

7386

2009-2010 Regular Sessions

I N   A S S E M B L Y

April 2, 2009

---

Introduced by M. of A. JOHN -- read once and referred 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 ASSEM-  
BLY, 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.

LBD10765-01-9

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.