

STATE OF NEW YORK

5679

2019-2020 Regular Sessions

IN SENATE

May 10, 2019

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to additional information provided to employees on public work contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (e) of subdivision 3 of section 220 of the labor
2 law, as amended by chapter 7 of the laws of 2008, is amended to read as
3 follows:

4 (e) The commissioner shall ensure that all supplements due under this
5 article shall be paid to or on behalf of an employee. (i) The commis-
6 sioner shall require proof that the pension plan for which any supple-
7 ment has been paid is qualified as a bona fide plan by the United States
8 internal revenue service. Acceptable proof shall be shown by submission
9 of a determination letter issued by the United States internal revenue
10 service. (ii) The commissioner shall also require any contractor or
11 subcontractor who provides any supplement which is part of a fund, plan
12 or program to furnish to the commissioner proof that the supplement is
13 provided through a fund, plan or program and the amount contributed on
14 the employees' behalf to such fund, plan or program.

15 § 2. Subparagraphs (ii) and (iii) of paragraph a of subdivision 3-a of
16 section 220 of the labor law, subparagraph (ii) as separately amended by
17 chapters 7 and 63 of the laws of 2008 and subparagraph (iii) as amended
18 by chapter 8 of the laws of 2008, are amended to read as follows:

19 (ii) The contractor and every sub-contractor on public works contracts
20 shall post in a prominent and accessible place on the site where the
21 work is performed a legible statement of all wage rates and supplements
22 as specified in the contract to be paid or provided, as the case may be,
23 for the various classes of mechanics, workers, or laborers employed on
24 the work. Such posted statement shall be written in plain English and
25 titled, in lettering no smaller than two inches in height and two inches

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD06045-01-9

1 in width, with the phrase "Prevailing Rate of Wages". Such posted state-
2 ment shall be constructed of materials capable of withstanding adverse
3 weather conditions. The contractor and every sub-contractor shall notify
4 all laborers, workers or mechanics in their employ in writing of the
5 prevailing rate of wage and supplements for their particular job classi-
6 fication. Such notification shall be given to every laborer, worker or
7 mechanic upon hire, on their first pay stub and with every pay stub
8 thereafter, and shall set forth the amounts paid per hour for each
9 supplement provided for his or her particular job classification in
10 accordance with the schedules determined by the fiscal officer. Such
11 notification shall be provided in English and in the language identified
12 by each employee as the primary language of such employee. At the begin-
13 ning of performance of every public works contract, and with the first
14 paycheck after July first of each year, the contractor and every sub-
15 contractor shall notify all laborers, workers, and mechanics in their
16 employ in writing, in English and in the language identified by each
17 employee as the primary language of such employee, in accordance with
18 such form as is prescribed by the fiscal officer, of the telephone
19 number and address for the fiscal officer. The notice shall also inform
20 each laborer, worker, or mechanic of his or her right to contact the
21 fiscal officer or some other representative if, at any time while work-
22 ing for the public works contractor or sub-contractor, he or she does
23 not receive the proper prevailing rate of wages or supplements for his
24 or her particular job classification that he or she is entitled to
25 receive under the contract. If after investigation the fiscal officer
26 finds that a contractor or sub-contractor has (1) failed to post or
27 provide any notice required under this subdivision, including having
28 failed to provide any such notice in the language identified by an
29 employee as the primary language of such employee, (2) failed to set
30 forth the prevailing wage or the breakdown of supplements on the pay
31 stub, (3) [~~wilfully~~] willfully posted the incorrect prevailing wage, or
32 (4) [~~wilfully~~] willfully set forth the incorrect prevailing wage or the
33 amounts paid per hour for each supplement on the pay stub, the fiscal
34 officer[~~r~~] shall, by an order which shall describe particularly the
35 nature of the alleged violation, assess the contractor or sub-contractor
36 a civil penalty of not more than fifty dollars upon the first finding of
37 a violation, two hundred fifty dollars upon the second finding of a
38 violation, and five hundred dollars for each subsequent violation. In
39 assessing the amount of the penalty, the fiscal officer shall give due
40 consideration to the size of the employer's business, the good faith of
41 the employer, and the gravity of the violation.

42 (iii) The contractor and every sub-contractor shall keep original
43 payrolls or transcripts thereof, subscribed and sworn to or affirmed by
44 him or her as true under the penalties of perjury, setting forth the
45 names and addresses and showing for each worker, laborer, or mechanic
46 the hours and days worked, the occupations worked, the hourly wage rates
47 paid and the supplements paid or provided. Such payrolls or transcripts
48 thereof shall also set forth the amounts paid per hour for each supple-
49 ment provided in accordance with the schedules determined by the fiscal
50 officer. Where the contractor or sub-contractor maintains no regular
51 place of business in New York state and where the amount of the contract
52 is in excess of twenty-five thousand dollars such payrolls shall be kept
53 on the site of the work. All other contractors or sub-contractors shall
54 produce within five days on the site of the work and upon formal order
55 of the commissioner or his or her designated representative such
56 original payrolls or transcripts thereof, subscribed and sworn to or

1 affirmed by him or her as true under the penalties of perjury, as may be
2 deemed necessary to adequately enforce the provisions of this article.
3 Every contractor, and sub-contractor, shall submit to the department of
4 jurisdiction within thirty days after issuance of its first payroll, and
5 every thirty days thereafter, a transcript of the original payroll
6 record, as provided by this article, subscribed and sworn to or affirmed
7 as true under the penalties of perjury.

8 Every contractor and subcon-
9 tractor shall submit to the commissioner, and to the fiscal officer,
10 when the fiscal officer is a city comptroller or other analogous offi-
11 cer, within thirty days of its first payroll, and annually thereafter, a
12 transcript of the original payroll record, subscribed and sworn to or
13 affirmed as true under the penalties of perjury, including, documenta-
14 tion of each fund, plan, or program for which any supplement has been
15 paid or provided. Such transcripts and additional information shall be
16 provided on a form promulgated by the department. Any person who
17 ~~[wilfully]~~ willfully fails to file such payroll records with the depart-
18 ment of jurisdiction, commissioner, or the fiscal officer shall be guil-
19 ty of a class E felony. In addition, any person who ~~[wilfully]~~ willfully
20 fails to file such payroll records within the time specified in this
21 subparagraph shall be subject to a civil penalty of up to one thousand
22 dollars per day.

23 § 3. Subdivision 6 of section 220 of the labor law, as amended by
24 chapter 230 of the laws of 1984, is amended to read as follows:

25 6. The fiscal officer~~[r]~~ may, and on the written request of any inter-
26 ested person shall, require any person or corporation performing such
27 public work to file with such fiscal officer schedules of the supple-
28 ments to be provided and wages to be paid to such laborers, workmen or
29 mechanics, including information regarding the amounts to be paid per
30 hour for each supplement provided for each particular job classifica-
31 tion. The fiscal officer may, and on the written request of any inter-
32 ested party shall, require and furnish proof of any supplements provided
33 or amounts paid to or on behalf of employees in satisfaction of the
34 obligation to provide supplements under this section. Any such person or
35 corporation shall, within ten days after the receipt of written notice
36 of such requirement, file with the fiscal officer such schedules of
37 wages and supplements. An employer may contest a determination by the
38 fiscal officer under paragraphs a and c of subdivision five of this
39 section. The employer must allege and prove by competent evidence, that
40 the actual percentage of workers, laborers or mechanics is below the
41 required thirty per centum and during the pendency of any such contest
42 and until final determination thereof, the work in question shall
43 proceed under the rate established by the fiscal officer.

44 § 4. This act shall take effect on the one hundred eightieth day after
45 it shall have become a law and shall only apply to public work contracts
entered into on or after such effective date.