

STATE OF NEW YORK

7307

IN SENATE

January 17, 2020

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

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:

Section 1. Paragraph (a) of subdivision 1 and subdivisions 3 and 4 of section 195 of the labor law, paragraph (a) of subdivision 1 as amended by chapter 537 of the laws of 2014, and subdivisions 3 and 4 as amended by chapter 564 of the laws of 2010, are amended to read as follows:

(a) provide his or her employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring, a notice containing the following information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; prevailing wage supplements, if any, claimed as part of any prevailing wage or similar requirement pursuant to article eight of this chapter; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary. Where such prevailing wage supplements are claimed, the notice shall identify, for each type of supplement claimed: (i) the hourly rate claimed; (ii) the type of supplement, including when applicable, but not limited to, pension or healthcare; (iii) the names and addresses of the person or entity providing such supplement; and (iv) the agreement, if any, requiring or providing for such supplement, together with information on how copies of such agreements or summaries thereof may be obtained. Each time the employer provides such notice to an employee, the employer shall obtain from the employee a signed and dated written acknowledgement, in English and in the primary language of

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

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1 the employee, of receipt of this notice, which the employer shall
2 preserve and maintain for six years. Such acknowledgement shall include
3 an affirmation by the employee that the employee accurately identified
4 his or her primary language to the employer, and that the notice
5 provided by the employer to such employee pursuant to this subdivision
6 was in the language so identified or otherwise complied with paragraph
7 (c) of this subdivision, and shall conform to any additional require-
8 ments established by the commissioner with regard to content and form.

9 For all employees who are not exempt from overtime compensation as
10 established in the commissioner's minimum wage orders or otherwise
11 provided by New York state law or regulation, the notice must state the
12 regular hourly rate and overtime rate of pay;

13 3. furnish each employee with a statement with every payment of wages,
14 listing the following: the dates of work covered by that payment of
15 wages; name of employee; name of employer; address and phone number of
16 employer; rate or rates of pay and basis thereof, whether paid by the
17 hour, shift, day, week, salary, piece, commission, or other; gross
18 wages; deductions; allowances, if any, claimed as part of the minimum
19 wage; prevailing wage supplements, if any, claimed as part of any
20 prevailing wage or similar requirement pursuant to article eight of this
21 chapter; and net wages. Where such prevailing wage supplements are
22 claimed, the statement shall either: (i) identify the type of each
23 supplement claimed and the hourly rate for each; or (ii) be accompanied
24 by a copy of the applicable notice required under subdivisions one and
25 two of this section. For all employees who are not exempt from overtime
26 compensation as established in the commissioner's minimum wage orders or
27 otherwise provided by New York state law or regulation, the statement
28 shall include the regular hourly rate or rates of pay; the overtime rate
29 or rates of pay; the number of regular hours worked, and the number of
30 overtime hours worked. For all employees paid a piece rate, the state-
31 ment shall include the applicable piece rate or rates of pay and number
32 of pieces completed at each piece rate. Upon the request of an employee,
33 an employer shall furnish an explanation in writing of how such wages
34 were computed;

35 4. establish, maintain and preserve for not less than six years
36 contemporaneous, true, and accurate payroll records showing for each
37 week worked the hours worked; the rate or rates of pay and basis there-
38 of, whether paid by the hour, shift, day, week, salary, piece, commis-
39 sion, or other; gross wages; deductions; allowances, if any, claimed as
40 part of the minimum wage; prevailing wage supplements, if any, claimed
41 as part of any prevailing wage or similar requirement pursuant to arti-
42 cle eight of this chapter; and net wages for each employee. Where such
43 prevailing wage supplements are claimed, the payroll records shall
44 include copies of all notices required by subdivisions one and two of
45 this section. For all employees who are not exempt from overtime compen-
46 sation as established in the commissioner's minimum wage orders or
47 otherwise provided by New York state law or regulation, the payroll
48 records shall include the regular hourly rate or rates of pay, the over-
49 time rate or rates of pay, the number of regular hours worked, and the
50 number of overtime hours worked. For all employees paid a piece rate,
51 the payroll records shall include the applicable piece rate or rates of
52 pay and number of pieces completed at each piece rate;

53 § 2. Paragraph (e) of subdivision 3 of section 220 of the labor law,
54 as amended by a chapter of the laws of 2019, amending the labor law
55 relating to additional information provided to employees on public work

1 contracts, as proposed in legislative bills numbers S. 5679-A and A.
2 2101-A, is amended to read as follows:

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

14 § 3. Subparagraphs (ii) and (iii) of paragraph a of subdivision 3-a of
15 section 220 of the labor law, as amended by a chapter of the laws of
16 2019, amending the labor law relating to additional information provided
17 to employees on public work contracts, as proposed in legislative bills
18 numbers S. 5679-A and A. 2101-A, 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
26 in width, with the phrase "Prevailing Rate of Wages". Such posted state-
27 ment shall be constructed of materials capable of withstanding adverse
28 weather conditions. The contractor and every sub-contractor shall notify
29 all laborers, workers or mechanics in their employ in writing of the
30 prevailing ~~[rate]~~ rates of ~~[wage]~~ wages and supplements for their
31 particular job classification. Such notification shall be given to every
32 laborer, worker or mechanic upon hire, ~~[on]~~ with their first pay stub
33 and ~~[with]~~ every pay stub thereafter~~, and shall set forth the amounts~~
34 ~~paid per hour for each supplement provided for his or her particular job~~
35 ~~classification in accordance with the schedules determined by the fiscal~~
36 ~~officer. Such notification shall be provided in English and in the~~
37 ~~language identified by such laborer, worker, or mechanic as his or her~~
38 ~~primary language.]~~ At the beginning of performance of every public works
39 contract, and with the first paycheck after July first of each year, the
40 contractor and every sub-contractor shall notify all laborers, workers,
41 and mechanics in their employ in writing, in English and in the language
42 identified by each laborer, worker, and mechanic as his or her primary
43 language, in accordance with such form as is prescribed by the fiscal
44 officer, of the telephone number and address for the fiscal officer. The
45 notice shall also inform each laborer, worker, or mechanic of his or her
46 right to contact the fiscal officer or some other representative if, at
47 any time while working for the public works contractor or sub-contrac-
48 tor, he or she does not receive the proper prevailing rate of wages or
49 supplements for his or her particular job classification that he or she
50 is entitled to receive under the contract. If after investigation the
51 fiscal officer finds that a contractor or sub-contractor has (1) failed
52 to post ~~[or provide any notice]~~ the statement required under this
53 ~~[subdivision, including having failed to provide any such notice in the~~
54 ~~language identified by any laborer, worker, or mechanic as his or her~~
55 ~~primary language]~~ subparagraph, (2) failed to ~~[set forth the prevailing~~
56 ~~wage or the breakdown of supplements on the pay stub]~~ provide any

1 notification to laborers, workers and mechanics as required under this
2 subparagraph, (3) willfully posted the incorrect prevailing ~~[wage]~~ wages
3 and supplements, or (4) willfully set forth the incorrect prevailing
4 wage or ~~[the amounts paid per hour for each]~~ supplement ~~[on the]~~ with
5 every pay stub, the fiscal officer shall, by an order which shall
6 describe particularly the nature of the alleged violation, assess the
7 contractor or sub-contractor a civil penalty of not more than fifty
8 dollars upon the first finding of a violation, two hundred fifty dollars
9 upon the second finding of a violation, and five hundred dollars for
10 each subsequent violation. In assessing the amount of the penalty, the
11 fiscal officer shall give due consideration to the size of the employ-
12 er's business, the good faith of the employer, and the gravity of the
13 violation.

14 The fiscal officer shall prepare templates that comply with the
15 notification requirements of this subparagraph. Each such template shall
16 be dual-language, including English and one additional language. The
17 fiscal officer shall determine, in his or her discretion, which
18 languages to provide in addition to English, based on the size of the
19 New York state population that speaks each language and any other factor
20 that the fiscal officer shall deem relevant. All such templates shall be
21 posted on the fiscal officer's website and made available for download-
22 ing by contractors and subcontractors. When any laborer, worker, or
23 mechanic identifies his or her primary language and a template is not
24 made available by the fiscal officer in that language, the contractor or
25 subcontractor shall comply with this subparagraph by providing such
26 laborer, worker, or mechanic an English-language notice or acknowledg-
27 ment. A contractor or subcontractor shall not be penalized for errors or
28 omissions in the non-English portions of any notice provided by the
29 fiscal officer. The fiscal officer shall have discretion to waive or
30 alter the notification requirements of this subparagraph for temporary
31 help firms as defined in section nine hundred sixteen of this chapter.

32 (iii) The contractor and every sub-contractor shall keep original
33 payrolls or transcripts thereof, subscribed and sworn to or affirmed by
34 him or her as true under the penalties of perjury, setting forth the
35 names and addresses and showing for each worker, laborer, or mechanic
36 the hours and days worked, the occupations worked, the hourly wage rates
37 paid and the supplements paid or provided. Such payrolls or transcripts
38 thereof shall ~~[also set forth the amounts paid per hour for each supple-~~
39 ~~ment provided in accordance with the schedules determined by the fiscal~~
40 ~~officer]~~ be accompanied by a copy of each notice required under subdivi-
41 sion one or two of section one hundred ninety-five of this chapter for
42 every laborer, worker or mechanic, which shall be subscribed and sworn
43 to or affirmed as true under penalties of perjury and shall be deemed to
44 be part of the original payrolls or transcripts thereof for purposes of
45 this subdivision. Where the contractor or sub-contractor maintains no
46 regular place of business in New York state and where the amount of the
47 contract is in excess of twenty-five thousand dollars such payrolls
48 shall be kept on the site of the work. All other contractors or sub-
49 contractors shall produce within five days on the site of the work and
50 upon formal order of the commissioner or his or her designated represen-
51 tative such original payrolls or transcripts thereof, subscribed and
52 sworn to or affirmed by him or her as true under the penalties of perju-
53 ry, as may be deemed necessary to adequately enforce the provisions of
54 this article. Every contractor, and sub-contractor, shall submit to the
55 department of jurisdiction within thirty days after issuance of its
56 first payroll, and every thirty days thereafter, a transcript of the

1 original payroll record, as provided by this article, subscribed and
2 sworn to or affirmed as true under the penalties of perjury. [~~Every~~
3 ~~contractor and subcontractor shall submit to the commissioner, and to~~
4 ~~the fiscal officer, when the fiscal officer is a city comptroller or~~
5 ~~other analogous officer, within thirty days of its first payroll, and~~
6 ~~annually thereafter, a transcript of the original payroll record,~~
7 ~~subscribed and sworn to or affirmed as true under the penalties of~~
8 ~~perjury, including, documentation of each fund, plan, or program for~~
9 ~~which any supplement has been paid or provided. Such transcripts and~~
10 ~~additional information shall be provided on a form promulgated by the~~
11 ~~department.~~] Any person who willfully fails to file such payroll records
12 with the department of jurisdiction, commissioner, or the fiscal officer
13 shall be guilty of a class E felony. In addition, any person who will-
14 fully fails to file such payroll records within the time specified in
15 this subparagraph shall be subject to a civil penalty of up to one thou-
16 sand dollars per day.

17 § 4. Subdivision 6 of section 220 of the labor law, as amended by a
18 chapter of the laws of 2019, amending the labor law relating to addi-
19 tional information provided to employees on public work contracts, as
20 proposed in legislative bills numbers S. 5679-A and A. 2101-A, is
21 amended to read as follows:

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

42 § 5. Paragraph c of subdivision 3-a of section 220 of the labor law,
43 as added by chapter 137 of the laws of 1985, is amended to read as
44 follows:

45 c. The fiscal officer may require any person or corporation performing
46 such public work to file with the fiscal officer within ten days of
47 receipt of said request, payroll records, sworn to as to their validity
48 and accuracy, requested by the fiscal officer, for said public work or
49 for any public or private work performed by said person or corporation
50 during the same period of time as said public work. Such payroll
51 records shall include a copy of each notice required under subdivision
52 one or two of section one hundred ninety-five of this chapter for every
53 laborer, worker or mechanic, which shall be subscribed and sworn to or
54 affirmed as true under penalties of perjury. In addition, the fiscal
55 officer may require such person or corporation to furnish proof of any
56 supplements provided or amount paid to or on behalf of laborers, workers

1 or mechanics in satisfaction of the obligation to provide supplements
2 pursuant to this section. In the event said person or corporation fails
3 to provide the requested information within the allotted ten days, the
4 fiscal officer shall, within fifteen days, order the department of
5 jurisdiction to immediately withhold from payment to said person or
6 corporation up to twenty-five percent of the amount, not to exceed one
7 hundred thousand dollars, to be paid to said person or corporation under
8 the terms of the contract pursuant to which said public work is being
9 performed. Said amount withheld shall be immediately released upon
10 receipt by the department of jurisdiction of a notice from the fiscal
11 officer indicating that the request for records had been satisfied.

12 § 6. This act shall take effect on the same date and in the same
13 manner as a chapter of the laws of 2019, amending the labor law relating
14 to additional information provided to employees on public work
15 contracts, as proposed in legislative bills numbers S. 5679-A and A.
16 2101-A, takes effect.