§ 220. Hours, wages and supplements. 1. Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

2. Each contract to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law is a party, and any contract for public work entered into by a third party acting in place of, on behalf of and for the benefit of such public entity pursuant to any lease, permit or other agreement between such third party and the public entity, and which may involve the employment of laborers, workers or mechanics shall contain a stipulation that no laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workers and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the commissioner determines that there are not sufficient workers, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay

of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the commissioner shall grant a dispensation permitting all laborers, workers and mechanics, or any classification of such laborers, workers and mechanics, to work such additional hours or days per week on such public project or in such areas the commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workers and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

2-a. Any person contracting with the state or a public benefit corporation, or a municipal corporation, or a commission appointed pursuant to law that shall require more than eight hours work for a day's labor, unless otherwise permitted by law, is guilty of a misdemeanor, and upon conviction thereof shall be punished in accordance with the penal law for each offense.

3. (a) The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon such public works, shall be not less than the prevailing rate of wages as hereinafter defined. Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be paid not less than the prevailing rate of wages as hereinafter defined. No employee shall be deemed to be an apprentice unless he is individually registered in an apprenticeship program which is duly registered with the commissioner of labor in conformity with the provisions of article twenty-three of this

chapter. The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon any material to be used upon or in connection therewith, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Such contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be paid the wages herein provided.

(b) The supplements, as hereinafter defined, to be provided to laborers, workmen or mechanics upon such public works, shall be in accordance with the prevailing practices in the locality, as hereinafter defined. Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be provided supplements in accordance with the prevailing practices as hereinafter defined. No employee shall be deemed to be an apprentice unless he is individually registered in an apprenticeship program which is duly registered with the industrial commissioner in conformity with the provisions of article twenty-three of this chapter. The supplements, as hereinafter defined, to be provided to laborers, workmen or mechanics upon any material to be used upon or in connection therewith, shall be in accordance with the prevailing practices in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Such contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be provided the supplements as required in this article.

(c) It shall be the duty of the fiscal officer, as defined in this section, to ascertain and determine the schedules of supplements to be provided and wages to be paid workers, laborers and mechanics on such public work, prior to the time of the advertisement for bids, and such schedules shall be annexed to and form a part of the specifications for the work. Such fiscal officer shall file with the department having jurisdiction such schedules prior to the time of the commencement of the advertisement for bids on all public works proposed to be constructed.

The term "contract" as used in this article also shall include reconstruction and repair of any such public work, and any public work performed under a lease, permit or other agreement pursuant to which the department of jurisdiction grants the responsibility of contracting for such public work to any third party proposing to perform such work to which the provisions of this article would apply had the department of jurisdiction contracted directly for its performance, or where there is no lease, permit or other agreement and ownership of a public work is intended to be assumed by such public entity at any time subsequent to completion of the public work.

(d) (i) Any person that participates in a public works project in the capacity of a contractor or subcontractor and who wilfully fails to pay or provide the prevailing rate of wage or supplements and:

(1) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, results in an amount less than twenty-five thousand dollars, shall be guilty of a class A misdemeanor;

(2) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than twenty-five thousand dollars, that person shall be guilty of a class E felony;

(3) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than one hundred thousand dollars, that person shall be guilty of a class D felony; or

(4) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than five hundred thousand dollars, that person shall be guilty of a class C felony.

(ii) Disposition for violations of this section shall be in accordance with the penal law. Fines upon conviction for any violation of this section shall be in accordance with the penal law.

(iii) In addition to the penalties set forth above, any such person convicted of a second offense under subparagraph (i) of this paragraph within five years shall disgorge profits and shall not be entitled to receive any monies due and owing on the contract or subcontract; nor shall any officer, agent or employee of the department of jurisdiction

or its financial officer pay to such person any such monies. Notwithstanding the foregoing, the department of jurisdiction may release monies due and owing on the contract or subcontract which have not been withheld pursuant to section two hundred twenty-b of this article for the sole purpose of satisfying the contractor's or subcontractor's obligations under the contract or subcontract to third parties who were not themselves involved in the violations giving rise to the subsequent offense. For the purposes of this subdivision, third parties shall include, but not be limited to, contractors, subcontractors, materialmen, and funds, plans, and programs providing pension, health, and welfare benefits to workmen, laborers, and mechanics employed pursuant to such contract or subcontract. The department of jurisdiction may release such monies upon the application of the contractor provided that no monies shall be released without the written approval of the fiscal officer or by order of a court of competent jurisdiction.

(iv) In addition to the penalties set forth above, every contract for a public work project shall contain a term stating that the filing of payrolls in a manner consistent with subdivision three-a of this section is a condition precedent to payment of any sums due and owing to any person for work done upon the project.

(e) The commissioner shall ensure that all supplements due under this article shall be paid to or on behalf of an employee. 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.

(f) (i) For the purposes of this subdivision contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers. For the purposes of this subdivision, a legal day's work for which the prevailing rate of wages for the New York county in which the public works project is situated shall be paid to laborers, workers and mechanics shall include custom fabrication regardless of whether the custom fabrication occurs on-site, off-site, or in another jurisdiction and such pay shall be a condition of the contract concerning all such custom fabrication work involving the contractor or

employer awarded the public work contract, except where the project includes federal funding that triggers federal rules for wage requirements, and any subcontractor thereto shall pay the on-site prevailing wage required for workers at the site of the public work project to those workers performing the custom fabrication.

(ii) To perform a public works contract each contractor or subcontractor who employs workers for custom fabrication work related to a public work project shall maintain certified payrolls and shall comply with sections two hundred twenty-i and two hundred twenty-j of this article.

(iii) For the purposes of this subdivision the term "custom fabrication" shall include the fabrication of exterior or interior wall panel systems, woodwork, electrical, plumbing, heating, cooling, ventilation or exhaust duct systems, rebar cages, and mechanical insulation solely and specifically designed and engineered for a specified public work project. The term "custom fabrication" does not include components, portions, modules, or materials that are otherwise stocked or readily available absent a specified public work project.

(iv) The provisions of this paragraph shall not include any highway, structure, vehicle or watercraft used to support transporting persons; the foregoing notwithstanding, this paragraph shall include electrical, plumbing, heating, cooling, ventilation or mechanical insulation work in rest areas, transit stations or depots.

(v) Nothing in this paragraph shall be construed to apply the requirements set forth in section two hundred twenty-four-a of this article to any custom fabrication associated with the creation or rehabilitation of any residential dwelling units or manufactured home parks that are exempted from the definition of "covered projects" as set forth in section two hundred twenty four-a of this article.

(vi) The contractor awarded a public work contract, or a subcontractor thereto, shall be required to report to the department of jurisdiction the intent to utilize custom fabrication in a form and manner prescribed by the fiscal officer. Such reports shall identify the public work contract, the name and location of the custom fabrication entity, and description of the custom fabrication work. The contractor awarded a public work contract, or subcontractor thereto, shall notify any additional party contracted with for custom fabrication that the

contract is subject to this subdivision. The department of jurisdiction, as defined in subdivision three-a of this section and including any entity to whom such department of jurisdiction delegates their authority, shall be required to report to the fiscal officer the intention to contract for custom fabrication in a form and manner prescribed by the fiscal officer. Such reports shall identify the public work contract, the name and location of the custom fabrication entity, and description of the custom fabrication work. Reports submitted to the fiscal officer shall be subject to disclosure pursuant to article six of the public officers law.

3-a. a. (i) It shall be the duty of the department of jurisdiction as defined in this section to ascertain from the plans and specifications the classification of workers, mechanics and laborers to be employed on such project. Such department shall file with the fiscal officer, as defined in this section, the classification of workers, mechanics and laborers to be employed upon such public works project, together with a statement of the work to be performed by each such classification. From such statement it shall be the duty of the fiscal officer to make a proper classification of such workers, mechanics and laborers taking into account whether the work is heavy and highway, building, sewer and water, tunnel work or residential and to make a determination of the schedules of wages and supplements to be paid or provided, as the case may be, therefor.

(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 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 rates of wages and supplements for their particular job classification. Such notification shall be given to every

laborer, worker or mechanic upon hire, with their first pay stub and every pay stub thereafter 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 the statement required under this subparagraph, (2) failed to provide any notification to laborers, workers and mechanics as required under this subparagraph, (3) willfully posted the incorrect prevailing wages and supplements, or (4) willfully set forth the incorrect prevailing wage or supplement with every 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 acknowledgment. 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 be accompanied by a copy of each notice required under subdivision one or two of section one hundred ninety-five of this chapter for every laborer, worker or mechanic, which shall be subscribed and sworn to or affirmed as true under penalties of perjury and shall be deemed to be part of the original payrolls or transcripts thereof for purposes of this subdivision. 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. Unless otherwise submitted pursuant to section two hundred twenty-j 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. Any person who 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 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.

(iv) Unless otherwise submitted pursuant to section two hundred twenty-j of this article, the department of jurisdiction shall be required to collect and maintain such payroll records at the times specified in subparagraph (iii) of this paragraph. The original payrolls or transcripts shall be preserved by the department of jurisdiction for five years from the date of completion of the work on the awarded contract. The department of jurisdiction as herein referred to shall be the department of the state, board or officer in the state, or municipal corporation or commission or board appointed pursuant to law, whose duty it is to prepare or direct the preparation of the plans and specifications for a public work project. Each department of jurisdiction shall designate in writing an individual employed by such department responsible for the receipt, collection and review for facial validity of payrolls. Said designation shall be filed with the fiscal officer and posted in a conspicuous location at the project site. If the designated individual cannot perform the receipt, collection and review of certified payrolls duties as indicated above, for any reason, including but not limited to reassignment, promotion or separation from employment, the department of jurisdiction must immediately designate another individual employed by such department to fulfill such responsibilities. In the event that a department of jurisdiction fails to name an individual responsible for the receipt, collection and review for facial validity of payrolls, as set forth above, then the individual so responsible shall be the individual who is the chief policy-making individual of such department of jurisdiction.

b. All departments of jurisdiction in respect of public work as to which the industrial commissioner is fiscal officer, as defined in this section, shall furnish to the industrial commissioner the following information immediately upon signing of a contract for such public work:

(a) the name and address of the contractor engaged by said department of jurisdiction; (b) the date when the contract was let; (c) the approximate consideration stipulated for in said contract.

c. The fiscal officer may require any person or corporation performing such public work to file with the fiscal officer within ten days of receipt of said request, payroll records, sworn to as to their validity and accuracy, requested by the fiscal officer, for said public work or for any public or private work performed by said person or corporation during the same period of time as said public work. Such payroll records shall include a copy of each notice required under subdivision one or two of section one hundred ninety-five of this chapter for every laborer, worker or mechanic, which shall be subscribed and sworn to or affirmed as true under penalties of perjury. In addition, the fiscal officer may require such person or corporation to furnish proof of any supplements provided or amount paid to or on behalf of laborers, workers or mechanics in satisfaction of the obligation to provide supplements pursuant to this section. In the event said person or corporation fails to provide the requested information within the allotted ten days, the fiscal officer shall, within fifteen days, order the department of jurisdiction to immediately withhold from payment to said person or corporation up to twenty-five percent of the amount, not to exceed one hundred thousand dollars, to be paid to said person or corporation under the terms of the contract pursuant to which said public work is being performed. Said amount withheld shall be immediately released upon receipt by the department of jurisdiction of a notice from the fiscal officer indicating that the request for records had been satisfied.

d. Any person who wilfully fails to file the requested payroll records within ninety days of a demand by the fiscal officer shall be guilty of a class A misdemeanor, provided, however, that a person who violates this subdivision after having previously been convicted of violating this subdivision within the past five years shall be guilty of a class E felony.

e. (i) Utility companies who, under local law or ordinance, are required, as a condition of issuance of a permit to use or open a

street, to agree that none but competent workers, skilled in the work required of them shall be employed thereon and that prevailing scale of union wages shall be the prevailing wage for the similar titles as established by the fiscal officer pursuant to this section, paid to those so employed, shall be required to 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 workman, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided as, and in the manner required by paragraphs a, b and c of this subdivision.

(ii) Utility company contractors and subcontractors to whom a permit may be issued, to use or open a street, shall be required to comply with section two hundred twenty-four-f of this article, as a condition of the issuance of a permit to use or open a street, to agree that none but competent workers, skilled in the work required of them shall be employed thereon and that prevailing scale of union wages shall be the prevailing wage for the similar titles as established by the fiscal officer pursuant to this section, paid to those so employed, shall be required to 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 workman, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided as, and in the manner required by paragraphs a, b and c of this subdivision.

f. Prevailing wage shall be paid for work performed on a public works worksite pursuant to this section for any work involving the delivery to and hauling from such worksites of aggregate supply construction materials, as well as any return hauls, whether empty or loaded and any time spent loading/unloading.

g. Prevailing wage shall be paid for work performed on a public works worksite pursuant to this section for any work involving the delivery to and hauling from such worksites of concrete and asphalt, as well as any return hauls, whether empty or loaded and any time spent

loading/unloading, in the counties of Nassau, Putnam, Suffolk, and Westchester, and in the city of New York.

3-b. 1. Public work advisory board. There is hereby created in the department an advisory board on public work composed of six members to be appointed by the governor by and with the advice and consent of the senate. Two members of the advisory board shall be persons known to represent the interests of employers in the construction industry, two persons shall be known to represent the interest of employees therein, and two members shall be persons appointed to represent the public. The governor may remove any member when he or she ceases to represent the interests in whose behalf he or she was appointed. The commissioner of labor shall be an additional member of such board without any voting power and act as chairman thereof and shall designate an employee of the department to be secretary. The board shall meet at the call of the commissioner of labor and when engaged upon the work of the board each member, except the commissioner, shall not receive a salary or other compensation, but shall be reimbursed for reasonable traveling and other expenses to be audited by the state comptroller.

2. Terms of office. All members of the advisory board shall be appointed for a term of six years to begin at the expiration of the term of office of the member whom he is to succeed. Any member appointed to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed.

3-c. The advisory board shall adopt rules and regulations to govern its own proceedings, and to expedite the making by it of the examinations and determinations required by this chapter. The members of the advisory board shall have power:

1. To issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers, documents and other evidence;

2. To hear testimony and take or cause to be taken depositions of witnesses residing within or without this state in the manner prescribed

by law for like depositions in civil actions in the supreme court. Subpoenas and commissions to take testimony shall be issued under the seal of the department.

3-d. The fiscal officer of any political subdivision of the state, wherein a public work project is proposed to be constructed, may request the industrial commissioner to make a classification by trades or occupations of laborers, workmen and mechanics required to perform the public work in its completed form. The board shall, when requested by the industrial commissioner, examine into proposed public work projects and determine the classification by trades or occupations of laborers, workmen and mechanics required to perform the public work in its completed form; and to determine which of same are skilled, semi-skilled or unskilled. The board shall file with the industrial commissioner its findings, determinations and recommendations.

3-e. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the New York State Department of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work.

4. This section shall not apply to:

a. Stationary firemen in state hospitals;

b. Other persons regularly employed in the state institutions, except mechanics;

c. Engineers, electricians and elevator men in the bureau of building management of the office of general services during the annual session of the legislature.

5. Definitions. a. The "prevailing rate of wage," for the intents and purposes of this article, shall be the rate of wage paid in the locality, as hereinafter defined, by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed. The prevailing rate of wage shall be annually determined in accordance herewith by the fiscal officer no later than thirty days prior to July first of each year, and the prevailing rate of wage for the period commencing July first of such year through June thirtieth, inclusive, of the following year shall be the rate of wage set forth in such collective bargaining agreements for the period commencing July first through June thirtieth, including those increases for such period which are directly ascertainable from such collective bargaining agreements by the fiscal officer in his annual determination. In the event that it is determined after a contest, as provided in subdivision six of this section, that less than thirty percent of the workers, laborers or mechanics in a particular trade or occupation in the locality where the work is being performed receive a collectively bargained rate of wage, then the average wage paid to such workers, laborers or mechanics in the same trade or occupation in the locality for the twelve-month period preceding the fiscal officer's annual determination shall be the prevailing rate of wage. Laborers, workers or mechanics for whom a prevailing rate of wage is to be determined shall not be considered in determining such prevailing wage.

b. "Supplements," for the intents and purposes of this article, means all remuneration for employment paid in any medium other than cash, or reimbursement for expenses, or any payments which are not "wages" within the meaning of the law, including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay life insurance, and apprenticeship training.

c. "Prevailing practices in the locality," for the intents and purposes of this article, shall be the practice of providing supplements, as hereinbefore defined, as provided by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality, as determined by the fiscal officer in accordance with the provisions herein.

With respect to each supplement determined to be one of the prevailing practices in the locality, the amount of such supplement shall be determined in the same manner and at the same times as the prevailing rate of wage is determined pursuant to this section.

d. "Locality" means such areas of the state described and defined for a trade or occupation in the current collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public and private work.

e. The "fiscal officer," as used herein, shall be deemed to be, on public work performed by or on behalf of the state or a public benefit corporation or a county or a village, or other civil division of the state, except a city, with a population in excess of one million, the commissioner of labor; and on public work performed by or on behalf of a city with a population in excess of one million, the comptroller or other analogous officer of such city.

f. The term "verified complaint," as applied to a claim against a municipality, shall include a verified demand or verified notice of claim heretofore, and since the first day of January, nineteen hundred thirty-five, filed with the fiscal officer of such municipality in accordance with the provisions of the local charter or local laws or ordinances relating generally to the filing of claims or demands against such municipality; and any person who has filed such a demand or notice shall be deemed to have filed a verified complaint as of the date, not

earlier than the first day of January, nineteen hundred thirty-five, mentioned in such notice or demand as the commencement of the period in relation to which such claim or demand is made.

g. "Substantially owned-affiliated entity" shall mean the parent company of the contractor or subcontractor, any subsidiary of the contractor or subcontractor, or any entity in which the parent of the contractor or subcontractor owns more than fifty percent of the voting stock, or an entity in which one or more of the top five shareholders of the contractor or subcontractor individually or collectively also owns a controlling share of the voting stock, or an entity which exhibits any other indicia of control over the contractor or subcontractor or over which the contractor or subcontractor exhibits control, regardless of whether or not the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include, power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

h. "Entity" shall mean a partnership, association, joint venture, company, sole proprietorship, corporation or any other form of doing business.

i. "Parent company" shall mean an entity that directly controls the contractor or subcontractor.

j. "Subsidiary" shall mean an entity that is controlled directly, or indirectly through one or more intermediaries, by a contractor or subcontractor or by the contractor's parent company.

k. "Successor" shall mean an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

l. "Person" shall mean a human being and shall also include an

"entity" as defined in this article, including, but not limited to, a contractor or subcontractor.

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. 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.

7. Compliance investigations. The fiscal officer as herein defined shall on a verified complaint in writing of any person interested or of any employee organization pursuant to subdivision eight-d of this section, and may on his own initiative cause a compliance investigation to be made to determine whether the contractor or a subcontractor has paid the prevailing rate of wages and prevailing practices for supplements in the same trade or occupation in the locality within the state where such public work is being performed, or the hours of labor performed by the workmen, laborers and mechanics employed on such public work, or both. The fiscal officer or his agents, examiners and inspectors may examine or cause to be examined the books and records pertaining to the rate of wages paid and supplements provided to the laborers, workmen and mechanics on said public work and the hours of labor performed by such laborers, workmen and mechanics on said public work. The fiscal officer in such investigation shall be deemed to be acting in a judicial capacity, and shall have the right to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules. Such fiscal officer shall make either an order,

determination or any other disposition, including but not limited to an agreed upon settlement and/or stipulation, within six months from the date of filing of such verified complaint, and where a compliance investigation is made without the filing of a verified complaint, within six months from the date a compliance investigation is initiated by such fiscal officer. Upon the making of said order or determination, or upon arriving at such agreed upon settlement and/or stipulation, a copy thereof shall be sent by certified mail, return receipt requested, by the fiscal officer: (i) to the person and employee organization, if any, who or which initiated the complaint, (ii) to the person or corporation, if any, against whom the complaint was brought, and (iii) where a compliance investigation is made without the filing of a complaint, to the person who or which was the subject of the compliance investigation.

7-a. The fiscal officer must make an inquiry as to the willfulness of the alleged violation which is the subject of a compliance investigation pursuant to subdivision seven of this section. In the event a formal hearing is held pursuant to subdivision eight of this section, the fiscal officer, upon a review of the entire record and a finding of credible evidence, must make a determination, as to the willfulness of said violation. No finding of willfulness made pursuant to the provisions of this subdivision shall be dispositive in a criminal prosecution initiated pursuant to section one hundred ninety-eight-a of this chapter, or paragraph (d) of subdivision three of this section, or paragraph (c) of subdivision three-a of this section or any other provision of law.

8. Hearings. Before issuing an order or determination as provided in subdivision seven of this section, the fiscal officer shall order a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a copy of such complaint or the purpose thereof, or a statement of the facts disclosed upon such investigation, which notice shall be served personally or by mail on any person affected thereby; such person shall have an opportunity to be heard in respect to the matters complained of at the time and place specified in such notice, which time shall be not less than five days from the service of the notice personally or by mail. The fiscal officer in such

hearing shall be deemed to be acting in a judicial capacity, and shall have the right to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules. Such hearing shall be expeditiously conducted and upon such hearing the fiscal officer shall determine the issues raised thereon and shall make and file an order in the office of the fiscal officer stating such determination, and forthwith serve a copy of such order, with a notice of the filing thereof, upon the parties to such proceeding, personally or by mail. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment, provided, however, that such interest rate shall not apply to subdivision eight-c of this section.

In addition to directing payment of wages or supplements including interest found to be due, such order may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping or other non-wage requirements. Where the fiscal officer is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

Upon the entry of such order any party aggrieved thereby may commence a proceeding for the review thereof pursuant to article seventy-eight of the civil practice law and rules within thirty days from the notice of the filing of the said order in the office of the fiscal officer. Said proceeding shall be commenced directly in the appellate division of the supreme court. If such order is not reviewed, or is so reviewed and the final decision is in favor of the complainant and the order involves or relates to the rate of wages paid or the supplements provided on such

public work, the complainant or any other person affected may within six months after the service of notice of the filing of said order, or the notice of entry of said final decision on review, institute an action against the person found violating this act for the recovery of the difference between the sum actually paid or provided and the amount which should have been paid or provided, together with interest at the rate of interest provided herein, as determined by said order or decision, as the case may be, from and after the date of the filing of said verified complaint, with the fiscal officer or of the filing of the fiscal officer's report of investigation made on his own initiative. Provided that no proceeding for judicial review as provided herein shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer may file with the county clerk of the county where the employer resides or has a place of business the order of the fiscal officer containing the amount found to be due. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the fiscal officer in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

8-a. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, the prior receipt without protest of the wages, salary or supplements paid or provided, as the case may be, to the complainant or any other person affected by such final order, or his failure to state orally or in writing upon any payroll or receipt which he is required to sign that the wages, salary or supplements received by him is received under protest, or to indicate in any other way his protest against the amount thereof, or that the amount so paid does not constitute payment in full of the wages or salary due him for the period covered by such payment, or that the supplements provided do not constitute the full supplements due him, shall not be a bar to his right to recover, in accordance with the provisions of subdivision eight, the difference between the sum actually paid or provided, as the case may be, and the amount which should have been paid or provided, as the case may be, as determined by such final order.

8-b. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, an employee of a municipal corporation, irrespective of the title of his position or employment, whose salary or wage or supplement is fixed by reference to a prevailing rate of wage determined or to a prevailing practice for supplements determination and established by a final order in a proceeding instituted under this section, shall not be barred from his right to recover, in accordance with the terms of such fixation, the difference between the amount actually paid to him and the amount which should have been paid to him or provided, as the case may be, pursuant to such fixation, because of the prior receipt by him without protest of the salary, wages or supplements paid or provided to him, as the case may be; or because he did not previously protest his prior failure to be provided with any supplement whatsoever; or on account of his failure to state orally or in writing upon any payroll or receipt which he is required to sign that the salary or wages or supplements received by him is received under protest, or on account of his failure to indicate his protest against the amount or non-provision thereof or that the amount so paid or provided does not constitute payment or provision, as the case may be, in full of the salary, wages or supplement due him for the period covered by such payment.

8-c. Interest at six percentum per annum shall begin to accrue sixty days after a final determination made by a fiscal officer on the difference between the prevailing wages so determined, and which should have been paid to an employee of a municipal corporation, and the amount actually received by him. Said accumulated interest shall be paid to the employee when back pay based on the determination is paid to him.

8-d. Notwithstanding any inconsistent provision of this chapter or of any other law, in a city of one million or more, where a majority of laborers, workmen or mechanics in a particular civil service title are members of an employee organization which has been certified or recognized to represent them pursuant to the provisions of article fourteen of the civil service law or a local law enacted thereunder, the

public employer and such employee organization shall in good faith negotiate and enter into a written agreement with respect to the wages and supplements of the laborers, workmen or mechanics in the title. If the parties fail to achieve an agreement, only the employee organization shall be authorized to file a single verified complaint pursuant to subdivision seven herein, on behalf of the laborers, workmen or mechanics so represented. Such employee organization shall be the sole and exclusive representative of such laborers, workmen or mechanics at any hearing pursuant to subdivision eight herein, and shall be the sole complainant in the proceeding for all purposes therein, including review pursuant to article seventy-eight of the civil practice law and rules. Service by the fiscal officer on the employee organization shall be sufficient notice to the laborers, workmen or mechanics so represented for all purposes of subdivision eight herein, except that the issuance and enforcement of subpoenas shall be regulated by the civil practice law and rules. Any order, compromise, or settlement determining the issues raised upon such a proceeding, which has not been taken up for review by the employee organization, shall be binding upon the laborers, workmen or mechanics represented by the employee organization. Nothing herein shall be construed to limit the rights of any laborer, workman or mechanic who has on file a verified complaint prior to the effective date of this subdivision.

9. When a final determination has been rendered, any person that wilfully refuses thereafter to pay the rate of wages or to provide the supplements determined to be prevailing, or wilfully employs on such public work, laborers, workmen or mechanics more than the hours per day determined by said order until modified by order of the fiscal officer or court and thereby violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished, in accordance with the penal law. A person who violates this subdivision after having previously been convicted of violating this subdivision within the past five years shall be guilty of a class E felony, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such person shall be entitled to receive any sum nor shall any officer, agent or employee of the state or of a municipal corporation pay the same or authorize its payment from the funds under

his charge or control to any such person for work done upon any contract, on which the contractor has been convicted of second offense in violation of the provisions of this section.