. 4161 (which ultimately became P.L. 2005, c. 379, the State Building Service Contracts Act),

Information concerning building service contracts, collected from the State Division of Purchase and Property website contract listings, indicates that approximately 500 workers may be affected by the bill. It may be assumed that approximately 75 percent of these workers are part-time and 25 percent are full-time and the majority are currently paid the \$ 6.15 hourly minimum wage [since the publication of this fiscal note, the hourly minimum wage has increased from \$ 6.15 to \$ 7.15]. The average hourly federal prevailing wage rate for New Jersey is \$ 13.16 (it should be noted that the prevailing wage fluctuates by county and that this average is based on all county wage rates).

As to the economic impact of the proposed new chapter upon contractors who furnish building services for properties and premises owned or leased by the State and, further, as to the economic impact on the State, which will ultimately bear the burden of paying more for building services contracts so as to enable contractors to compensate building services workers at the prevailing wage rates required by law, the Office of Legislative Services estimated the cost of the State Building Service Contracts Act "at approximately \$ 2.3 million to \$ 3 million in the first year, \$ 5.3 million to \$ 7.5 million in the second year and \$ 7 million to \$ 10 million in the third year." Legislative Fiscal Estimate [Second Reprint] for Assembly Bill No. 4161 (which ultimately became P.L. 2005, c. 379). Under N.J.A.C. 12:64-4, contractors would also be liable for penalties when it has been determined that they have violated the State Building Service Contractors Act.

Each of the economic impacts listed above derive primarily from the State Building Service Contracts Act, itself, and only secondarily from the proposed new chapter. That is, the State Building Service Contracts Act requires that building services workers be paid the prevailing wage. The Act also sets forth the manner in which the prevailing wage for building services is to be calculated. The proposed new chapter reflects this statutory mandate and provides the specific mechanism by which the Department will enforce the State Building Service Contracts Act.

Although affected contractors must bear the cost of paying the prevailing wage rates required by law, the proposed new chapter would have a positive economic impact on building services contractors in that it would provide clarification with regard to certain central issues addressed by the law, thereby fostering a better understanding of the Act. This better understanding possessed by contractors will enable them to submit appropriate bids for covered work and, thereby, increase the chances that they will be awarded contracts to furnish building services. Moreover, having a better understanding of the Act will enable contractors to avoid running afoul of the Act's requirements and, thereby, incur fewer administrative penalties.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal standards or requirements. Specifically, the proposed new rules are governed by *N.J.S.A. 34:11-56.58* et seq. This State law uses the wage and benefit rate determinations made by the Federal General Services Administration, pursuant to the Federal "Service Contract Act of 1965," *41 U.S.C. § § 351* et seq., as a benchmark for the determination by the Commissioner of the New Jersey Department of Labor and Workforce Development of the State prevailing wage for building services. The Federal "Service Contract Act of 1965," itself, however applies only to workers furnishing services under contract with the Federal government. The link between the State and Federal schemes created by the State statute serves the sole purpose of providing the Commissioner of Labor and Workforce Development with an established mechanism for the calculation of prevailing wage rates for building services workers. It does not equate to the proposed new rules being "subject to a Federal standard or requirement."

### **Jobs Impact**

The proposed new rules would have no impact on either the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed new rules would have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The proposed new rules would impose reporting, recordkeeping and compliance requirements on small businesses, as that term is defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. All businesses, regardless of size, that furnish building services for any property or premises owned or leased by the State, would be required to include certain provisions in their contracts for such services, would be required to pay their workers the State prevailing wage rates for building services determined by the Commissioner of Labor and Workforce Development, would be required to maintain accurate payroll records for each worker performing building services pursuant to a State contract, would be required to allow the Department to inspect their records and question their employees in order to determine whether a violation or violations of the State Building Service Contracts Act or of this chapter have occurred, and would be required to remit penalties and fees where the Department has found that such violations did occur. Pursuant to the State Building Service Contracts Act, these requirements are imposed on all contractors, regardless of size, who have contracted with the State to furnish building services for any property or premises owned or leased by the State. In order to protect the interests of workers, the Department cannot provide exemptions for small businesses, since to do so would be inconsistent with the law and would jeopardize the well-being of the very workers sought to be protected by the State Building Service Contracts Act. Employers should not require outside professional services to comply with the proposed new rules.

### **Smart Growth Impact**

The proposed new rules would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed new rules follows:

## CHAPTER 64 PREVAILING WAGES FOR BUILDING SERVICES

### 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 daily, routine maintenance of the physical plant of a building including, but not limited to, boilers, heating, ventilation, and air conditioning (HVAC) systems, electrical service and plumbing. Excluded from the definition of the term "engineering" is work under any contract for construction, reconstruction, demolition, alteration or repair of public buildings or public works, including painting or decorating, which work is covered by the New Jersey Prevailing Wage Act, *N.J.S.A. 34:11-56.25* et seq.

"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.

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