

# STATE OF NEW YORK

2101--A

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

Introduced by M. of A. WOERNER, D'URSO, SAYEGH, ARROYO, STIRPE, SANTA-BARBARA, LUPARDO, RAMOS -- Multi-Sponsored by -- M. of A. DeSTEFANO -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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,

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

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1 for the various classes of mechanics, workers, or laborers employed on  
2 the work. Such posted statement shall be written in plain English and  
3 titled, in lettering no smaller than two inches in height and two inches  
4 in width, with the phrase "Prevailing Rate of Wages". Such posted state-  
5 ment shall be constructed of materials capable of withstanding adverse  
6 weather conditions. The contractor and every sub-contractor shall notify  
7 all laborers, workers or mechanics in their employ in writing of the  
8 prevailing rate of wage and supplements for their particular job classi-  
9 fication. Such notification shall be given to every laborer, worker or  
10 mechanic upon hire, on their first pay stub and with every pay stub  
11 thereafter, and shall set forth the amounts paid per hour for each  
12 supplement provided for his or her particular job classification in  
13 accordance with the schedules determined by the fiscal officer. Such  
14 notification shall be provided in English and in the language identified  
15 by such laborer, worker, or mechanic as his or her primary language. At  
16 the beginning of performance of every public works contract, and with  
17 the first paycheck after July first of each year, the contractor and  
18 every sub-contractor shall notify all laborers, workers, and mechanics  
19 in their employ in writing, in English and in the language identified by  
20 each laborer, worker, and mechanic as his or her primary language, in  
21 accordance with such form as is prescribed by the fiscal officer, of the  
22 telephone number and address for the fiscal officer. The notice shall  
23 also inform each laborer, worker, or mechanic of his or her right to  
24 contact the fiscal officer or some other representative if, at any time  
25 while working for the public works contractor or sub-contractor, he or  
26 she does not receive the proper prevailing rate of wages or supplements  
27 for his or her particular job classification that he or she is entitled  
28 to receive under the contract. If after investigation the fiscal officer  
29 finds that a contractor or sub-contractor has (1) failed to post or  
30 provide any notice required under this subdivision, including having  
31 failed to provide any such notice in the language identified by any  
32 laborer, worker, or mechanic as his or her primary language, (2) failed  
33 to set forth the prevailing wage or the breakdown of supplements on the  
34 pay stub, (3) [~~willfully~~] willfully posted the incorrect prevailing wage,  
35 or (4) [~~willfully~~] willfully set forth the incorrect prevailing wage or  
36 the amounts paid per hour for each supplement on the pay stub, the  
37 fiscal officer[7] shall, by an order which shall describe particularly  
38 the nature of the alleged violation, assess the contractor or sub-con-  
39 tractor a civil penalty of not more than fifty dollars upon the first  
40 finding of a violation, two hundred fifty dollars upon the second find-  
41 ing of a violation, and five hundred dollars for each subsequent  
42 violation. In assessing the amount of the penalty, the fiscal officer  
43 shall give due consideration to the size of the employer's business, the  
44 good faith of the employer, and the gravity of the violation.

45 The fiscal officer shall prepare templates that comply with the  
46 notification requirements of this subparagraph. Each such template shall  
47 be dual-language, including English and one additional language. The  
48 fiscal officer shall determine, in his or her discretion, which  
49 languages to provide in addition to English, based on the size of the  
50 New York state population that speaks each language and any other factor  
51 that the fiscal officer shall deem relevant. All such templates shall be  
52 posted on the fiscal officer's website and made available for download-  
53 ing by contractors and subcontractors. When any laborer, worker, or  
54 mechanic identifies his or her primary language and a template is not  
55 made available by the fiscal officer in that language, the contractor or  
56 subcontractor shall comply with this subparagraph by providing such

1 laborer, worker, or mechanic an English-language notice or acknowledg-  
2 ment. A contractor or subcontractor shall not be penalized for errors or  
3 omissions in the non-English portions of any notice provided by the  
4 fiscal officer. The fiscal officer shall have discretion to waive or  
5 alter the notification requirements of this subparagraph for temporary  
6 help firms as defined in section nine hundred sixteen of this chapter.

7 (iii) The contractor and every sub-contractor shall keep original  
8 payrolls or transcripts thereof, subscribed and sworn to or affirmed by  
9 him or her as true under the penalties of perjury, setting forth the  
10 names and addresses and showing for each worker, laborer, or mechanic  
11 the hours and days worked, the occupations worked, the hourly wage rates  
12 paid and the supplements paid or provided. Such payrolls or transcripts  
13 thereof shall also set forth the amounts paid per hour for each supple-  
14 ment provided in accordance with the schedules determined by the fiscal  
15 officer. Where the contractor or sub-contractor maintains no regular  
16 place of business in New York state and where the amount of the contract  
17 is in excess of twenty-five thousand dollars such payrolls shall be kept  
18 on the site of the work. All other contractors or sub-contractors shall  
19 produce within five days on the site of the work and upon formal order  
20 of the commissioner or his or her designated representative such  
21 original payrolls or transcripts thereof, subscribed and sworn to or  
22 affirmed by him or her as true under the penalties of perjury, as may be  
23 deemed necessary to adequately enforce the provisions of this article.  
24 Every contractor, and sub-contractor, shall submit to the department of  
25 jurisdiction within thirty days after issuance of its first payroll, and  
26 every thirty days thereafter, a transcript of the original payroll  
27 record, as provided by this article, subscribed and sworn to or affirmed  
28 as true under the penalties of perjury. Every contractor and subcon-  
29 tractor shall submit to the commissioner, and to the fiscal officer,  
30 when the fiscal officer is a city comptroller or other analogous offi-  
31 cer, within thirty days of its first payroll, and annually thereafter, a  
32 transcript of the original payroll record, subscribed and sworn to or  
33 affirmed as true under the penalties of perjury, including, documenta-  
34 tion of each fund, plan, or program for which any supplement has been  
35 paid or provided. Such transcripts and additional information shall be  
36 provided on a form promulgated by the department. Any person who  
37 [~~wilfully~~] willfully fails to file such payroll records with the depart-  
38 ment of jurisdiction, commissioner, or the fiscal officer shall be guil-  
39 ty of a class E felony. In addition, any person who [~~wilfully~~] willfully  
40 fails to file such payroll records within the time specified in this  
41 subparagraph shall be subject to a civil penalty of up to one thousand  
42 dollars per day.

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

45 6. The fiscal officer[~~r~~] may, and on the written request of any inter-  
46 ested person shall, require any person or corporation performing such  
47 public work to file with such fiscal officer schedules of the supple-  
48 ments to be provided and wages to be paid to such laborers, workmen or  
49 mechanics, including information regarding the amounts to be paid per  
50 hour for each supplement provided for each particular job classifica-  
51 tion. The fiscal officer may, and on the written request of any inter-  
52 ested party shall, require and furnish proof of any supplements provided  
53 or amounts paid to or on behalf of laborers, workers, or mechanics in  
54 satisfaction of the obligation to provide supplements under this  
55 section. Any such person or corporation shall, within ten days after the  
56 receipt of written notice of such requirement, file with the fiscal

1 officer such schedules of wages and supplements. An employer may contest  
2 a determination by the fiscal officer under paragraphs a and c of subdi-  
3 vision five of this section. The employer must allege and prove by  
4 competent evidence, that the actual percentage of workers, laborers or  
5 mechanics is below the required thirty per centum and during the penden-  
6 cy of any such contest and until final determination thereof, the work  
7 in question shall proceed under the rate established by the fiscal offi-  
8 cer.

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