

# STATE OF NEW YORK

2101

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Labor

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

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

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

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

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

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

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

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