

STATE OF NEW YORK

9056

IN SENATE

June 15, 2018

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:

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
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

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

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

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

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

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

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

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