

5232

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

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 the posting of prevailing wage

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraph (ii) of paragraph a of subdivision 3-a of
2 section 220 of the labor law, as separately amended by chapters 7 and 63
3 of the laws of 2008, is amended to read as follows:
4 (ii) The contractor and every sub-contractor on public works contracts
5 shall post in a prominent and accessible place on the site where the
6 work is performed a legible statement of all wage rates and supplements
7 as specified in the contract to be paid or provided, as the case may be,
8 for the various classes of mechanics, workers, or laborers employed on
9 the work. Such posted statement shall be written in plain English and
10 titled, in lettering no smaller than two inches in height and two inches
11 in width, with the phrase "Prevailing Rate of Wages". EACH CONTRACTOR
12 OR SUB-CONTRACTOR SHALL ENSURE THAT SUCH STATEMENT IS PROVIDED IN
13 ENGLISH, SPANISH AND ANY OTHER LANGUAGES SPOKEN BY TEN PERCENT OR MORE
14 OF THE WORKERS EMPLOYED BY THE CONTRACTOR OR SUB-CONTRACTORS. Such post-
15 ed statement shall be constructed of materials capable of withstanding
16 adverse weather conditions. EVERY CONTRACTOR OR SUB-CONTRACTOR WHO
17 FAILS TO POST SUCH STATEMENT SHALL, FOR THE FIRST DAY OF A VIOLATION
18 THEREOF, BE LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN FIFTY DOLLARS
19 NOR MORE THAN ONE HUNDRED DOLLARS; AND FOR THE SECOND DAY OF SUCH
20 VIOLATION AND EACH SUBSEQUENT DAY THEREAFTER UNTIL SUCH POSTING IS
21 DISPLAYED, BE LIABLE FOR A CIVIL PENALTY THAT IS TWO TIMES THE AMOUNT OF
22 THE PENALTY OF THE PREVIOUS DAY, NOT TO EXCEED TEN THOUSAND DOLLARS PER
23 DAY. WHERE THE FISCAL OFFICER IS THE COMMISSIONER, THE FINE SHALL BE
24 PAID TO THE COMMISSIONER FOR DEPOSIT IN THE STATE TREASURY. WHERE THE
25 FISCAL OFFICER IS THE CITY COMPTROLLER OF A CITY WITH A POPULATION IN

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

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1 EXCESS OF ONE MILLION, THE PENALTY SHALL BE PAID TO SAID OFFICER FOR
2 DEPOSIT IN THE CITY TREASURY. The contractor and every sub-contractor
3 shall notify all laborers, workers or mechanics in their employ in writ-
4 ing of the prevailing rate of wage for their particular job classifica-
5 tion. Such notification shall be given to every laborer, worker or
6 mechanic on their first pay stub and with every pay stub thereafter. At
7 the beginning of performance of every public works contract, and with
8 the first paycheck after July first of each year, the contractor and
9 every sub-contractor shall notify all laborers, workers, and mechanics
10 in their employ in writing, in accordance with such form as is
11 prescribed by the fiscal officer, of the telephone number and address
12 for the fiscal officer. The notice shall also inform each laborer, work-
13 er, or mechanic of his or her right to contact the fiscal officer or
14 some other representative if, at any time while working for the public
15 works contractor or sub-contractor, he or she does not receive the prop-
16 er prevailing rate of wages or supplements for his or her particular job
17 classification that he or she is entitled to receive under the contract.
18 If after investigation the fiscal officer finds that a contractor or
19 sub-contractor has (1) failed to post any notice required under this
20 subdivision, (2) failed to set forth the prevailing wage on the pay
21 stub, (3) wilfully posted the incorrect prevailing wage, or (4) wilfully
22 set forth the incorrect prevailing wage on the pay stub, the fiscal
23 officer, shall by an order which shall describe particularly the nature
24 of the alleged violation, assess the contractor or sub-contractor a
25 civil penalty of not more than fifty dollars upon the first finding of a
26 violation, two hundred fifty dollars upon the second finding of a
27 violation, and five hundred dollars for each subsequent violation. In
28 assessing the amount of the penalty, the fiscal officer shall give due
29 consideration to the size of the employer's business, the good faith of
30 the employer, and the gravity of the violation.

31 S 2. Subdivision 6 of section 231 of the labor law, as added by chap-
32 ter 777 of the laws of 1971, is amended to read as follows:

33 6. No later than the first day upon which work on said contract is
34 performed by any employee, the contractor shall post in a prominent and
35 accessible place on the site of the work a legible statement of the
36 wages to be paid to the [workmen] WORKERS employed thereon. EACH
37 CONTRACTOR OR SUB-CONTRACTOR SHALL ENSURE THAT SUCH STATEMENT IS
38 PROVIDED IN ENGLISH, SPANISH AND ANY OTHER LANGUAGES SPOKEN BY TEN
39 PERCENT OR MORE OF THE WORKERS EMPLOYED BY THE CONTRACTOR OR SUB-CON-
40 TRACTORS. EVERY CONTRACTOR OR SUB-CONTRACTOR WHO FAILS TO POST SUCH
41 STATEMENT SHALL, FOR THE FIRST DAY OF A VIOLATION THEREOF, BE LIABLE FOR
42 A CIVIL PENALTY OF NOT LESS THAN FIFTY DOLLARS NOR MORE THAN ONE HUNDRED
43 DOLLARS; AND FOR THE SECOND DAY OF SUCH VIOLATION AND EACH SUBSEQUENT
44 DAY THEREAFTER UNTIL SUCH POSTING IS DISPLAYED, BE LIABLE FOR A CIVIL
45 PENALTY THAT IS TWO TIMES THE AMOUNT OF THE PENALTY OF THE PREVIOUS DAY,
46 NOT TO EXCEED TEN THOUSAND DOLLARS PER DAY. WHERE THE FISCAL OFFICER IS
47 THE COMMISSIONER, THE FINE SHALL BE PAID TO THE COMMISSIONER FOR DEPOSIT
48 IN THE STATE TREASURY. WHERE THE FISCAL OFFICER IS THE CITY COMPTROLLER
49 OF A CITY WITH A POPULATION IN EXCESS OF ONE MILLION, THE PENALTY SHALL
50 BE PAID TO SAID OFFICER FOR DEPOSIT IN THE CITY TREASURY.

51 S 3. This act shall take effect on the one hundred eightieth day after
52 it shall have become a law.