STATE OF NEW YORK

5679--A

2019-2020 Regular Sessions

IN SENATE

May 10, 2019

Introduced by Sens. SAVINO, SKOUFIS -- read twice and ordered printed, and when printed to be committed 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:

Section 1. Paragraph (e) of subdivision 3 of section 220 of the labor law, as amended by chapter 7 of the laws of 2008, is amended to read as follows:

(e) The commissioner shall ensure that all supplements due under this article shall be paid to or on behalf of an employee. **(i)** The commissioner shall require proof that the pension plan for which any supplement has been paid is qualified as a bona fide plan by the United States internal revenue service. Acceptable proof shall be shown by submission of a determination letter issued by the United States internal revenue service. **(ii) The commissioner shall also require any contractor or subcontractor who provides any supplement which is part of a fund, plan or program to furnish to the commissioner proof that the supplement is provided through a fund, plan or program and the amount contributed on the employees' behalf to such fund, plan or program.**

§ 2. Subparagraphs (ii) and (iii) of paragraph a of subdivision 3-a of section 220 of the labor law, subparagraph (ii) as separately amended by chapters 7 and 63 of the laws of 2008 and subparagraph (iii) as amended by chapter 8 of the laws of 2008, are amended to read as follows:

(ii) The contractor and every sub-contractor on public works contracts shall post in a prominent and accessible place on the site where the work is performed a legible statement of all wage rates and supplements as specified in the contract to be paid or provided, as the case may be, for the various classes of mechanics, workers, or laborers employed on

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

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the work. Such posted statement shall be written in plain English and titled, in lettering no smaller than two inches in height and two inches in width, with the phrase "Prevailing Rate of Wages". Such posted statement shall be constructed of materials capable of withstanding adverse weather conditions. The contractor and every sub-contractor shall notify all laborers, workers or mechanics in their employ in writing of the prevailing rate of wage **and supplements** for their particular job classification. Such notification shall be given to every laborer, worker or mechanic **upon hire,** on their first pay stub and with every pay stub thereafter**, and shall set forth the amounts paid per hour for each supplement provided for his or her particular job classification in accordance with the schedules determined by the fiscal officer. Such notification shall be provided in English and in the language identified by such laborer, worker, or mechanic as his or her primary language**. At the beginning of performance of every public works contract, and with the first paycheck after July first of each year, the contractor and every sub-contractor shall notify all laborers, workers, and mechanics in their employ in writing, **in English and in the language identified by each laborer, worker, and mechanic as his or her primary language,** in accordance with such form as is prescribed by the fiscal officer, of the telephone number and address for the fiscal officer. The notice shall also inform each laborer, worker, or mechanic of his or her right to contact the fiscal officer or some other representative if, at any time while working for the public works contractor or sub-contractor, he or she does not receive the proper prevailing rate of wages or supplements for his or her particular job classification that he or she is entitled to receive under the contract. If after investigation the fiscal officer finds that a contractor or sub-contractor has (1) failed to post **or provide** any notice required under this subdivision, **including having failed to provide any such notice in the language identified by any laborer, worker, or mechanic as his or her primary language,** (2) failed to set forth the prevailing wage **or the breakdown of supplements** on the pay stub, (3) [~~wilfully~~] **willfully** posted the incorrect prevailing wage, or (4) [~~wilfully~~] **willfully** set forth the incorrect prevailing wage **or the amounts paid per hour for each supplement** on the pay stub, the fiscal officer[~~,~~] shall**,** by an order which shall describe particularly the nature of the alleged violation, assess the contractor or sub-contractor a civil penalty of not more than fifty dollars upon the first finding of a violation, two hundred fifty dollars upon the second finding of a violation, and five hundred dollars for each subsequent violation. In assessing the amount of the penalty, the fiscal officer shall give due consideration to the size of the employer's business, the good faith of the employer, and the gravity of the violation.

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

ment. A contractor or subcontractor shall not be penalized for errors or omissions in the non-English portions of any notice provided by the fiscal officer. The fiscal officer shall have discretion to waive or alter the notification requirements of this subparagraph for temporary help firms as defined in section nine hundred sixteen of this chapter.

(iii) The contractor and every sub-contractor shall keep original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, setting forth the names and addresses and showing for each worker, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided. Such payrolls or transcripts thereof shall also set forth the amounts paid per hour for each supplement provided in accordance with the schedules determined by the fiscal officer. Where the contractor or sub-contractor maintains no regular place of business in New York state and where the amount of the contract is in excess of twenty-five thousand dollars such payrolls shall be kept on the site of the work. All other contractors or sub-contractors shall produce within five days on the site of the work and upon formal order of the commissioner or his or her designated representative such original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, as may be deemed necessary to adequately enforce the provisions of this article. Every contractor, and sub-contractor, shall submit to the department of jurisdiction within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record, as provided by this article, subscribed and sworn to or affirmed as true under the penalties of perjury. Every contractor and subcontractor shall submit to the commissioner, and to the fiscal officer, when the fiscal officer is a city comptroller or other analogous officer, within thirty days of its first payroll, and annually thereafter, a transcript of the original payroll record, subscribed and sworn to or affirmed as true under the penalties of perjury, including, documentation of each fund, plan, or program for which any supplement has been paid or provided. Such transcripts and additional information shall be provided on a form promulgated by the department. Any person who [~~wilfully~~] willfully fails to file such payroll records with the department of jurisdiction, commissioner, or the fiscal officer shall be guilty of a class E felony. In addition, any person who [~~wilfully~~] willfully fails to file such payroll records within the time specified in this subparagraph shall be subject to a civil penalty of up to one thousand dollars per day.

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

6. The fiscal officer[~~,~~] may, and on the written request of any interested person shall, require any person or corporation performing such public work to file with such fiscal officer schedules of the supplements to be provided and wages to be paid to such laborers, workmen or mechanics, including information regarding the amounts to be paid per hour for each supplement provided for each particular job classification. The fiscal officer may, and on the written request of any interested party shall, require and furnish proof of any supplements provided or amounts paid to or on behalf of laborers, workers, or mechanics in satisfaction of the obligation to provide supplements under this section. Any such person or corporation shall, within ten days after the receipt of written notice of such requirement, file with the fiscal officer such schedules of wages and supplements. An employer may contest

a determination by the fiscal officer under paragraphs a and c of subdivision five of this section. The employer must allege and prove by competent evidence, that the actual percentage of workers, laborers or mechanics is below the required thirty per centum and during the pendency of any such contest and until final determination thereof, the work in question shall proceed under the rate established by the fiscal officer.

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