

Effective January 1, 2023, the New Jersey minimum wage is \$14.13 per hour for most workers. [Learn more about the increase.](#)

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# NJ State Prevailing Wage Act and Regulations

Please note that as of July 1, 2004, the formal name of the Department as denoted below as "The Department of Labor and Industry" or the "Department of Labor" will henceforth be denoted as "The Department of Labor and Workforce Development".

## N.J.S.A. 34:11-56.25 et seq. New Jersey State Prevailing Wage Act

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## **Chapter 11 WAGES ON PUBLIC WORKS**

### **34:11-56.25. Public policy**

It is declared to be the public policy of this State to establish a prevailing wage level for workmen engaged in public works in order to safeguard their efficiency and general well being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to efficiency and well-being.

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### **34:11-56.26. Definitions**

As used in this act:

(1) "Department" means the Department of Labor and Workforce Development of the State of New Jersey.

(2) "Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the

commissioner from time to time, provided that in determining the "locality", the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workers in such craft or trade.

(3) "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. "Maintenance work" also means any work on a maintenance-related project that exceeds the scope of work and capabilities of in-house maintenance personnel, requires the solicitation of bids, and has an aggregate value exceeding \$50,000.

(4) "Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

(5) "Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

(a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and

(b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

(6) "Commissioner" means the Commissioner of Labor and Workforce Development or his duly authorized representatives.

(7) "Workman" or "worker" includes laborer, mechanic, skilled or semi-skilled, laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. For the purpose of P.L. 1963, c.150 (C.34:11-56.25 et seq.), contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.

(8) "Work performed under a rehabilitation program" means work arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions.

(9) "Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

(10) "Act" means the provisions of P.L.1963, c. 150 (C.34:11-56.25 et seq.) and the rules and regulations issued hereunder.

(11) "Prevailing wage contract threshold amount" means:

(a) In the case of any public work paid for in whole or in part out of the funds of a municipality in the State of New Jersey or done on property or premises owned by a public body or leased or to be leased by the municipality, the dollar amount established for the then current calendar year by the commissioner through rules and regulations promulgated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et seq.), which amount shall be equal to \$9,850<sup>[1]</sup> on July 1, 1994 and which amount shall be adjusted on July 1 every five calendar years thereafter in direct proportion to the rise or fall in the average of the Consumer Price Indices for Urban Wage Earners and Clerical Workers for the New York metropolitan and the Philadelphia metropolitan regions as reported by the United States Department of Labor during the last full calendar year preceding the date upon which the adjustment is made; and

[1]See [N.J.A.C. 12:60-1.4](#) for the current prevailing wage contract threshold amount.

Effective July 1, 2014 the prevailing wage contract threshold amount is \$15,444.

Effective July 1, 2019 the prevailing wage contract threshold amount is \$16,263.

(b) In the case of any public work other than a public work described in paragraph (a) of this subsection, an amount equal to \$2,000.

(12) "Custom fabrication" means:

(a) the fabrication of any of the following: plumbing, heating, cooling, ventilation or exhaust duct systems, mechanical insulation, or one or more signs in a project which cost a total of more than \$30,000 and are part of a project upon completion; or

(b) any other fabrication which is either of components or structures pre-fabricated to specifications for a particular project of public work or of other materials finished into components without further modification for use in a project of public work or for use in a type or classification of a project of public work.

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### **34:11-56.27. Required contract provisions; liability of contractor and sureties for excess costs**

Every contract in excess of the prevailing wage contract threshold amount for any public work to which any public body is a party or for public work to be done on property or premises owned by a public body or leased or to be leased by a public body shall contain a provision stating the prevailing wage rate which can be paid (as shall be designated by the commissioner) to the workers employed in the performance of the contract and the contract shall contain a stipulation that such workers shall be paid not less than such prevailing wage rate. Such contract shall also contain a provision that in the event it is found that any worker, employed by the contractor or any subcontractor covered by said contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable for any excess costs occasioned thereby to the public body, any lessee to whom the public body is leasing a property or premises or any lessor from whom the public body is leasing or will be leasing a property or premises.

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### **34:11-56.28. Specification of prevailing wage rate by craft in contract**

The public body, any lessee to whom the public body is leasing a property or premises and any lessor from whom the public body is leasing or will be leasing a property or premises awarding any contract for public work or otherwise undertaking any public work shall ascertain from the commissioner the prevailing wage rate in the locality in which the public work is to be performed for each craft or trade needed to perform the contract and shall specify in the contract itself what the prevailing wage rate in the locality is for each craft or trade or classification of all workers needed to perform the contract during the anticipated term thereof. Nothing in this act however shall prohibit the payment of more than the prevailing wage rate to any worker employed on a public work.

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### **34:11-56.29. Record of wages paid by contractor and subcontractor**

Every contractor and subcontractor shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed by him in connection with a public work and such records shall be preserved for two years from date of payment.

The record shall be open at all reasonable hours to the inspection of the public body awarding the contract, to any other party to the lease or agreement to lease pursuant to which the public work is done, and to the commissioner.

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### **34:11-56.30. Establishment of prevailing wage rate by commissioner**

The commissioner shall determine the prevailing wage rate and forthwith shall establish the prevailing wage in the locality in which the public work is to be performed for each craft or trade or classification of all workmen needed to perform public work contracts. The prevailing wage shall be determined and computed in accordance with rules and regulations issued by the commissioner as may be required to carry out the provisions of this act; provided, however, that employer contributions for employee benefits pursuant to a then existing bona fide collective bargaining agreement shall be considered an integral part of the wage rate paid by employers of any craft or trade in the locality under consideration for the purpose of determining the prevailing wage under this act. Said wage determination shall be conclusive for a period of 2 years from date of issuance unless superseded within said 2-year period by a later determination. The commissioner shall forthwith announce all said determinations and give notice by mail of all determinations of prevailing wage rates made pursuant to this section to any representative of any craft or trade, any employer, or any representative of any group of employers who shall in writing request the commissioner so to do.

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### **34:11-56.31. Authority of commissioner**

The commissioner shall have the authority to:

(a) investigate and ascertain the wages of workmen employed in any public work in the State;

(b) enter and inspect the place of business or employment of any employer or workmen in any public work in the State, for the purpose of examining and inspecting any or all books, registers, payrolls, and other records of any such employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any such workmen; copy any or all of such books, registers, payrolls, and other records as he or his authorized representative may deem necessary or appropriate; obtain proof of, and question, any worker's identity to determine whether the worker's identity is accurately and truthfully included or reported in any or all books, registers, payrolls, and other records of the employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment in the public work; and question such workmen for the purpose of ascertaining whether the provisions of this act have been and are being complied with;

(c) require from such employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and such other information pertaining to his workmen and their employment as the commissioner, or his authorized representative may deem necessary or appropriate; and

(d) require any employer to file, within 10 days of receipt of a request, any records enumerated in subsections (b) and (c) of this section, sworn as to their validity and accuracy. If the employer fails to provide the requested records within 10 days, the commissioner may direct within 15 days the fiscal or financial officer charged with the custody and disbursements of the funds of the public body which contracted for the public work immediately to withhold from payment to the employer up to 25% of the amount, not to exceed \$100,000.00, to be paid to the employer under the terms of the contract pursuant to which the public work is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records has been satisfied.

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### **34:11-56.32. Posting of prevailing wage rates**

Contractors and subcontractors performing public work of a public body subject to the provisions of this act shall post the prevailing wage rates for each craft and classification involved as determined by the commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workmen their wages.

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### **34:11-56.33. Statement by contractor of amounts due workers; deductions from payments to contractor; payments by public body to workers**

(a) Before final payment is made by or on behalf of any public body or before any lessee to whom the public body is leasing a property or premises or any lessor from whom the public body is leasing or will be leasing a property or premises makes such payment, of any sum or sums due on a public work, it shall be the duty of the treasurer of the public body or other officer or person charged with the custody and disbursement of the funds of the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, as the case may be, to require the contractor and subcontractor to file written statements with the public body in form satisfactory to the commissioner certifying to the amounts then due and owing from such contractor and subcontractor filing such statement to any and all workers for wages due on account of the public work, setting forth therein the names of the persons whose wages are unpaid and the amount due to each respectively, which statement shall be verified by the oath of the contractor or subcontractor, as the case may be, that he has read such statement subscribed by him, knows the contents thereof, and that the same is true of his own knowledge; provided, however, that nothing herein shall impair the right of a contractor to receive final payment because of the failure of any subcontractor to comply with provisions of this act.

(b) In case any worker shall have filed a protest in writing within three months from the date of the occurrence of the incident complained of with the commissioner, objecting to the payment to any contractor to the extent of the amount or amounts due or to become due to the worker for wages for work performed on a public work, the commissioner may direct the fiscal or financial officer of the public body or other person charged with the custody and disbursements of the funds of the public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, as the case may be, to deduct from the whole amount of any payment, the sum or sums admitted by any contractor in such statement or statements so filed to be due and owing by him on account of wages earned on such public work.

Such fiscal or financial officer, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, shall withhold the amount so deducted for the benefit of the worker whose wages are unpaid as shown by the verified statement filed by such contractor, and shall pay directly to any worker the amount shown by such statement to be due to him for such wages. Such payment shall thereby discharge the obligation of the contractor to the person receiving such payment to the extent of the amount thereof.

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### **34:11-56.34. Failure to pay prevailing wages; notice to commissioner; protest by worker**

(a) The fiscal or financial officer of any public body, the lessee to whom the public body is leasing a property or premises or the lessor from whom the public body is leasing or will be leasing a property or premises, having public work performed under which any worker shall have been paid less than the prevailing wage shall forthwith notify the commissioner in writing of the name of the person or firm failing to pay the prevailing wages.

(b) Any worker may within two years from the date of the occurrence of the incident complained of file a protest in writing with the commissioner objecting to the amount of

wages paid for service performed by him on a public work as being less than the prevailing wages for such services.

(c) It shall not constitute a failure to pay the prevailing wage rates for the work of a particular craft or classification where the prevailing wage rate determined for a specific craft or classification has been paid and thereafter one or more craft unions contend that the work should have been assigned to their members instead of the members of the specific craft to whom it was assigned or by whom it was performed.

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### **34:11-56.35. Penalties, stop-work orders**

(a) Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to him under this act and each worker so paid, shall constitute a separate offense.

(b) As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c. 150 (C. 34:11-56.25 et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

(c) When the Commissioner of Labor and Workforce Development finds that the employer has violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

(d) If the commissioner makes an initial determination that an employer has violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) by paying wages at rates less than the rates applicable under that act, whether or not the commissioner refers the matter to the Attorney General or other appropriate prosecutorial authority for investigation or prosecution pursuant to subsection (c) of this section, the commissioner may immediately issue a stop-work order to cease all business operations at every site where the violation has occurred. The

stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The stop-work order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has agreed to pay wages at the required rate and has paid any wages due and any penalty deemed satisfactory to the commissioner. As a condition for release from a stop-work order, the commissioner may require the employer to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's continued compliance with the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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### **34:11-56.36. Supervision by commissioner of payment of amounts due workers; administrative fee**

As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to workers under this act, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the workers, and paid on order of the commissioner directly to the worker or workers affected. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

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### **34:11-56.37. Lists relative to contractors performing prevailing wage public work**

13. a. In the event that the commissioner shall determine, after investigation, that any contractor or subcontractor has failed to pay the prevailing wage he shall thereupon list and keep on record the name of such contractor or subcontractor and forthwith give notice by mail of such list to any public body who shall request the commissioner so to do. Where the person responsible denies that a failure to pay the prevailing wage has occurred, he shall have the right to apply to the commissioner for a hearing which must be afforded and a decision rendered within 48 hours of the request for a hearing. If the commissioner rules against the petitioning party he shall have the right to apply for injunctive relief in the Superior Court against the listing by the commissioner.

b. The commissioner shall create, maintain, and distribute an informational list for contractors and subcontractors who bid on and perform public work, which includes but need not be limited to wage payment, recordkeeping, and registration requirements, and applicable penalties, pursuant to the "New Jersey Prevailing Wage Act," P.L. 1963, c. 150 (C.34:11-56.25 et seq.) and "The Public Works Contractor Registration Act," P.L.1999, c. 238 (C.34:11-56.48 et seq.). The commissioner shall prominently display the informational list on a website maintained by the Department of Labor and Workforce Development and shall distribute to any contractor, subcontractor, or public body, upon request, the informational list, as well as the list of the names of contractors and subcontractors who have failed to pay prevailing wages as determined pursuant to subsection a. of this section, or who have failed to pay any State employer payroll tax.

c. The commissioner shall create, maintain, and distribute an informational list of labor organizations that represent workers who engage in public work, which shall contain information about required hourly rates, required fringe benefit rates, and regions in which the labor organizations represent workers. The commissioner shall prominently display the

informational list on a website maintained by the Department of Labor and Workforce Development and shall distribute to any contractor, subcontractor, labor organization, or public body, upon request, the informational list for use on public work, including projects for which the cost is below the prevailing wage contract threshold amount.

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### **34:11-56.38. Prohibition against award of contract to non-complying contractors; definition of "interest"; presumption**

The public body awarding any contract for public work, or otherwise undertaking any public work, or entering into a lease or agreement to lease pursuant to which public work is to be done, shall first ascertain from the commissioner the list of names of contractors or subcontractors who have failed to pay prevailing wages as determined in section 13 of this act, and no contract shall be awarded to such contractor or subcontractor, or to any firm, corporation or partnership in which such contractor or subcontractor has an interest until three years have elapsed from the date of listing as determined in section 13 of this act.

For purposes of this section, "interest" shall mean an interest in the firm, corporation or partnership bidding on, or performing public work, whether having the interest as an owner, partner, officer, manager, employee, agent, consultant or representative. The term may also include, but not be limited to, all instances in which the contractor or subcontractor listed by the commissioner under section 13 of this act has received payments, whether those payments are in the form of cash or any other form of compensation from the firm, corporation or partnership, or when the contractor or subcontractor listed by the commissioner under section 13 of this act has entered into any contract or agreement with the firm, corporation or partnership for services performed or to be performed, for services that have been or will be assigned or subletted, or for the sale, rental or lease of vehicles, tools, equipment or supplies during the period from the initiation of the proceedings under section 13 of this act against the contractor or subcontractor until three years have elapsed from the date that the contractor or subcontractor has been listed by the commissioner under section 13 of this act. The term "interest" shall not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of proceedings under section 13 of this act from a firm, corporation or partnership bidding or performing public work.

A rebuttable presumption that a contractor or subcontractor listed by the commissioner under section 13 of this act has an interest in another firm, corporation or partnership may arise if the two share any of the following capacities or characteristics: (1) perform similar work within the same geographical area and within the same monetary range, (2) occupy the same premises, (3) have the same telephone number or fax number, (4) have the same email address or internet website, (5) employ substantially the same administrative employees, (6) utilize the same tools and equipment, (7) employ or engage the services of any person or persons involved in the direction or control of the other, or (8) list substantially the same work experience in order to obtain the requisite pre-qualification rating from the Department of Treasury, or any other entity, to participate in any public work.

If a rebuttable presumption has arisen that a contractor or subcontractor listed by the commissioner under section 13 of this act has an interest in another firm, corporation or partnership, the adversely affected contractor or subcontractor, including the firm, corporation or partnership, which would by virtue of a finding of "interest" be prevented under this section from being awarded public work, may request a hearing, which shall be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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### **34:11-56.39. Discrimination against workers; violation; penalty**

Any employer who discharges or in any other manner discriminates against any worker because the worker has made any complaint to his employer, to the public body or to the commissioner that he has not been paid wages in accordance with the provisions of this act, or because the worker has caused to be instituted or is about to cause to be instituted any

proceeding under or related to this act, or because the worker has testified or is about to testify in any such proceeding shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100 nor more than \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c. 150 (C. 34:11-56.25 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement laws" (N.J.S. 2A:58-1 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

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#### **34:11-56.40. Action for recovery of full amount of prevailing wage**

If any workman is paid by an employer less than the prevailing wage to which such workman is entitled under the provisions of this act such workman may recover in a civil action the full amount of such prevailing wage less any amount actually paid to him or her by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such workman and the employer to work for less than such prevailing wage shall be no defense to the action. Any workman shall be entitled to maintain such action for and on behalf of himself or other workmen similarly situated, and such workman and workmen may designate an agent or representative to maintain such action for and on behalf of all workmen similarly situated. At the request of any workman paid less than the prevailing wage to which such workman was entitled under the provisions of this act the commissioner may take an assignment of the wage claim in trust for the assigning workman and may bring any legal action necessary to collect the claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

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#### **34:11-56.41. Collective bargaining; effect of act**

Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of workmen to bargain collectively through representatives of their own choosing in order to establish wages in excess of any applicable minimum under this act.

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#### **34:11-56.42. Partial invalidity**

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

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### **34:11-56.43. Rules and regulations**

The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

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### **34:11-56.44. Short title**

This act shall be known as the "New Jersey Prevailing Wage Act."

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### **34:11-56.45. Repeal of inconsistent acts**

All acts and parts of acts are repealed insofar as they are inconsistent herewith.

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### **34:11-56.47. Action for damages against contractor for failure to pay prevailing wages or taxes, contributions, assessments or benefits**

a. Any person who submits a bid directly to a public body for a contract for any public work subject to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C. 34:11-56.25 et seq.) and is not awarded the contract and whose bid is the lowest bid other than the bid accepted by the public body or, if, pursuant to law, the contract is awarded on the basis of factors other than or in addition to the lowest bid, whose bid is the highest in rank other than the bid accepted by the public body (hereinafter referred to in this section as the "plaintiff") may bring an action for damages in a court of competent jurisdiction against the contractor who was directly awarded the contract by the public body or any subcontractor of that contractor (hereinafter referred to in this section as the "defendant") alleging that the defendant has, in connection with work performed pursuant to the contract, violated the provisions of P.L.1963, c. 150 (C. 34:11-56.25 et seq.) or failed to pay any contribution, tax, assessment or benefit required by any other applicable law. If there is more than one losing bidder, a bidder with a higher bid than the second lowest bidder or lower rank than the second highest rank, if, pursuant to law, the contract is awarded on the basis of factors other than or in addition to the lowest bid, may bring the action if that bidder gives written notice of his intention to bring an action, sent by first-class mail and certified mail, return receipt requested, to every other losing bidder whose bid was lower than his or whose bid was higher in rank than his and none of the bidders notified files an action within 30 days following the date of their receipt of notice. The written notice of intention to bring an action must contain the following: (1) a statement of the specific violations or failures to pay allegedly committed, which shall not preclude, in the course of the action, consideration of other violations or failures to pay as may be revealed in the course of discovery, (2) a statement that the action is to be filed pursuant to this act, and (3) a statement that the recipient of the notice may have the right to file an action and will be precluded from doing so if he does not file an action within 30 days of his receipt of the notice. If no other losing bidder so notified files an action within 30 days of his receipt of the notice, the losing bidder who sent the notice shall file an action pursuant to this act within 15 days of the last day any of the recipients of the notice could have filed an action. If more than one bidder files an action, all actions other than that filed by the bidder whose bid is the lowest of the bidders who filed actions, or, if, pursuant to law, the contract is awarded on the basis of factors other than or in addition to the lowest bid, whose bid is the highest in rank of the bidders who filed actions, shall be dismissed.

b. Upon a finding by the court that the plaintiff was a responsible bidder for the contract and a finding that one or more defendants violated the provisions of P.L.1963, c. 150 (C. 34:11-56.25 et seq.) or failed to pay any contribution, tax, assessment or benefit required by any other applicable law in connection with work performed pursuant to the contract, and that the plaintiff submitted a bid for the contract which was less than the sum total of the bid accepted by the public body plus any additional amount that the defendant or defendants would have paid during the term of the contract to be in full compliance with P.L.1963, c. 150 (C. 34:11-56.25 et seq.) and other applicable laws in connection with the contract, the court

shall order the defendant or defendants to pay to the plaintiff the entire amount of damages sustained plus costs and reasonable attorney's fees or, if the court finds the noncompliance to be intentional, three times the amount of damages sustained plus costs and reasonable attorney's fees, except that the court shall order no payment to the plaintiff if the court finds that the violation or failure to pay was caused by minor record keeping mistakes or minor computational errors or by other minor mistakes. The occurrence of more than two violations or failures to pay shall lead to the rebuttable presumption that the violation or failure to pay at issue is not minor. If there are two or more defendants, the court shall allocate the payments for damages sustained and attorney's fees among the defendants in a reasonable manner. Nothing in this section shall be construed as requiring payments to a plaintiff by any contractor or subcontractor who has not violated the provisions of P.L.1963, c. 150 (C. 34:11-56.25 et seq.) or failed to pay any contribution, tax, assessment or benefit required by any other applicable law in connection with work performed pursuant to the contract. A plaintiff may designate an agent or representative to maintain the action if the violation or failure to pay has an adverse effect on the agent or representative or, if the agent or representative is an organization or association, on any member of the organization or association. If the plaintiff prevails, the agent or representative shall be entitled to reimbursement for costs and reasonable attorney's fees of the agent or representative but not to a financial interest in the damages awarded.

c. For the purposes of this section, the damages sustained by a plaintiff shall include the plaintiff's costs of preparing and submitting the bid and may, if sought by the plaintiff, include profits that the court determines the plaintiff would have made if the plaintiff had been awarded the contract and complied with P.L.1963, c. 150 (C. 34:11-56.25 et seq.) and other applicable laws.

d. If the court determines that the defendant did not, in connection with work performed pursuant to the contract, violate the provisions of P.L.1963, c. 150 (C. 34:11-56.25 et seq.) or fail to pay any contribution, tax, assessment or benefit required by other applicable law, the court shall order the plaintiff to pay the costs and reasonable attorney's fees of the defendant. Nothing herein shall preclude a defendant who is found to have committed minor record keeping mistakes, minor computational errors or other minor mistakes from being awarded relief pursuant to section 1 of P.L.1988, c. 46 (C. 2A:15-59.1).

e. As used in this section:

"Person" means any individual, corporation, company, partnership, firm, association or business;

"Contractor" means a person who is directly awarded a contract for a public work by a public body; and

"Subcontractor" means any subcontractor or lower tier subcontractor of a contractor.

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### **34:11-56.48. Short title**

This act shall be known and may be cited as "The Public Works Contractor Registration Act."

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### **34:11-56.49. Legislative findings**

The Legislature finds and declares that:

a. There is growing concern over the increasing number of construction industry workers on public works projects laboring under conditions which violate State labor laws and regulations concerning wages, unemployment and temporary disability insurance, workers' compensation insurance, and the payment of payroll taxes;

b. Contractors and subcontractors receiving the benefit of public tax dollars for their work should not be allowed to exploit their workers by denying them benefits and pay mandated by

law;

c. It is therefore necessary and proper for the Legislature to establish a registration system for contractors and subcontractors engaged in public works projects in order to better enforce existing labor laws and regulations in the public works industry.

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### **34:11-56.50. Definitions relative to public works contractors**

3. As used in chapter 11 of Title 34 of the Revised Statutes:

“Apprenticeship Agreement” means a written agreement, complying with 29 C.F.R. s.29.7, between an apprentice and either the apprentice’s program sponsor, or an apprenticeship committee acting as agent for a program sponsor, which contains the terms and conditions of the employment and training of the apprentice.

“Apprenticeship cohort” means the group of individual apprentices registered to a specific individual program during a one-year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.

“Apprenticeship committee” means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows:

(1) A joint committee is composed of an equal number of representatives of the employer or employers and of the employees represented by a bona fide collective bargaining agent or agents.

(2) A non-joint committee, which may also be known as a unilateral or group non-joint committee, has employer representatives, but does not have a bona fide collective bargaining agent as a participant. A non-joint committee may include employees.

“Apprenticeable occupation” means a skilled trade or technical occupation that

is included on the United States Department of Labor’s “List of Occupations Officially Recognized as Apprenticeable by the Office of Apprenticeship”.

“Apprenticeship program” means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, as required under 29 C.F.R. ss.29 and 30, including such matters as the requirement for a written apprenticeship agreement.

“Commissioner” means the Commissioner of Labor and Workforce Development or his duly authorized representatives.

“Completion rate” means the percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within one year of the projected completion date.

“Contractor” means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25 et seq.), and includes any subcontractor or lower tier subcontractor of a contractor as defined herein.

“Department” means the Department of Labor and Workforce Development.

“Director” means the Director of the Division of Wage and Hour Compliance in the Department of Labor and Workforce Development.

“Worker” includes laborer, mechanic, skilled or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, who have completed or are actively participating in a registered apprenticeship program, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site.

"Registered apprenticeship program" or "program" means an apprenticeship program which is registered with and approved by the United States Department of Labor, which provides each trainee with combined classroom and on-the-job training in an occupation recognized as an apprenticeable occupation, and which involves the attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the specific apprenticeable occupation, are outlined under 29 C.F.R. s.29.5.

"Sponsor" means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is or will be registered or approved.

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### **34:11-56.51. Registration required for contractors, subcontractors**

No contractor shall bid on any contract for public work as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26), or for which payment of the prevailing wage is required by any other provision of law, unless the contractor is registered pursuant to this act. No contractor shall list a subcontractor in a bid proposal for the contract unless the subcontractor is registered pursuant to P.L.1999, c.238 (C.34:11-56.48 et seq.) at the time the bid is made. No contractor or subcontractor, including a subcontractor not listed in the bid proposal, shall engage in the performance of any public work subject to the contract, unless the contractor or subcontractor is registered pursuant to that act.

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### **34:11-56.51a. Subcontractor duties.**

Subcontractors of a contractor registered pursuant to P.L.1999, c.238 (C.34:11-56.48 et seq.) are not required to register under that act if they do not perform work at any construction site subject to that act.

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### **34:11-56.52. Contractor to register in writing; form; requisites.**

a. A contractor shall register in writing with the department on a form provided by the commissioner. The form shall require the following information:

- (1) The name, principal business address and telephone number of the contractor;
- (2) Whether the contractor is a corporation, partnership, sole proprietorship, or other form of business entity;
- (3) If the contractor's principal business address is not within the State, the name and address of the contractor's custodian of records and agent for service of process in this State;
- (4) The name and address of each person with a financial interest in the contractor and the percentage interest, except that if the contractor is a publicly traded corporation, the contractor shall supply the names and addresses of the corporation's officers;
- (5) The contractor's tax identification number and unemployment insurance registration number;
- (6) A certification form provided by the commissioner, with documentation satisfactory to the commissioner, that the contractor has all valid and effective licenses, registrations or certificates required by State law, including registrations or certifications required to do business in the State of New Jersey, and the contractor, if directly employing craftworkers, participates in a registered apprenticeship program as defined in section 3 of P.L.1999, c.238 (C.34:11-56.50) for each craft they employ;
- (7) A certification form provided by the commissioner, with supporting documentation, establishing to the satisfaction of the commissioner that the registered apprenticeship program, as defined in section 3 of P.L.1999, c.238 (C.34:11-56.50), meets all of the requirements of section 6 of P.L.2021, c.423 (C.34:11-56.55a), and 29 C.F.R. ss.29.3, 29.4, 29.5, 29.6 and 29.7;

(a) If it is determined by the commissioner that a registered apprenticeship program in which the contractor participates does not meet all of the requirements of 29 C.F.R. ss.29.3, 29.4, 29.5, 29.6 and 29.7, that determination of the commissioner shall, subject to the requirements of subsection b. of section 9 of P.L.1999, c.238 (C.34:11-56.56), including the contractor's right to request a hearing, result in initial registration application denial, registration renewal denial, revocation, or suspension of the certificate of registration to perform public work in New Jersey;

(b) The determination of the commissioner under this paragraph shall only impact the contractor's ability to obtain or maintain its public works contractor registration certificate under P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall not affect the status of the registered apprenticeship program for the purpose of its continued operation in New Jersey;

(c) A determination by the commissioner under subparagraph (a) of this paragraph (7) that a registered apprenticeship program in which the contractor participates does not meet all of the requirements of 29 C.F.R. ss. 29.3, 29.4, 29.5, 29.6 and 29.7 shall result not only in initial registration application denial, registration renewal denial, revocation or suspension of that contractor's certificate of registration to perform public work in New Jersey, but also shall result in the initial registration application denial, registration renewal denial, revocation or suspension of every contractor who is meeting the apprenticeship program participation requirement through participation in the non-compliant registered apprenticeship program; provided that any initial registration application denial, registration renewal denial, revocation or suspension shall be subject to the requirements of subsection b. of section 9 of P.L.1999, c.238 (C.34:11-56.56), including the contractor's right to request a hearing; and

(8) Any other relevant and appropriate information as determined by the commissioner.

b. At the time of registration, and subsequently upon request, the contractor shall submit to the commissioner documentation demonstrating that the contractor has worker's compensation insurance coverage for all workers as required by law.

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### **34:11-56.53. Nonrefundable registration fees.**

a. The contractor shall pay an initial annual non-refundable registration fee of \$500 to the commissioner. The non-refundable registration fee for the second annual registration shall be \$500. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$750.

b. A contractor who is performing public work on the effective date of this act shall submit the registration application form and fee to the commissioner within 30 days of the effective date of this act.

c. Registration fees collected pursuant to this act shall be applied toward the enforcement and administration costs of the Division of Workplace Standards, Office of Wage and Hour Compliance, Public Contracts section and Registration section within the department.

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### **34:11-56.54. Issuance of certificate of registration.**

Upon receipt of the fee, form and documentation required by section 5 of this act, and upon a finding that the applicant for the certificate of registration has met all of the requirements set forth at section 5 of P.L.1999, c.238 (C.34:11-56.52), the commissioner shall issue a certificate of registration to the contractor. A registration certificate shall be valid for one calendar year from the date of registration. Registrations shall be renewed not less than 30 days before the expiration date of the immediately preceding registration.

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### **34:11-56.54a. Contractor, sponsor obligations, registration certificate renewal cycles; compliance.**

a. Each contractor or sponsor as defined herein, who is registered under P.L.1999, c.238 (C.34:11-56.48 et seq.) to bid on and perform public work shall be under a continuing obligation between registration certificate renewal cycles to ensure compliance with the requirements of section 5 of P.L.1999, c.238 (C.34:11-56.52).

b. When between registration certificate renewal cycles it is determined by the department that a contractor has failed to comply with the requirements of section 5 of P.L.1999, c.238 (C.34:11-56.52), provided it is also determined by the department that the failure to comply with section 5 of P.L.1999, c.238 (C.34:11-56.52) existed at the time of the contractor's most recent certificate of registration application, whether that application was for contractor registration renewal or initial approval, the department shall consider the resulting failure of the contractor to accurately complete its registration application to have been the making or causing to be made of a false, deceptive or fraudulent statement on the public works contractor registration form, which pursuant to paragraph (7) of subsection a. of section 9 of P.L.1999, c.238 (C.34:11-56.56), constitutes grounds for revocation of the contractor's certificate of registration.

c. When between registration certificate renewal cycles it is determined by the department that a contractor has failed to comply with section 5 of P.L.1999, c.238 (C.34:11-56.52), but where it is also determined by the department that the failure to comply with section 5 of P.L.1999, c.238 (C.34:11-56.52) did not exist at the time of the contractor's most recent certificate of registration application, whether that application was for contractor registration renewal or initial approval, the department shall suspend the contractor's certificate of registration pursuant to this section either until the contractor establishes compliance with section 5 of P.L.1999, c.238 (C.34:11-56.52) or until the beginning of the next registration certificate renewal cycle, whichever occurs first.

d. When a contractor has had its registration certificate either revoked or suspended under subsections b. or c. of this section, for failure between registration certificate renewal cycles to comply with section 5 of P.L.1999, c.238 (C.34:11-56.52), that registration certificate revocation or suspension shall be taken into consideration by the department as a prior offense when determining whether to grant any subsequent certificate of registration application.

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### **34:11-56.55. Submission of all subcontractor registration certificates by contractor**

Each contractor shall, after the bid is made and prior to the awarding of the contract, submit to the public entity, including, but not limited to, any authority, board, or commission, the certificates of registration for all subcontractors listed in the bid proposal. Applications for registration shall not be accepted as a substitute for a certificate of registration for the purposes of this section.

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### **34:11-56.55a. Registered apprenticeship program requisites.**

A registered apprenticeship program shall require the completion of the on-the-job training hours which conform to the industry standards for learning the skills of a specific craft or trade, as well as on-the-job organized, related instruction in technical subjects related to the specific apprenticeable occupation in conformance with industry standards. The industry standards for program completion shall be based upon the training requirements as registered and certified by the United States Department of Labor each individual occupation and craft title published by the United States Department of Labor Employment and Training Administration.

The length of a program shall depend upon the complexity of the occupation. Program duration shall be not less than one year and not more than six years. During the program, the apprentice shall receive both structured on-the-job training and related classroom instruction.

For each year of the program, the apprentice shall receive at least 2,000 hours of on-the-job training and at least 144 hours of related classroom instruction.

The program shall include all other recommended minimum requirements as outlined under 29 C.F.R. s.29.5 including, but not limited to, a successful demonstration of competency, the registration of program standards, the submission and publication of program completion rates which meet the program performance standards of enrollment and completion rates as outlined under 29 C.F.R. s.29.6, and meet the training recommendations, the terms and conditions of the employment and training agreement between the employer and the apprentice, and the publication of the graduated wages scales to be paid to the apprentice as outlined under 29 C.F.R. s.29.7.

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### **34:11-56.56. Violation; disorderly persons offense; other penalties; suspension; hearing**

a. A contractor who: (1) willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act; (2) fails to make, keep, and preserve any records as required under the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); (3) falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand; (4) refuses to furnish a sworn statement of such records or any other information required for the enforcement of this act to the commissioner upon demand; (5) pays or agrees to pay wages at a rate less than the rate prescribed by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.); (6) willfully makes, or causes to be made, a false, deceptive or fraudulent statement on the public works contractor registration form; or (7) otherwise violates any provision of this act, shall be guilty of a disorderly persons offense and shall, upon conviction, be subject to punishment by a fine of not less than \$2,500 nor more than \$25,000 and disqualification from bidding on or engaging in public work for a period of up to three years. Where the contractor has made or has caused to be made a false, deceptive or fraudulent statement on the public works contractor registration form in connection with the requirement of section 5 of P.L.1999, c.238 (C.34:11-56.52) that the contractor participate in a registered apprenticeship program for each craft that the contractor employs, and where the false, deceptive or fraudulent statement was made by an officer or employee charged with the duty of completion of the registration form for a contractor, that officer or employee, upon conviction, shall be subject to punishment by the fine indicated in this subsection or by imprisonment not exceeding six months, or both.

b. As an alternative to or in addition to sanctions provided by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may, after providing the contractor with notice of any alleged violation of this act, and with an opportunity to request a hearing before the commissioner or his designee:

(1) Deny renewal, revoke or suspend the registration of a contractor for a period of not more than five years; or

(2) Require a contractor, as a condition of initial or continued registration, to provide a surety bond payable to the State. The surety bond shall be for the benefit of workers damaged by any failure of a contractor to pay wages or benefits pursuant to or otherwise comply with the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) or this act. The surety bond shall be in the amount and form that the commissioner deems necessary for the protection of the contractor's workers, but shall not exceed \$10,000 per worker. The surety bond shall be issued by a surety that meets the requirements of N.J.S.2A:44-143.

c. The director may order the immediate suspension of a contractor's registration, prior to a formal hearing on the revocation of the contractor's registration pursuant to subsection b. of this section, if the director determines that ordering an immediate suspension is in the public interest and provided that the contractor is afforded an opportunity to contest the immediate suspension in the following manner:

(1) The director shall notify the contractor in writing of the immediate revocation and the contractor's rights under the subsection.

(2) The contractor may notify the director of its request for an opportunity to be heard and contest the immediate suspension in writing within 72 hours of its receipt of immediate suspension notification.

(3) Within seven business days of receipt of the notification from the contractor pursuant to paragraph (2) of this subsection, the director shall grant the contractor a hearing to contest the immediate suspension. The director shall permit the contractor to present evidence at the hearing.

(4) The director shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's immediate suspension. The decision shall include the grounds for upholding or reversing the contractor's immediate suspension.

(5) If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. If the director intends to impose an immediate suspension as set forth in subsection c. of this section, based upon a rebuttable presumption as set forth in section 14 of P.L.1963, c.150 (C.34:11-56.38), the director shall provide the contractor with a notice of intent to suspend and the contractor may request a hearing before the Director of the Division of Wage and Hour Compliance within 72 hours of the receipt of the notice of intent to suspend in order to present evidence expeditiously in support of the position that the suspension should not be imposed. The suspension shall not take effect prior to the expiration of the 72-hour opportunity to request a hearing. If such a request is not made, the suspension shall take effect at the end of the 72-hour period. If such a request is made, the suspension shall take effect only after the director conducts the hearing.

e. If the director orders the immediate suspension of a contractor's registration pursuant to subsection b. of this section, the violation shall have no effect on the registration of any contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor, unless the registration form for the contractual chain of contractors and subcontractors was filed by a sponsor, in which case all of the contractors of whatever tier who participated in the sponsor's apprenticeship program shall be suspended and their registrations shall be revoked by the commissioner.

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### **34:11-56.57. Regulations**

The commissioner may adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

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### **34:11-56.72. Findings, declarations relative to a skilled and trained workforce in certain construction work.**

1. The Legislature finds and declares that:

a. The use of unskilled and untrained workers at chemical manufacturing and processing facilities that generate, store, treat, handle, refine, process, and transport hazardous materials is a risk to public health and safety, and the risk to public health and safety is particularly high when workers are employed by outside contractors because they generally are less familiar with the operations of the facility and its emergency plans and the owner or operator of the facility has less incentive to invest in their training.

b. Requiring that workers employed by outside contractors at these facilities be paid at least at a rate equivalent to the prevailing journeyman wage for their occupations, or be registered in approved apprenticeship programs, is necessary to provide an economic incentive for employers to use only the most skilled workers to perform work that poses a risk to public health and safety. The wage scale is also necessary to provide an economic incentive for the workers to obtain the mandatory advanced safety training required by section 3 of P.L.2020, c.65 (C.34:11-56.74).

c. Requiring that apprentices be registered in approved advanced safety training is necessary to ensure that these workers are receiving the proper training and on-the-job supervision and that the programs are subject to proper oversight.

d. The requirement that at least 60 percent of the journeypersons working for a contractor be graduates of an approved apprenticeship program is necessary to ensure that the majority of the journeypersons will have had appropriate classroom and laboratory instruction for their occupations. A phase-in for this requirement will avoid disruption of the industry.

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### **34:11-56.73. Definitions relative to a skilled and trained workforce in certain construction work.**

2. As used in this act:

"Apprenticeship program" means a registered apprenticeship program providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, registered by the Office of Apprenticeship of the U.S. Department of Labor.

"Approved advanced safety training for workers at high hazard facilities" means a curriculum approved by the State Office of Apprenticeship pursuant to section 4 of this act.

"Labor organization" means an organization which represents, for purposes of collective bargaining, employees of contractors or subcontractors engaged in contracting subject to the provisions of subsection a. of section 3 of P.L.2020, c.65 (C.34:11-56.74), and has the present ability to refer, provide or represent a sufficient number of qualified employees to perform the contracted work in a manner consistent with the provisions of P.L.2020, c.65 (C.34:11-56.72 et seq.) and a plan mutually agreed upon by the labor organization and the owner or operator.

"OEM" means original equipment manufacturer and refers to organizations who manufacture or fabricate equipment for sale directly to purchasers or other resellers.

"Prevailing hourly wage rate" means the prevailing hourly wage rate set for the applicable occupation and geographic area pursuant to the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.).

"Registered apprentice" means an apprentice registered in an apprenticeship program who is performing work covered by the standards of that apprenticeship program and receiving the supervision required by the standards of that apprenticeship program.

"Skilled journeyperson" means a worker who:

a. Has either graduated from an apprenticeship program for the applicable occupation, or has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation; and

b. Has completed within the prior two calendar years at least 20 hours of approved advanced safety training for workers at high hazard facilities, including approved advanced safety training that occurred in an approved apprenticeship program. This requirement shall apply only to work performed on or after January 1, 2025.

"Skilled and trained workforce" means a workforce that meets all of the following criteria:

a. (1) All the workers shall, as of January 1, 2021, be paid at least 80 percent of the applicable prevailing hourly wage rate, and shall be either registered apprentices or skilled journeypersons;

(2) All the workers shall, as of January 1, 2022, be paid at least 85 percent of the applicable prevailing hourly wage rate, and shall be either registered apprentices or skilled journeypersons;

(3) All the workers shall, as of January 1, 2023, be paid at least 90 percent of the applicable prevailing hourly wage rate, and shall be either registered apprentices or skilled journeypersons; and

(4) All the workers shall, as of January 1, 2024, be paid the applicable prevailing hourly wage rate, and shall be either registered apprentices or skilled journeypersons.

b. All the workers have, as of January 1, 2025, completed within the prior two calendar years at least 20 hours of approved advanced safety training for workers at high hazard facilities.

c. (1) As of January 1, 2021, at least 30 percent of the skilled journeypersons shall be graduates of an apprenticeship program for the applicable occupation.

(2) As of January 1, 2022, at least 40 percent of the skilled journeypersons shall be graduates of an apprenticeship program for the applicable occupation.

(3) As of January 1, 2023, at least 50 percent of the skilled journeypersons shall be graduates of an apprenticeship program for the applicable occupation.

(4) As of January 1, 2024, at least 60 percent of the skilled journeypersons shall be graduates of an apprenticeship program for the applicable occupation.

(5) As of January 1, 2025, all of the workers shall have completed within the prior two calendar years at least 20 hours of approved advanced safety training for workers at high hazard facilities, except that the requirements of this subsection c. shall not apply to the extent that the contractor requests qualified workers from a labor organization that refers or provides qualified workers, but the organization is unable to refer or provide sufficient qualified workers within 48 hours of the request, Saturdays, Sundays, and Holidays excepted, and shall not apply to the extent that compliance is impracticable because an emergency requires immediate action to prevent harm to public health or safety or to the environment, but the criteria shall again apply as soon as the emergency is over or it becomes practicable for contractors to obtain a qualified workforce.

“State Office of Apprenticeship” means the Office of Apprenticeship in the State Department of Labor and Workforce Development. “The State Office of Apprenticeship” does not mean the Office of Apprenticeship in the United States Department of Labor.

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### **34:11-56.74. Use of skilled and trained workforce by owner, operator; exemptions**

3. a. An owner or operator of a stationary source that is engaged in activities described in Code 324110, 325110, 325180, or 325199 of the North American Industry Classification System, as that code read on January 1, 2017, and has one or more covered processes for which the owner or operator is required to prepare and submit a Risk Management Plan, shall, when contracting with outside contractors for the performance of construction, alteration, demolition, installation, repair, or maintenance work at the stationary source, require that the contractors performing the work, and any subcontractors of the contractors, use a skilled and trained workforce to perform all onsite work which is in an apprenticeable occupation in the building and construction trades. The requirement to use a skilled and trained workforce shall apply to the onsite workforce of each contractor and subcontractor.

b. This section shall not apply to:

(1) Oil and gas extraction operations, and shall not apply to any contract awarded before January 1, 2021, unless the contract is extended or renewed after that date, and shall not apply to the employees of the owner or operator of the stationary source, or prevent the owner or operator of the stationary source from using its own employees to perform any work that has not been assigned to contractors while the employees of the contractor are present and working;

(2) Any owner or operator, or contractor or subcontractor of the owner or operator, who has entered into a project labor agreement or collectively bargained maintenance agreement with labor organizations with registered apprenticeship programs, if all contracted work at the facility or site subject to the provisions of this section is also subject to the provisions of the project labor agreement or collectively bargained maintenance agreement; or

(3) Contractors or subcontractors hired to perform OEM work for purposes of compliance with equipment warranty requirements.

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### **34:11-56.75. Curriculum for approved advanced safety training**

4. The State Office of Apprenticeship, in consultation with the Department of Environmental Protection and the Commission on Higher Education, shall approve a curriculum of in-person classroom and laboratory instruction for approved advanced safety training for workers at high hazard facilities. That safety training shall be included in any apprenticeship program for apprentices who will work for contractors or subcontractors at a stationary source subject to the provisions of this act, and shall be made available for employees of the contractors or subcontractors who had become skilled journeypersons before the training was included in their apprenticeship program. The State Office of Apprenticeship shall be empowered to consider existing industry and trade safety programs for compatibility and fulfillment of requirements under this section.

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### **34:11-56.76. Rights, powers, duties**

5. For the purpose of implementing the provisions of sections 1 through 4 of P.L.2020, c.65 (C.34:11-56.72 through C.34:11-56.75), the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act, the employer of the worker, or any designated representative of the worker or employer may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

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### **34:11-67.1. Owners' responsibility for wage claims against subcontractors**

a. (1) For any contract entered into on or after January 1, 2020 for construction, reconstruction, demolition, alteration, maintenance, including painting and decorating, or repair in the State other than work on an owner-occupied residence, including, but not limited to, any such work performed under a contract entered into on or after January 1, 2020 under which workers are required by any State law to be paid the prevailing wage rates set pursuant to the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the contractor entering into a contract shall assume, and be responsible for, any debt owed to a worker, or third party on the worker's behalf, incurred by a subcontractor at any tier acting under, by, or for the contractor for the worker's performance of labor under the contract, unless the worker's performance of labor under the contract is pursuant to a collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages may be collected.

(2) The contractor's responsibility under the provisions of this section shall extend to unpaid wages plus any interest owed, and shall extend to penalties or liquidated damages.

(3) A contractor or any other person shall not evade, or commit any act that negates, the requirements of this section. This section does not prohibit a contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for responsibility created by the nonpayment of wages by that subcontractor or by a subcontractor at any tier working under that subcontractor.

b. (1) The Commissioner of Labor and Workforce Development may enforce against a contractor the responsibility for unpaid wages created by this section by any action that the commissioner is authorized to undertake regarding responsibility for unpaid wages under the provisions of chapter 11 of Title 34 of the Revised Statutes, unless the worker's performance of labor under the contract is pursuant to a collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages may be collected.

(2) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. s.175a) which includes a union representing any of the workers employed in a project subject to the provisions of this section

may bring an action in any court of competent jurisdiction against a contractor or subcontractor at any tier for unpaid wages owed to a worker by the contractor or subcontractor for the performance of any work subject to the provisions of this section, including unpaid wages owed by the contractor, pursuant to subsection a. of this section. The committee shall notify the Department of Labor and Workforce Development when the committee brings the action. The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees. Prior to commencement of an action against a contractor to enforce the responsibility created by subsection a. of this section, the committee shall provide the contractor and subcontractor that employed the worker with at least 30 days' notice by first-class mail. The notice need only describe the general nature of the claim and shall not limit the responsibility of the contractor or preclude subsequent amendments of an action to encompass additional workers employed by the subcontractor, unless the worker's performance of labor under the contract is pursuant to a collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages may be collected.

(3) No party other than the parties indicated in this subsection b. may bring an action against a contractor to enforce the responsibility created by subsection a. of this section.

c. (1) Upon request by a contractor, project manager, or contractor to a subcontractor, the subcontractor shall provide payroll records of its employees who are providing labor on work subject to the provisions of this section, which payroll records shall include all wages. The payroll records shall not be modified except to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number.

(2) Upon request of a contractor to a project manager, contractor, or subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide the contractor information that includes the project name, name and address of the subcontractor, contractor with whom the subcontractor is under contract, anticipated start date, duration, and estimated journeyworker and apprentice hours, and contact information for its subcontractors on the project.

(3) A subcontractor's failure to comply with this section shall not relieve a contractor from any of the obligations contained in this section.

(4) Any subcontractor who fails to provide records or information requested pursuant to this subsection within 14 days of when the request was made shall be subject to a civil penalty in an amount not to exceed \$7,500 for each day the employer fails to provide the requested records or information, collectible by the commissioner in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The commissioner shall have the authority to waive this penalty.

d. Unless otherwise provided by law, property of the contractor may be attached, after trial, for the payment of any judgment received pursuant to this section.

e. An action brought pursuant to this section shall be filed within two years from the date of the occurrence of the incident alleged in the action.

f. This section shall not apply to work performed by an employee of the State, a special district, a city, a county, a city and county, or any political subdivision of the State.

g. For purposes of this section, "contractor" means a contractor that has a direct contractual relationship with an owner and "subcontractor" means a contractor that does not have a direct contractual relationship with an owner, including a contractor that has a contractual relationship with a contractor or with another subcontractor.

h. Nothing in this section shall alter the obligation under any other provision of State law of a contractor to pay in a timely manner a contractor, or of a contractor to pay in a timely manner a subcontractor, or any penalties for failing to do so, except that the contractor may withhold as "disputed" all sums owed if a subcontractor does not provide in a timely manner the information requested under paragraphs (1) and (2) of subsection c. of this section, until that information is provided.

## **34:11-67.2. Severability**

2. If any clause, sentence, paragraph, section or other part of this act shall be adjudged by any court of competent jurisdiction to be invalid, including any judgment made pursuant to R.S.1:1-10 that the part is unconstitutional, invalid, or inoperative, the judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, section or other part directly involved in the controversy in which the judgment shall have been rendered.

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## **CHAPTER 1B (PROMOTION OF BUSINESS AND INDUSTRY) I. NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ACT**

### **34:1B-5.1. Rules and regulations relative to payment of prevailing wage rate; "authority financial assistance" defined**

The New Jersey Economic Development Authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any construction contract, including contracts for millwork fabrication, undertaken in connection with authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.), or undertaken to fulfill any condition of receiving authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of authority financial assistance, unless the work performed under the contract is performed on a facility owned by a landlord of the entity receiving the assistance and less than 35% of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). For the purposes of this section, "authority financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, administered or provided by the authority to any entity and is provided before, during or after completion of a project, including but not limited to, all authority financial assistance received by the entity pursuant to the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.) that enables the entity to engage in a construction contract, but this section shall not be construed as requiring the payment of the prevailing wage for construction commencing more than two years after an entity has executed with the authority a commitment letter regarding authority financial assistance and the first payment or other provision of the assistance is received.

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### **34:1B-5.2. Administration and enforcement of rules and regulations**

The rules and regulations adopted under section 1 of this act shall provide for the proper and appropriate administration and enforcement of such regulations.

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### **34:1B-5.3. Violation of rules and regulations**

A violation of the rules and regulations adopted pursuant to section 1 of this act shall be deemed to be a violation of P.L.1963, c. 150 (C. 34:11-56.25 et seq.). The Commissioner of Labor and Industry and any worker shall have the same powers of enforcement against violations of such rules and regulations as are provided by Sections 11 through 16, inclusive, of P.L.1963, c. 150 (C. 34:11-56.35-34:11-56.40).

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#### **34:1B-5.4. Rules, regulations relative to establishment of affirmative action program**

a. The New Jersey Economic Development Authority shall adopt rules and regulations to establish an affirmative action program for the hiring of minority workers employed in the performance of construction contracts undertaken in connection with any of its projects, and to expand the business opportunities of socially and economically disadvantaged contractors and vendors seeking to provide materials and services for those contracts, consistent with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) and the authority shall provide for the proper enforcement and administration of such rules and regulations.

b. (Deleted by amendment, P.L.2007, c.137)

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#### **34:1B-5.5. Limitation of claims, damages, losses, liabilities, costs for school facilities projects**

In the exercise of powers granted by P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.) in connection with any school facilities project, any and all claims, damages, losses, liabilities or costs that the authority may incur shall be payable only from the amounts made available to the authority pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.). In connection with any agreement or contract entered into by the authority relating to any school facilities project, there shall be no recovery against the authority for punitive or consequential damages arising out of contract nor shall there be any recovery against the authority for claims based upon implied warranties or upon contracts implied in law.

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### **CHAPTER 27C NEW JERSEY COMMERCE COMMISSION (UEZ Authority)**

#### **52:27C-63. New Jersey Commerce Commission (UEZ Authority)**

There is established a body corporate and politic, with corporate succession, to be known as the "New Jersey Commerce Commission" (hereinafter "the commission").

The commission shall be established in the Executive Branch of the State Government and for the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated, in but not of, the Department of the Treasury, but notwithstanding this allocation, the commission shall be independent of any supervision and control by the department or by any board or officer thereof.

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#### **52:27C-71.1. Executive Director**

The commission shall be under the supervision of an Executive Director, who shall receive such salary as shall be fixed by the commission and who shall be a person qualified by training and experience to direct the work of the commission.

Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Commissioner of the Department of Commerce and Economic Development or the Chief Executive Officer and Secretary of the commission, the same shall mean and refer to the "New Jersey Commerce Commission."

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## **52:27C-73.1. Rules, regulations relative to payment of prevailing wage rate; "commission financial assistance" defined**

The commission shall adopt rules and regulations <sup>[1]</sup> requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any construction contract undertaken in connection with commission financial assistance or undertaken to fulfill any condition of receiving commission financial assistance. The prevailing wage rate shall be the rate determined by the Commissioner of Labor pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). For the purposes of this section, "commission financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance approved, funded, authorized, administered or provided by the commission to any entity, including but not limited to, all commission financial assistance received by the entity pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) that enables the entity to engage in a construction contract, but this shall not be construed as requiring the payment of the prevailing wage for construction commencing more than two years after the assistance is received.

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[<sup>1</sup> New Jersey Commerce Commission's regulations relative to payment of prevailing wage rate is contained in N.J.A.C. 12A:2A-3.1.]

## **CHAPTER 14K NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY (HMFA)**

### **55:14K-1 Short title**

1. This act shall be known as and may be cited as the "New Jersey Housing and Mortgage Finance Agency Law of 1983"

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### **55:14K-3 Definitions**

(a) "Agency" means the New Jersey Housing and Mortgage Finance Agency as consolidated by section 4 of P.L.1983, c.530 (C.55:14K-4), or, if that agency shall be abolished by law, the person, board, body or commission succeeding to the powers and duties thereof or to whom its powers and duties shall be given by law.

(d) "Continuing-care retirement community" means any work or undertaking, whether new construction, improvement or rehabilitation, which may be financed in part or in whole by the agency and which is designed to complement fully independent residential units with social and health care services (usually including nursing and medical services) for retirement families and which is intended to provide continuing care for the term of a contract in return for an entrance fee or periodic payments, or both, and which may include such appurtenances and facilities as the agency deems to be necessary, convenient or desirable.

(e) "Eligible loan" means a loan, secured or unsecured, made for the purpose of financing the operation, maintenance, construction, acquisition, rehabilitation or improvement of property, or the acquisition of a direct or indirect interest in property, located in the State, which is or shall be: (1) primarily residential in character or (2) used or to be used to provide services to the residents of an area or project which is primarily residential in character. The agency shall adopt regulations defining the term "primarily residential in character," which may include single-family, multi-family and congregate or other single room occupancy housing, continuing-care retirement communities, mobile homes and nonhousing properties and facilities which enhance the livability of the residential property or area; and specifying the types of residential services and facilities for which eligible loans may be made, which may include, but shall not be limited to, parking facilities, streets, sewers, utilities, and administrative, community, educational, welfare and recreational facilities, food, laundry, health and other services and commercial establishments and professional offices providing supplies and services enhancing the area. The term "loan" includes an obligation the return on which may vary with any appreciation in value of the property or interest in property financed with the proceeds of the loan, or a co-ventured instrument by which an institutional lender or the agency assumes an equity position in the property. Any undivided interest in an eligible

loan shall qualify as an eligible loan.

(h) "Housing project" or "project" means any work or undertaking, other than a continuing-care community, whether new construction, improvement, rehabilitation, or acquisition of existing buildings or units which is designed for the primary purpose of providing multi-family rental housing or acquisition of sites for future multi-family rental housing.

(i) "Housing sponsor" means any person, partnership, corporation or association, whether organized as for profit or not for profit, to which the agency has made or proposes to make a loan, either directly or through an institutional lender, for a housing project.

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### **55:14K-42 Wage rate of workmen employed by qualified housing sponsors; determination**

Each qualified housing sponsor granted a loan from the agency, or any builder, contractor or subcontractor engaged by the qualified housing sponsor for the construction or rehabilitation of any housing project, shall pay the workmen employed in the performance of any contract for such construction or rehabilitation not less than the prevailing wage rate. The prevailing wage rate shall be determined by the Commissioner of the New Jersey Department of Labor in all cases, except that the prevailing rate shall be determined by the Secretary of the United States Department of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a to 276a-5), when the loan from the agency for the construction or rehabilitation of a housing project or the tenants of the housing project is the subject of direct or indirect federal assistance other than the federal tax exemption of the interest paid on the agency obligations.

The Commissioner of Labor is authorized to, and shall, determine the prevailing wage rate and shall establish the prevailing wage in the locality in which the construction or rehabilitation of any housing project is to be performed for each craft or trade or classification of all workmen employed in the performance of such construction or rehabilitation, as if such construction or rehabilitation were "public work" within the meaning of P. L. 1963, c. 150 (34:11-56.25 et seq.). For the purpose of carrying out the provisions of this section, the Commissioner of Labor and any workmen employed in the performance of any contract for the construction or rehabilitation of any housing project, shall have and may exercise or perform any right, power or duty granted or imposed upon them by P.L.1963, c. 150.

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## **CHAPTER 19 NEW JERSEY REDEVELOPMENT AUTHORITY**

### **55:19-15. Wage rate of workmen employed on projects**

Any builder, contractor or subcontractor engaged upon a project within the meaning of this act, and any person, firm or corporation managing or operating such a project, including the corporation and its subsidiaries, shall pay the workmen employed in the construction, reconstruction, demolition, or rehabilitation thereof not less than the prevailing wage rate. The prevailing wage rate shall be determined by the Commissioner of the New Jersey Department of Labor in all cases, except that the prevailing wage rate shall be determined by the Secretary of the United States Department of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. § 276a to 276a-5), when the loan or other assistance given by the corporation in connection with the work, or the funds of the corporation or subsidiary thereof expended for the work, are the subject of direct or indirect federal assistance other than federal tax exemption of the interest paid on obligations of the corporation or a subsidiary thereof.

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### **55:19-38. Payment of prevailing wage required**

Any builder, contractor or subcontractor engaged upon a project within the meaning of P.L.1996, c. 62 (C. 55:19-20 et al.), and any person, firm or authority managing or operating such a project, including the authority and its subsidiaries, shall pay the workmen employed in

the construction, reconstruction, demolition, or rehabilitation thereof not less than the prevailing wage rate. The prevailing wage rate shall be determined by the Commissioner of Labor in all cases, except that the prevailing wage rate shall be determined by the Secretary of the United States Department of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. § 276a to 276a-5), when the loan or other assistance given by the authority in connection with the work, or the funds of the authority or subsidiary thereof expended for the work, are the subject of direct or indirect federal assistance other than federal tax exemption of the interest paid on obligations of the authority or a subsidiary thereof.

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## **N.J.S.A. 5:12-161.3 et seq. CASINO REDEVELOPMENT AUTHORITY**

### **5:12-161.3. Prevailing wage rate for workers employed on projects with Casino Redevelopment Authority involvement**

1. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by the Casino Reinvestment Development Authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

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### **5:12-161.4. Exercise of rights, powers or duties**

2. For the purpose of implementing the provisions of sections 1 through 3 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

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### **5:12-161.5. Prevailing wage rules, regulations, adoption by Casino Reinvestment Development Authority**

3. The Casino Reinvestment Development Authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

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### **5:12-161.6. Inapplicability of C.5:12-161.3 through C.5:12-161.5**

4. The provisions of sections 1 through 3 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all

construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

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## **N.J.S.A. 18A:72A-5.1 et seq. NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY**

### **18A:72A-5.1. Prevailing wage rate for workers employed on projects with New Jersey Educational Facilities Authority involvement.**

5. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by the New Jersey Educational Facilities Authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

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### **18A:72A-5.2. Exercise of rights, powers or duties.**

6. For the purpose of implementing the provisions of sections 5 through 7 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

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### **18A:72A-5.3. Prevailing wage rules, regulations, adoption by New Jersey Educational Facilities Authority.**

7. The New Jersey Educational Facilities Authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

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### **18A:72A-5.4. Inapplicability of C.18A:72A-5.1 through C.18A:72A-5.3.**

8. The provisions of sections 5 through 7 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

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## **N.J.S.A. 26:2I-5.3 et seq. NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY**

### **26:2I-5.3. Prevailing wage rate for workers employed on projects with New Jersey Health Care Facilities Financing Authority involvement.**

9. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by the New Jersey Health Care Facilities Financing Authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

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### **26:2I-5.4. Exercise of rights, powers or duties.**

10. For the purpose of implementing the provisions of sections 9 through 11 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

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### **26:2I-5.5. Prevailing wage rules, regulations, adoption by New Jersey Health Care Financing Authority.**

11. The New Jersey Health Care Facilities Financing Authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

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### **26:2I-5.6 Inapplicability of C.26:2I-5.3 through C.26:2I-5.5.**

12. The provisions of sections 9 through 11 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

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## **N.J.S.A. 40:37A-55.2 et seq. COUNTY IMPROVEMENT AUTHORITY**

### **40:37A-55.2 Prevailing wage rate for workers employed on projects with county improvement authority involvement.**

13. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by a county improvement authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

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#### **40:37A-55.3 Exercise of rights, powers or duties.**

14. For the purpose of implementing the provisions of sections 13 through 15 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

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#### **40:37A-55.4 Prevailing wage rules, regulations, adoption by county improvement authority.**

15. Each county improvement authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

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#### **40:37A-55.5 Inapplicability of C.40:37A-55.2 through C.40:37A-55.4.**

16. The provisions of section 13 through 15 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

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### **N.J.S.A. 34:13B-2.1 & N.J.S.A. 34:13B-16 Prevailing Wage for Construction Work on a Public Utility**

#### **34:13B-2.1 Construction contractors, employees, OSHA certification, payment of rate for trade, craft; required on public utility work [Effective July 13, 2008]**

Any construction contractor contracting with a public utility to engage in construction work on a public utility shall employ on the site only employees who have successfully completed any OSHA-certified safety training required for work to be performed on that site.

Any employee employed by a construction contractor engaged in construction work on a

public utility shall be paid the wage rate for their craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.).

A construction contractor who is found by the Commissioner of Labor and Workforce Development to be in violation of the provisions of this section shall be subject to the provisions of sections 11 and 12 of P.L.1963, c.150 (C.34:11-56.35 and 34:11-56.36) which apply to an employer for a violation of P.L.1963, c.150 (C.34:11-56.25 et seq.).

Nothing in this section shall be construed to apply to any public utility affiliate not regulated under the provisions of Title 48 of the Revised Statutes.

The Commissioner of Labor and Workforce Development shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt regulations to effectuate the provisions of this section.

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### **34:13B-16. Definitions [Effective July 13, 2008]**

(a) The term "public utility" shall include autobusses; bridge companies; canal companies; electric light, heat and power companies; ferries and steamboats; gas companies; pipeline companies; railroads; sewer companies; steam and water power companies; street railways; telegraph and telephone companies; tunnel companies; water companies.

(b) The term "person" means any individual, firm, copartnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

(c) The term "representative" means any person or persons, labor union, organization, or corporation designated either by a utility or group of utilities or by its or their employees to act or do for them.

(d) The term "collective bargaining" shall be understood to embody the philosophy of bargaining by employees through representatives of their own choosing, and shall include the right of representatives of employees' units to be consulted and to bargain upon the exceptional as well as the routine wages, hours, rules, and working conditions.

(e) The term "labor dispute" shall involve any controversy between employer and employees as to hours, wages, and working conditions. The fact that employees have amicable relations with their employers shall not preclude the existence of a dispute among them concerning their representative for collective bargaining purposes.

(f) The term "employee" shall refer to anyone in the service of another, actually engaged in or connected with the operation of any public utility throughout the State.

(g) The term "construction work on a public utility" shall, in connection with the construction of any public utility in the State, mean construction, reconstruction, installation, demolition, restoration, and alteration of facilities of the public utility. The term "construction work on a public utility" shall not be construed to include operational work, including flaggers, snow plowing, vegetation management in and around utility rights of way, mark outs, janitorial services, landscaping, leak surveyors, meter work, and miscellaneous repairs.

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## **N.J.S.A. 48:2-29.47 BOARD OF PUBLIC UTILITIES**

### **48:2-29.47 Prevailing wage requirement, construction undertaken with BPU financial assistance**

1. Not less than the prevailing wage rate shall be paid to workers employed in the performance of any construction undertaken in connection with Board of Public Utilities financial assistance, or undertaken to fulfill any condition of receiving Board of Public Utilities

financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility, the operations of which are necessary for the receipt of Board of Public Utilities financial assistance, except that the prevailing wage rate requirements of this section shall not apply to any contract which is less than the prevailing wage contract threshold amount for municipalities provided in paragraph (a) of subsection (11) of section 2 of P.L.1963, c.150 (C.34:11-56.26). The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). For the purposes of this section, "Board of Public Utilities financial assistance" means any tax exemption, abatement or other incentive or any rebate, credit, loan, loan guarantee, expenditure, investment, grant, incentive, or other financial assistance which is, in connection with construction, approved, funded, authorized, administered or provided by the Board of Public Utilities, whether the assistance is received before, during or after completion of the construction, except that "Board of Public Utilities financial assistance" does not include any rebate, credit, loan, loan guarantee, expenditure, investment, grant, rental voucher, rental assistance, tax exemption, tax abatement, tax incentive, or other financial assistance from any source, if that assistance is provided directly to a homeowner or tenant in connection with the homeowner's or tenant's place of residence, including assistance for energy-related and other improvements to the place of residence or if that assistance is provided for any new construction or weatherization of a single family home, town home, or row home, or of any apartment building, condominium building, or multi-family home of four stories or less.

For the purpose of implementing the provisions of this section, the Commissioner of Labor and Workforce Development shall exercise all powers and duties granted by P.L.1963, c.150 (C.34:11-56.25 et seq.) regarding the payment of the prevailing wage, and any worker employed in the performance of construction work subject to this section, and the employer or any designated representative of the worker, may exercise all rights granted to them by that act.

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## **N.J.S.A. 2C:21-34 NEW JERSEY CODE OF CRIMINAL JUSTICE**

### **2C:21-34 Penalty for false contract payment claims, representation, for a government contract; prevailing wage violations; grading**

(a) A person commits a crime if the person knowingly submits to the government any claim for payment for performance of a government contract knowing such claim to be false, fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the claim is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.

(b) A person commits a crime if the person knowingly makes a material representation that is false in connection with the negotiation, award or performance of a government contract. If the contract amount is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the contract amount exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the contract amount is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.

(c) An employer commits a crime if the employer knowingly pays one or more employees employed in public work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) at a rate less than the rate required pursuant to that act. If the contract amount is for \$75,000.00 or above, the employer is guilty of a crime of the second degree; if the contract amount exceeds \$2,500.00, but is less than \$75,000.00, the employer is guilty of a crime of the third degree; and if the contract amount is for \$2,500.00 or less, the employer is guilty of a crime of the fourth degree. In addition, the employer shall be deemed to have caused loss to the employees in the amount by which the employees were underpaid and shall be subject to the provisions of N.J.S.2C:43-3 regarding fines and restitution to victims and be subject to other pertinent provisions of Title 2C of the New Jersey Statutes, including, but not limited to N.J.S.2C:43-4, 2C:43-6 and 2C:44-1.

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## **CHAPTER 60 (PREVAILING WAGES FOR PUBLIC WORKS)**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **12:60-1.1 Title and citation**

This chapter shall be known and may be cited as N.J.A.C. 12:60, Prevailing Wages for Public Works.

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#### **12:60-1.2 Authority**

These rules are promulgated pursuant to the authority of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

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#### **12:60-1.3 Purpose**

(a) The purpose of this chapter is to:

1. List each and every craft, trade, or class of workmen employed on public works in each of the 21 counties of the State; and
2. List the criteria to be used when an issue regarding the establishment of a craft, trade or class of workmen arises.

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#### **12:60-1.4 Scope**

(a) This chapter shall implement the Act by listing by name each craft, trade or class of workmen utilized in the various counties of the State; and

(b) This chapter shall apply to every contract in excess of \$15,444<sup>[1]</sup> awarded in whole or in part by a municipal public body and to every subcontract pursuant to said contract. It shall also apply to every contract in excess of \$2,000 awarded by a nonmunicipal public body and to every subcontract pursuant to said contract.

<sup>[1]</sup> Effective July 1, 2019 the prevailing wage contract threshold amount is \$16,263.

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#### **12:60-1.5 Documents referred to by reference**

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:60-4.

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#### **12:60-1.6 Validity**

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

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## **SUBCHAPTER 2. DEFINITIONS**

#### **12:60-2.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

"Certified payroll record" means a payroll record which is attested to by the employer, or the owner of the company doing business as the employer, or a corporate officer of such company, or an authorized agent of the employer.

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development, or his or her duly authorized designee.

"Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation.

"Department" means the Department of Labor and Workforce Development.

"Division of Wage and Hour Compliance" means the Division of Wage and Hour Compliance, New Jersey Department of Labor and Workforce Development, PO Box 389, Trenton, New Jersey 08625-0389.

"Employer" means any natural person, company, firm, subcontractor or other entity engaged in public work.

"Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality" the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workmen in such craft or trade.

"Maintenance-related project" means a project related to the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

"Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. "Maintenance work" also means any work on a maintenance-related project that exceeds the scope of work and capabilities of in-house maintenance personnel, requires the solicitation of bids and has an aggregate value exceeding \$50,000.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Payroll record" means a form satisfactory to the Commissioner, wherein is shown employee information such as name, address, social security number, craft or trade, together with actual hourly rate of pay, actual daily, overtime and weekly hours worked in each craft or trade, gross pay, itemized deductions, and net pay paid to the employee; such record shall also include:

1. Any fringe benefits paid to approved plans, funds or programs on behalf of the employee; and
2. Fringe benefits paid in cash to the employee.

"Persons" means any natural person, company, firm, association, corporation, contractor, subcontractor or other entity engaged in public work.

"Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workmen of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract

and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

1. Not less than 55 percent of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and
2. The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

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## **SUBCHAPTER 2A. APPLICATION OF THE PREVAILING WAGE ACT TO OFF-SITE ACTIVITIES**

### **12:60-2A.1 Off-site manufacturing, assembly, or furnishing of materials, articles, supplies or equipment**

(a) The manufacture, assembly or furnishing of materials, articles, supplies or equipment will be subject to the Prevailing Wage Act if conducted in connection with, and at the work-site of, such public works project.

(b) Custom fabrication is subject to the Prevailing Wage Act, pursuant to P.L. 2004, c. 101, §1 ( N.J.S.A. 34:11-56.26), but custom fabrication shall not be subject to the requirements of this section.

(c) The work-site shall be deemed to include the following:

1. The physical place or places where the building or work called for in the public works contract, which is subject to the terms of the Prevailing Wage Act, will remain; and
2. Any other site where a significant portion of the building or work associated therewith, is constructed, provided that such site is established specifically for the performance of the contract or project.

(d) The following shall be considered to be part of the work-site of a public works project and subject to the terms of the Prevailing Wage Act:

1. Job headquarters, tool yards, batch plants, borrow pits, assembly centers and any other related manufacturing or construction site of the same contractor or a subcontractor provided that:
  - i. They are dedicated exclusively or primarily, to the performance of the public works contract or building project; and
  - ii. They are adjacent or virtually adjacent to the site of the work as defined in (c)1 above.

(e) Not included in the site of the work are those locations which were established by a supplier of materials for a public works construction project before the opening of bids and not on the site of the work as set forth in (c)1 and 2 above.

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## **SUBCHAPTER 3. CRITERIA FOR ESTABLISHMENT OF CRAFTS, TRADES OR CLASSES OF WORKMEN**

### **12:60-3.1 Scope of subchapter**

This subchapter establishes the criteria to be used to classify a craft, trade or class of workmen.

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## **12:60-3.2 Criteria for establishment**

(a) The criteria used to establish a craft, trade or class of workmen shall include:

1. Work history and industry practice;
2. Training and skills;
3. Nature of the specific work in issue;
4. Craft union collective bargaining agreements and craft recognition; and
5. Governmental regulation and recognition.

(b) In establishing a craft, trade or class of workmen, the Department shall consider any relevant information, documentation, or argument presented by an interested party and submitted to:

New Jersey Department of Labor and Workforce Development  
Division of Wage and Hour Compliance  
John Fitch Plaza  
PO Box 389  
Trenton, New Jersey 08625-0389

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## **SUBCHAPTER 3A. PREVAILING WAGE DETERMINATIONS FOR AIR CONDITIONING AND REFRIGERATION - SERVICE AND REPAIR; SCOPE**

### **12:60-3A.1 Prevailing wage determinations for air conditioning and refrigeration--service and repair; scope**

(a) The Department's prevailing wage determinations for air conditioning and refrigeration - service and repair, shall apply to all work which is both:

1. "Public work," as that term is defined in this chapter; and
2. Service, repair, or maintenance work performed in order to keep an existing air conditioning or refrigeration system within an occupied facility operating in an efficient manner.

(b) For purposes of this subchapter, the term "occupied facility" shall mean a facility for which a certificate of occupancy has been issued.

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## **SUBCHAPTER 4. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER**

### **12:60-4.1 Documents referred to by reference**

The full title and edition of each of the standards and publications referred to in this chapter are as follows:

N.J.S.A. 34:11-56.25 et seq., New Jersey Prevailing Wage Act.

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### **12:60-4.2 Availability of documents from issuing organization**

Copies of the referred to standards and publications in this chapter may be obtained from the organization listed below or from the website of the Department of Labor and Workforce Development at [www.nj.gov/labor](http://www.nj.gov/labor).

Copies available from:

Division of Wage and Hour Compliance  
New Jersey Department of Labor and Workforce Development  
John Fitch Plaza

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## **SUBCHAPTER 5. INSPECTION OF RECORDS**

### **12:60-5.1 Inspections**

(a) The Commissioner, or an authorized designee, shall have the authority to:

1. Inspect and copy books, registers, payrolls or other records that relate to or affect wages, hours and other conditions of employment for public works employees;
2. Question public works workmen to determine whether they are aware of violations of the prevailing wage act; and
3. Require public works employers to submit written statements, including sworn statements, concerning wages, hours, names, addresses and any other employee information as may be determined necessary by the Commissioner.

(b) If, within 10 days of a request by the Commissioner, a public works employer fails to file the material listed in (a)1 or 3 above, sworn as to its accuracy, the Commissioner may, within 15 days:

1. Direct the officer responsible for disbursement of funds for the public body which contracted for the public works project to withhold from the employer 25 percent of the amount, not to exceed \$100,000, due the employer under the contract for the project.
2. When the employer complies with the request for records, the Commissioner shall notify the public body, who shall immediately release the withheld funds.

(c) The public works contractors and subcontractors shall submit to the public body or lessor which contracted for the public works project the following in a form satisfactory to the Commissioner (see Appendix, incorporated herein by reference).

1. A certified payroll record on each public works project.
  - i. Such record shall be submitted each payroll period within 10 days of the payment of wages.
  - ii. The public body shall receive, file, store and make available for inspection at its normal place of business and during normal business hours the certified payroll records.

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## **SUBCHAPTER 6. CRITERIA FOR DETERMINING APPRENTICE TO JOURNEYMAN RATIO**

### **12:60-6.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Apprentice" means an individual who, while performing work on a public work project, is registered, in good standing, in an apprenticeship program approved or certified by the Office of Apprenticeship in the United States Department of Labor.

"Records" means all books, registers, payrolls, and any other documentation maintained by the employer that have a bearing upon the question of wages, hours and other conditions of employment of any workmen.

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## **12:60-6.2 Responsibilities of contractors and subcontractors**

(a) A contractor or subcontractor employing one or more apprentices on a public work project shall maintain with its records written evidence that the apprentice or apprentices are registered in an approved apprenticeship program while performing work on the project.

1. The contractor or subcontractor shall make all records available for inspection by the public body awarding the contract and by the Commissioner during normal business hours.

2. The awarding body and the Commissioner shall have unencumbered access to the employees who are employed on a public work project for the purpose of interviewing and determining compliance.

(b) A contractor or subcontractor shall not create job titles and worker classifications which are not consistent with prevailing practices and existing task ratios for a specific building trades craft for the purpose of circumventing the intent of this subchapter.

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## **12:60-6.3 Ratio of apprentices to journeymen**

(a) Upon determining the prevailing wage rate and establishing the prevailing wage in the locality for each craft, trade or class of workmen needed to perform public work contracts, the Commissioner shall also determine the ratio of apprentices to journeymen for the purpose of establishing the number of workmen who may be paid the apprentice rate.

(b) If no ratio of apprentices to journeymen is set forth in the collective bargaining agreement used by the Commissioner to make his or her prevailing wage determination, the maximum ratio of apprentices to journeymen shall be one apprentice to every four journeymen.

(c) If the prevailing collective bargaining agreement for a craft or trade does not provide for an apprentice rate, the employer shall pay the employees not less than the journeyman's rate even if an employee is registered in an apprentice program for that trade.

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## **12:60-6.4 Correction of wage rate**

(a) If the Department determines that a worker who has been paid an apprentice wage rate on a project is entitled to a journeyman's rate, the Department shall conduct an audit and require the contractor or subcontractor to pay the worker an additional amount equal to the difference between the rate of an apprentice and the rate of a journeyman plus any applicable benefits the worker is entitled to as a journeyman.

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## **SUBCHAPTER 7. DEBARMENT FROM CONTRACTING**

### **12:60-7.1 Purpose and scope**

(a) The purpose of this subchapter is to set forth the conditions which constitute grounds for debarment from public works and Economic Development Authority (EDA) contracts, and to notify individuals of the departmental policies and procedures concerning debarment.

(b) The provisions of this subchapter shall be applicable to all contractors, subcontractors, and other persons who perform public works for any public body and EDA projects in New Jersey.

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### **12:60-7.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development or his or her designee.

"Contractor" means a person who undertakes to perform a job or piece of a public works project or EDA project and who retains control of the means, method and manner of accomplishing the desired result. Contractor includes the officers and directors of a corporate contractor.

"Debarment" means the inclusion on a Statewide list of persons who are prohibited from performing public works or EDA projects, on the basis of a lack of responsibility evidenced by an offense as set forth in this subchapter.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Entity" means a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust or organization.

"Interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant or representative. The term also includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed, or to be performed, for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment or supplies that have been or will be sold, rented or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Interest," however, does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

"Person" means any natural person, company corporate officer or principal, firm, association, corporation, contractor, subcontractor or other entity engaged in public works or EDA projects.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means constructions, reconstruction, demolition, alteration, or repair work or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.

"Suspension" means that an affected contractor shall not bid on or engage in any public works project effective upon the date on which he or she receives the Commissioner's Notification of Suspension Pending Debarment. Suspension shall not include public works projects bearing award dates which precede receipt of said notification.

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### **12:60-7.3 Conditions of debarment**

(a) Debarment from public works or EDA contracts shall be made only with the approval of the Commissioner, except as otherwise provided by law.

(b) The Commissioner may debar a person, after an investigation and determination that the person has failed or refused to pay the prevailing wage rate.

(c) A violation as listed in (b) above shall not necessarily require that a person be debarred. In each case, the decision to debar shall be made at the discretion of the Commissioner unless otherwise provided by law. The Commissioner may consider the following factors as material in each decision to debar:

1. The record of previous violations by the person with the Division of Wage and Hour Compliance;
2. Previous cases of debarment by the Commissioner;
3. The frequency of violations by the person discovered in previous cases;
4. The significance or scale of the violations, consisting of shortfalls in wages or fringe benefits computed in audits;
5. The existence of outstanding audit(s) or failure(s) to pay;
6. Failure to respond to a request to produce records, forms, documents, or proof of payments; and
7. Submission of falsified or altered records, forms, documents, or proof of payment.

(d) The Commissioner may suspend a person pending debarment. The bases therefor shall include any or all of the following:

1. A history of any previous violation by the contractor of the New Jersey Prevailing Wage Act or Contractor Registration Act or any of their subsidiary regulations;
2. A history of a prior debarment or of a penalty imposed in a contested matter;
3. The existence of other contested prevailing wage or contractor registration matters pending against the contractor;
4. The size and scale of an outstanding audit by the Division of Wage and Hour Compliance is such as to indicate that the alleged violation by the contractor of the New Jersey Prevailing Wage Act, even absent a previous history of violations thereof, is significant; and/or
5. Aggravating factors which may include, but are not limited to:
  - i. Falsified testimony or statements;
  - ii. Attempts to evade investigations conducted by the Department;
  - iii. Attempts to intimidate or coerce workers from cooperating with the Department and its representatives in the investigation of the contractor;
  - iv. A history of not adhering to prior settlement agreements reached previously with the Department regarding the payment of wages, fees and penalties; and
  - v. A history of hiring subcontractors who have been found to be in violation of the Prevailing Wage Act or the Contractor Registration Act.

(e) When the Commissioner suspends a person from contracting, the person suspended shall be furnished with a written notice, which may be included in the notification of debarment, stating:

1. That suspension has been imposed, the date on which it becomes effective and the reasons therefor;
2. That if the contractor chooses to contest the suspension pending debarment, the contractor shall notify the Department in writing of that decision within 72 hours of receipt of the notification of suspension; and
3. That the suspension is for a temporary period, but that whenever debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

(f) A Departmental-level hearing on the suspension will be held before the Director of the Division of Wage and Hour Compliance, or his or her designee, within seven days of the receipt by the Department of the contractor's notification contesting the suspension.

1. The Director, or his or her designee, shall permit the contractor to explain his or her position as to why suspension should not be imposed and to present evidence expeditiously in support of that position;

2. At the conclusion of the Departmental-level hearing, the Director, or his or her designee, shall consider all of the evidence so presented and shall reevaluate the necessity of the suspension, if so warranted by the evidence; and

3. The Director, or his or her designee, shall issue a written determination upholding or reversing the suspension and the reasons for same within five business days of the hearing.

(g) If the contractor disagrees with the written determination, he or she shall appeal said determination to the Office of Administrative Law for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, in connection with the underlying debarment action.

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## **12:60-7.4 Notification of debarment**

(a) When the Department seeks to debar a person, the person or persons shall be furnished with a written notice stating:

1. That debarment is being considered;

2. The provisions of N.J.S.A. 34:11-56.37 and 34:11-56.38;

3. The specific details of the violations referring to employees involved by name, job classifications, dates of violations and any amount found due;

4. The public work or EDA project involved during which performance of the violations cited occurred; and

5. That the person shall have the right to appeal the debarment to the Commissioner within 15 days of the date of the notice of intent to debar. Any appeal received within the 15-day period will be filed as of the 15th day.

(b) The notice of intent to debar shall be mailed, by regular mail and return receipt requested, to each corporate officer of record, partner, individual proprietor or other involved person.

(c) If, after confirmation that the person has been mailed the notice of intent to debar, the person has not filed an appeal, the person shall be listed as a debarred person.

(d) All hearings conducted pursuant to this section shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and N.J.A.C. 1:12B. Where any other State department or agency has already imposed debarment upon a party, the Commissioner may also impose a similar debarment without affording an opportunity for a hearing, provided the Commissioner furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or part.

(e) Debarment shall be for a period of three years.

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## **12:60-7.5 Lists**

The Department shall provide the State Treasurer with the names of all persons debarred and the effective date and period of debarment, if any.

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## **SUBCHAPTER 8. VIOLATIONS, PENALTIES, AND FEES**

### **12:60-8.1 Purpose; scope**

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-56.25 et seq., the New Jersey Prevailing Wage Act (Act), provide sanctions for non-compliance, and to protect established wage rates.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act; and
2. Wages paid to an employee for services rendered.

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## **12:60-8.2 Violations of the Act**

(a) Violations of the Act shall occur when an employer:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter;
2. Fails to make, keep and preserve any records as required under the provisions of this chapter;
3. Falsifies any such record;
4. Refuses to make any such record accessible to the Commissioner upon demand;
5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the Commissioner upon demand;
6. Pays or agrees to pay wages at a rate less than the prevailing rate applicable under this chapter;
7. Requests, demands, or receives, either for himself or any other person, either before or after a worker is engaged in public work at a specified rate of wages, the following:
  8. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her wages, salary or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining employment; or
10. Otherwise violates any provision of this chapter or of any order issued under this chapter.

(b) An employer who knowingly and willfully violates any provision of this chapter shall be guilty of a disorderly persons offense and shall, upon conviction therefor:

1. Be fined not less than \$100.00 nor more than \$1,000;
2. Be imprisoned for not less than 10 nor more than 90 days; or
3. Be subject to both the fine and imprisonment.

(c) Each week in any day of which an employee is paid less than the rate applicable to him or her under the Act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

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## **12:60-8.3 Administrative penalties**

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:60-8.2, pursuant to N.J.S.A. 34:11-56.25 et seq. when the Commissioner finds that an employer has violated that Act, the Commissioner is authorized to assess and collect administrative penalties in the amounts that follow:

1. First violation—not more than \$2,500.
2. Second and subsequent violations—not more than \$5,000.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a

formal hearing must be received within 15 working days following the receipt of the notice.

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15-working day period following receipt of the notice.

2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.

3. All wages due, fees and penalties shall be paid within 30 days of the date of the final order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.

4. All payments shall be made payable to the "Commissioner of Labor and Workforce Development, Prevailing Wage Trust Fund." All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner of Labor and Workforce Development.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations.

1. The seriousness of the violation;

2. The past history of previous violations by the employer;

3. The good faith of the employer;

4. The size of the employer's business; and

5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

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## **12:60-8.4 Administrative fees**

(a) The Commissioner is authorized to supervise the payment of amounts due to employees under this chapter, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employee, and paid on order of the Commissioner directly to the employee or employees affected.

(b) The employer shall also pay the Commissioner an administrative fee on all payments due to employees pursuant to Articles 1 and 2 of Chapter 11 of Title 34 of the revised statutes.

(c) A schedule of the administrative fees is set forth in Table 8.4(c) below:

Table 8.4(c) Schedule of Administrative Fees

1. First violation—10 percent of amount of any payment made to the Commissioner pursuant to this chapter;

2. Second violation—18 percent of amount of any payment made to the Commissioner pursuant to this chapter;

3. Third and subsequent violations—25 percent of amount of any payment made to the Commissioner pursuant to this chapter.

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## **12:60-8.5 Interest**

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;

2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or

3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

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## **12:60-8.6 Hearings**

(a) No assessment of wages, fees or penalties shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the wages, fees and/or penalties, and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice of assessment. All contested cases shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The filing of a request for a hearing regarding wages, fees or penalties shall not preclude the Commissioner from pursuing other remedies under the Prevailing Wage Act, including debarment pursuant to N.J.S.A. 34:11-56.37 and 56.38.

(b) All requests for a hearing shall be reviewed by the Division of Wage and Hour Compliance to determine if the reason for dispute could be resolvable at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(e) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, reschedule a hearing.

(f) If the Commissioner or his or her designee does not authorize such a rescheduled hearing, then the Commissioner shall issue a final agency determination.

(g) Payment of the wages, fees and/or penalties is due when a final agency determination is issued.

(h) Upon final determination, the wages, fees and penalties may be recovered with cost in a summary proceeding commenced by the Commissioner.

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## **12:60-8.7 Discharge or discrimination against employee making complaint**

(a) An employer is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, to the public body, or to the Commissioner that he or she has not been paid wages in accordance with the provisions of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding, shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000.00.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner is authorized under N.J.S.A. 34:11-56a.24 to assess and collect administrative penalties as provided for in N.J.A.C. 12:60-8.3.

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## **APPENDIX - FORM TO FACILITATE THE SUBMISSION OF PAYROLL RECORDS**

Editor's Note: N.J.A.C. 12:60, [Appendix](#), is not reproduced in the New Jersey Administrative Code. A copy may be obtained by contacting the Department of Labor and Workforce Development, Division of Wage and Hour Compliance, P.O. Box 389, Trenton, New Jersey 08625-0389, or visiting the Department's web site at [www.nj.gov/labor](http://www.nj.gov/labor).

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## **CHAPTER 62 (PUBLIC WORKS CONTRACTOR REGISTRATION) SUBCHAPTER 1. GENERAL PROVISIONS**

### **12:62-1.1 Application and scope**

(a) The rules in this chapter are promulgated by the Department of Labor and Workforce Development in order to implement "The Public Works Contractor Registration Act," P.L. 1999, c.238 (N.J.S.A. 34:11-56.48 et seq.). The Act establishes a unified procedure for the registration of contractors and subcontractors engaged in public works projects.

(b) The provisions of this chapter shall apply to all contractors, as that term is defined in N.J.A.C. 12:62-1.2.

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### **12:62-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means "The Public Works Contractor Registration Act" (P.L. 1999, c.238; N.J.S.A. 34:11-56.48 et seq.) and the rules promulgated thereunder.

"Commissioner" means the Commissioner of Labor and Workforce Development or his or her duly authorized representatives.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who enters into a contract which is subject to the provisions of the New Jersey Prevailing Wage Act, P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq., and includes any subcontractor or lower tier subcontractor of a contractor as defined in this section.

"Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems and mechanical insulation.

"Department" means the Department of Labor and Workforce Development.

"Maintenance" means "maintenance work" as that term is defined at N.J.S.A. 34:11-56.26, namely, the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

"Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract the property or premises is owned by the public body or:

1. Not less than 55 percent of the property or premises is leased by a public body or is subject to an agreement to be subsequently leased by the public body; and

2. The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

"Subcontractor" means any subcontractor or lower tier subcontractor of a contractor, including owner operators or independent contractors.

"Worker" includes a laborer, mechanic, skilled or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. For the purposes of these rules, contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers.

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### **12:62-1.3 Administration and enforcement**

The Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development, shall administer and enforce this chapter. All the powers, duties and responsibilities vested in the Commissioner by the Public Works Contractor Registration Act are hereby delegated to and vested in the Director of the Division of Wage and Hour Compliance, except the power to adopt, amend or repeal rules and the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

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### **12:62-1.4 Validity**

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter. To this end, the provisions of this chapter are severable.

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## **SUBCHAPTER 2. PUBLIC WORKS CONTRACTOR REGISTRATION**

### **12:62-2.1 Registration required**

(a) No contractor shall bid on any contract for public work unless the contractor is registered pursuant to the Act. In addition:

1. No contractor shall list a subcontractor, including a contractor/subcontractor who is involved in off-site custom fabrication, as defined in N.J.S.A. 34:11-56.26, in a bid proposal for a public works contract unless the subcontractor as required is registered pursuant to the terms of N.J.S.A. 34:11-56.48 et seq., the Public Works Contractor Registration Act, at the time the bid is submitted to the public entity; and

2. No contractor or subcontractor not listed on the bid proposal shall engage in the performance of any public work project unless the contractor or subcontractor is registered pursuant to the Act.

(b) Any contractor which seeks to register under the Act shall apply to the Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development. For this purpose, the Department shall prepare a "New Jersey Department of Labor and Workforce Development Application for Public Works Contractor Registration." This form shall be available from the Department.

(c) As part of its application to the Department, a contractor shall provide all required information and documents requested by the Application for Public Works Contractor Registration. The information to be submitted for review shall include:

1. The name, principal business address, telephone and fax number as well as any e-mail address of the business;

2. Whether the contractor or subcontractor is a corporation, partnership, sole proprietorship, or other form of a business entity;
3. The name and address of the custodian of records and agent for service of process within the State of New Jersey;
4. The name, addresses of residence, and telephone number of each person with a financial interest in the business and the percentage of interest, except that if the business is a publicly traded corporation, the contractor shall supply the names and addresses of residence of the corporation's officers;
5. The business' Federal Employer Identification Number and State of New Jersey Taxpayer Identification Number;
6. A history of previous and/or current labor law violations and the final dispositions of such violations and any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects;
7. Proof of workers' compensation insurance; and
8. Any other relevant and appropriate information from a particular applicant as determined by the Commissioner.

(d) The contractor shall pay an initial, non-refundable, annual registration fee of \$300.00 to the Commissioner. The non-refundable fee for the second annual registration shall be \$300.00. Upon successful completion of two consecutive years of registration, a contractor may elect to register for a two-year period and pay a non-refundable registration fee of \$500.00. However, a two-year registration will only be granted if the applicant has not violated the Act and/or the Prevailing Wage Act or these rules during the period of licensure preceding submission of the renewal application.

(e) An applicant shall fully and accurately complete all relevant parts of the Application for Public Works Contractor Registration. Failure to provide a complete application shall result in rejection.

(f) An applicant who fails to provide specifically requested additional information or documentation shall be considered not in compliance with the Act and shall be subject to rejection.

(g) If the applicant knowingly supplies incomplete or inaccurate information to the Department in connection with his or her application, he or she shall be disqualified under these rules, barred from reapplying for registration for a period of up to one year from the date of notice of disqualification, and may be subject to other penalties described in N.J.A.C. 12:62-2.3, 2.4 and 2.5.

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## **12:62-2.2 Issuance and term of a certificate of registration**

(a) Upon receipt of the fee, a fully completed form and all documentation required under N.J.A.C. 12:62-2.1, the Commissioner shall issue a certificate of registration to the contractor within 30 days.

(b) An initial certificate of registration shall be valid only for a period of one calendar year from the date of registration.

(c) Registration shall be renewed not less than 30 calendar days prior to the expiration date of the immediately preceding registration. However, renewal shall be predicated upon the contractor not having knowingly or willfully violated the provisions of the Act or of the New Jersey Prevailing Wage Act during the period of licensure preceding the renewal application.

(d) Each contractor shall, after the bid is made and prior to the awarding of the public works contract, submit to the public entity for whom the work is to be performed the certificates of registration for all subcontractors listed in the bid proposal.

(e) A certificate of registration shall not be transferable.

(f) A registered contractor who allows his or her contractor registration certificate to expire prior to attempting to renew same, must subsequently apply for a registration certificate as if for the first time.

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### **12:62-2.3 Disorderly persons offense**

(a) A contractor who commits any of the following acts shall be guilty of a disorderly persons offense:

1. Willfully hindering or delaying the Commissioner in the performance of his or her duties in the enforcement of the Act;
2. Failure to make, keep, and preserve any records as required under the provisions of the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq.;
3. Falsifying any such record, or refusing to make any such record accessible to the Commissioner upon demand;
4. Refusing to furnish a sworn statement of such records or any other information required for the enforcement of the Act to the Commissioner upon demand;
5. Paying or agreeing to pay wages at a rate less than the rate prescribed by the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq.; or
6. Otherwise violating any provision of the Act.

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### **12:62-2.4 Denial, suspension or revocation of registration**

(a) As an alternative to or in addition to sanctions provided in N.J.A.C. 12:62-2.5, a certificate of registration may be denied, suspended or revoked if the registrant or applicant or an officer, partner, director, stockholder, or agent of the applicant or registrant has at any time:

1. Failed to comply with the registration requirement set forth in the Act;
2. Bid for or performed work pursuant to a public works contract without having fully complied with the registration requirement set forth in the Act;
3. Willfully made a misstatement of or omitted revealing a material fact or facts in the application for registration or renewal;
4. Failed to provide all information requested by the Department pursuant to N.J.A.C. 12:62-2.1(c);
5. Contracted for use in the completion of a public work any subcontractor or independent contractor required to register under the Act who is not so registered or has utilized a subcontractor who has subcontracted his or her work to any subcontractor or independent contractor who is not so registered; or
6. Failed to respond to a request to produce records, forms or documents or failed to cooperate or has interfered with a designee of the Commissioner in the course of a departmental investigation.

(b) A certificate of registration may be denied, revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director, stockholder or agent of the applicant or registrant has at any time violated any provision of the Act or of this chapter, and/or any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects or has failed to comply with the labor laws of New Jersey or any other state or Federal labor law or any order of the Commissioner with regard to any matter not referred to in (a) above.

(c) The registration of a contractor shall not be revoked or suspended for a period beyond five years. However, in determining the length of time for which a contractor's registration may be denied, suspended or revoked, the following criteria shall be considered:

1. The record of previous violations by the contractor of the Public Works Contractor Registration Act and/or the New Jersey Prevailing Wage Act and any violations, or pending violations, brought by a governmental entity of criminal or civil statutes and/or regulations which would reflect upon the fitness of the applicant/contractor to bid on or engage in public work projects.
2. Whether the general contractor or subcontractor in question should reasonably have known that a subcontractor with whom he or she is in privity had not registered, pursuant to the Act or had his or her registration revoked or suspended or had let his or her registration lapse;
3. The total number of unregistered subcontractors at the work site(s) in question and the size and scope of public works project(s); and
4. Whether the general contractor or subcontractor in privity to the subcontractor who is not registered pursuant to the Act obeyed the Department's directive to remove the unregistered subcontractor from the work site and thus cure the violation of the Act.

(d) The Commissioner may require as a condition of initial or continued registration that a contractor who has violated either the Act or the Prevailing Wage Act must provide a surety bond payable to the State.

1. The surety bond shall be for the benefit of workers damaged by any failure of a contractor to pay wages or benefits pursuant to or otherwise comply with the provisions of the "New Jersey Prevailing Wage Act," P.L. 1963, c.150, N.J.S.A. 34:11-56.25 et seq., or the Act.
2. The surety bond shall be in the amount and form that the Commissioner deems necessary for the protection of the contractor's workers, but shall not exceed \$10,000 per worker.
3. The surety bond shall be issued by a surety that meets the requirements of N.J.S.A. 2A:44-143.

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### **12:62-2.5 Administrative penalties**

Any or all of the administrative penalties set forth in N.J.A.C. 12:60-8.3 for violations of the "Prevailing Wage Act," N.J.S.A. 34:11-56.25 et seq., may also be imposed by the Commissioner or his or her designee upon a finding that a registrant or applicant or an officer, partner, director, stockholder, or agent of the applicant or registrant has at any time committed any of the acts set forth at N.J.A.C. 12:62-2.4(a).

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### **12:62-2.6 Appeals**

(a) Whenever the Department shall find cause to deny, suspend or revoke a certificate of registration, to require the posting of a surety bond pursuant to N.J.A.C. 12:62-2.4(d), or to impose an administrative penalty pursuant to N.J.A.C. 12:62-2.5, it shall notify the registrant or applicant of the reasons therefor, in writing, and provide opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) All requests for hearing shall be filed within 10 business days from the date of receipt of the notice. The Commissioner or his or her designee shall issue the final decision in accordance with the applicable provisions of the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

1. All requests for hearing shall be in writing and shall be directed to the following address:

NJ Department of Labor and Workforce Development

Division of Wage and Hour Compliance  
PO Box 389  
3rd Floor  
Trenton, NJ 08625-0389

(c) In the absence of a timely request for a hearing, pursuant to (b) above, the determination of the Department shall be deemed the final administrative action in the given matter.

(d) Where the Department has notified a registrant that it has found cause to deny, suspend or revoke its certificate of registration and where, further, that registrant has failed to request a hearing within the 10 day time limit prescribed in (b) above, the registrant shall, within 20 days of having received notice of the denial, revocation or suspension, surrender its certificate of registration by way of certified mail to the address listed at (b)1 above.

(e) Any contractor who has his or her registration denied, suspended or revoked for violations enumerated in this subchapter shall not be permitted to perform work for which a bid has been submitted and which is under review.

(f) Where a hearing with regard to a denial, suspension or revocation of a certificate of registration is requested and where, further, the Commissioner of Labor and Workforce Development ultimately determines that cause has been established to deny, suspend or revoke the certificate of registration, the registrant shall, within 10 days of receipt of the final order of the Commissioner or his or her designee, surrender the certificate of registration, by way of certified mail to the address listed at (b)1 above.

(g) All requests for hearing shall be reviewed by the Division of Wage and Hour Compliance in order to determine whether the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

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## **N.J.A.C. 19:30 ADMINISTRATIVE RULES - NJ ECONOMIC DEVELOPMENT AUTHORITY**

### **SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS**

#### **19:30-4.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Authority financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, administered or provided by the Authority to any entity and is provided before, during or after completion of a project, including but not limited to, all Authority financial assistance received by the entity pursuant to the Business Employment Incentive Program Act, P.L. 1999, c. 26 (*N.J.S.A. 34:1B-124 et seq.*), that enables the entity to engage in a construction contract.

"Construction contract" means any contract, subcontract or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 or undertaken to fulfill any condition of receiving Authority financial assistance and paid for in whole or in part with funds received through Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance unless specifically exempted by *N.J.A.C. 19:30-4.2*.

"Construction project" or "project" means a project that has received final approval from the Authority.

"Contractor" means any party who enters into a construction contract with the project owner/applicant, or any party to whom funds will be disbursed for payment of construction work, including any subcontractor of the contractor.

"Prevailing wage rate" means the prevailing wage rate established by the Commissioner of New Jersey Department of Labor and Workforce Development from time to time in accordance with the provisions of *N.J.S.A. 34:11-56.25 et seq.* for the locality in which the project is located.

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### **19:30-4.2 Payments of prevailing wages in projects receiving assistance**

(a) Not less than the prevailing wage rate shall be paid to workers employed in the performance of any construction contract, including contracts for millwork fabrication, undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1 et seq.*), or undertaken to fulfill any condition of receiving Authority financial assistance, including the performance of any contract to construct, renovate, or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance, unless the work performed under the contract is:

1. Performed on a facility owned by a landlord of the entity receiving the assistance;
2. The landlord is a party to a construction contract(s); and
3. Less than 55 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility.

(b) In accordance with P.L. 2007, c. 245 (*N.J.S.A. 34:1B-5.1*), nothing in this subchapter shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after an entity has executed with the Authority a commitment letter regarding Authority financial assistance and the first payment or other provision of the assistance is received

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### **19:30-4.3 Assurances required**

(a) Recipients of Authority financial assistance for construction contracts shall deliver an NJEDA affirmative action completion certificate to the Authority (or designated agent for the Authority), upon completion of the contract, signed by an authorized representative of the recipient, representing and confirming that:

1. It has complied and has caused its landlord, if applicable, contractors and subcontractors to comply with the requirements of *N.J.A.C. 19:30-4.2*; or
2. It has not entered into any construction contracts subject to the provisions of *N.J.A.C. 19:30-4.2(a)* and its landlord has not entered in any contracts pursuant to *N.J.A.C. 19:30-4.2(a)*.

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### **19:30-4.4 Contract provisions required**

(a) All construction contracts in the amount of \$2,000 or more shall require that:

1. Prime contractors maintain and submit certified payroll records to the Authority; or
2. Contractors and subcontractors:
  - i. Permit the Authority, or its designated agent, complete access to payroll records and other

records for purposes of determining compliance with the provisions of this subchapter; and

ii. Keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract and to preserve such records for two years from the date of payment.

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### **19:30-4.5 Violation**

A violation of the provisions of this subchapter shall be deemed a violation of *N.J.S.A. 34:11-56.25* et seq. and *N.J.A.C. 12:60-5.1*, and the Internal Process Management unit in the EDA shall refer the determination of violation proceeding to the Authority unit that administers the Authority financial assistance to determine if the commitment to, or offer of, Authority financial assistance should be withdrawn, terminated and/or repaid.

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### **19:30-4.6 Reserved**

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## **N.J.A.C. 12:66 BY SUBCHAPTER - PREVAILING WAGES AND SAFETY TRAINING FOR CONSTRUCTION WORK ON PUBLIC UTILITIES SUBCHAPTER 1. GENERAL PROVISIONS**

### **12:66-1.1 Purpose**

(a) The purpose of this chapter is to establish prevailing wage levels for workers employed by any contractor engaged in construction work on a public utility.

(b) This chapter also establishes that any contractor referred to in (a) above shall employ, on the site, only individuals who have successfully completed any Occupational Safety and Health Act (OSHA)-certified safety training required for work to be performed on that site.

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### **12:66-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means P.L. 2007, c. 343 and the rules promulgated in accordance therewith, that is this chapter.

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development or his or her duly authorized designee.

"Construction work on a public utility" means, in connection with the construction of any public utility in the State of New Jersey, construction, reconstruction, installation, demolition, restoration and alteration of facilities of the public utility. "Construction work on a public utility" shall not be construed to include operational work, including the work of flaggers, snow plowing, vegetation management in and around utility rights of way, mark outs, janitorial services, landscaping, the work of leak surveyors, meter work and miscellaneous repairs customarily and historically performed in-house by the employees of the public utility.

"Construction work on a public utility" shall also not be construed to include any construction, reconstruction, installation, demolition, restoration or alteration of facilities on property owned by a private developer, including facilities located off-site pursuant to a subdivision or site plan approval received by a private developer, notwithstanding that ownership of the facilities being constructed, reconstructed, installed, demolished, restored or altered on the property owned by the private developer will ultimately be transferred to a public utility or a public body.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation

or other legal business entity or successor thereof, that enters into a contract with a public utility to engage in construction work on a public utility and includes any subcontractor or lower-tier subcontractor of a contractor, as defined in this section.

"Department" means the Department of Labor and Workforce Development.

"Payroll record" means a form satisfactory to the Commissioner, wherein is shown worker information, such as name, address, social security number and job classification, together with actual hourly rate of pay, actual daily, overtime and weekly hours worked in each job classification, gross pay, itemized deductions and net pay paid to the worker; such record shall also include:

1. Any fringe benefits paid to approved plans, funds or programs on behalf of the worker; and
2. Fringe benefits paid in cash to the worker.

"Public utility" means autobuses; bridge companies; canal companies; electric light, heat and power companies; ferries and steamboats; gas companies; pipeline companies; railroads; sewer companies; steam and water power companies; street railways; telegraph and telephone companies; tunnel companies; and water companies.

"Subcontractor" means any subcontractor or lower-tier subcontractor of a contractor.

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## **SUBCHAPTER 2. CONTRACTOR AND PUBLIC UTILITY RESPONSIBILITIES**

### **12:66-2.1 Contract provisions**

(a) The contractor and the public utility shall ensure that each contract entered into between a contractor and a public utility for construction work on a public utility shall contain the following provisions:

1. A provision setting forth the prevailing wages that are applicable to the workers employed in the performance of the contract;
2. A provision stating that the workers employed in the performance of the contract shall be paid not less than the applicable prevailing wages, as set forth in the contract; and
3. A provision stating that the contractor will employ on the work-site(s) only individuals who have successfully completed all OSHA-certified safety training, if any, required by either the Federal Occupational Safety and Health Administration, the public utility or the contractor, as a prerequisite for the particular work to be performed on the given work-site(s).

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### **12:66-2.2 Multiple classes of work**

(a) Where, during a given workweek, a worker performs work in multiple job classifications and two or more prevailing wages are applicable to the separate classes of work performed, the contractor must pay the worker the highest of such prevailing wages for all hours worked in the workweek, unless the contractor's records clearly delineate which hours of work for the given worker in the given workweek were spent engaged in each separate class of work.

(b) Where a worker is employed for a portion of a given workweek in work not subject to the Act, which work would otherwise be compensated at a rate lower than the prevailing wage to which a worker is entitled for covered work performed during the workweek, the contractor must pay the worker the higher prevailing wage for all work performed during the workweek, including work not subject to the Act, unless the contractor's records clearly delineate which hours of work for the given worker in the given workweek were spent engaged in covered work and which hours were spent engaged in work not subject to the Act.

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### **12:66-2.3 Collective bargaining rights**

Where a collective bargaining agreement has established a higher rate of compensation than the applicable prevailing wage, the affected worker or workers shall receive the higher rate of compensation set forth in the collective bargaining agreement.

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### **12:66-2.4 Records**

(a) Each contractor shall keep an accurate payroll record for each worker performing construction work on a public utility.

(b) Each contractor shall preserve the records maintained under (a) above for a period of two years from the date of payment of the wages.

(c) The records maintained under (a) above shall be open at all reasonable hours to inspection by the Commissioner.

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## **SUBCHAPTER 3. INSPECTIONS**

### **12:66-3.1 Right to enter and inspect**

(a) The Commissioner shall have the authority to:

1. Inspect and copy books, registers, payrolls or other records that relate to or affect wages, hours and other conditions of work for workers who perform construction work on a public utility;

2. Question privately, any employee or managerial executive of the contractor, including workers who perform construction work on a public utility, to determine whether they are aware of violations of the Act; and

3. Require contractors to submit written statements, including sworn statements, concerning wages, hours, names, addresses and other information pertaining to the contractor's workers and their work as the Commissioner may deem necessary or appropriate.

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## **SUBCHAPTER 4. VIOLATIONS, PENALTIES AND FEES**

### **12:66-4.1 Violations of the Act**

(a) Violations of the Act shall occur when a contractor:

1. Willfully hinders or delays the Commissioner in the performance of his or her duties in the enforcement of the Act;

2. Fails to make, keep and preserve any records as required under the provisions of the Act;

3. Falsifies any such record;

4. Refuses to make any such record accessible to the Commissioner upon demand;

5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of the Act to the Commissioner on demand;

6. Pays or agrees to pay wages at a rate less than the prevailing wage applicable under the Act;

7. Requests, demands or receives, either for himself, herself or any other person, either before or after a worker is employed in the performance of construction work on a public utility at a specified rate of wages that such worker forego, pay back, return, donate, contribute or give

any part, or all, of his or her wages or thing of value to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining employment; or

8. Otherwise violates any provision of the Act or of any order issued under the Act.

(b) A contractor who violates any provision of the Act shall be guilty of a disorderly persons offense and shall, upon conviction therefore:

1. Be fined not less than \$100.00, nor more than \$1,000;
2. Be imprisoned for not less than 10, nor more than 90 days; or
3. Be subject to both the fine and imprisonment.

(c) Each week, in any day of which a worker is paid less than the rate applicable to that worker under the Act and each worker so paid, shall constitute a separate offense.

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## **12:66-4.2 Administrative penalties**

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:66-4.1, when the Commissioner finds that a contractor has violated the Act, the Commissioner may assess and collect administrative penalties in the amounts that follow:

1. First violation--not more than \$2,500.
2. Second violation and subsequent violations--not more than \$5,000.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 working days following the receipt of the notice.

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15-working-day period following receipt of the notice.
2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.
3. All penalties and fees, along with wages due, shall be paid within 30 days of the date of the final order. Failure to pay such wages, fees and/or penalties shall result in a judgment being obtained in a court of competent jurisdiction.
4. All payments shall be made payable to the "Commissioner of Labor and Workforce Development." All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation(s):

1. The seriousness of the violation;
2. The past history of previous violations by the contractor;
3. The good faith of the contractor;
4. The size of the contractor's business; and
5. Any other factors that the Commissioner deems to be appropriate in determining the penalty to be assessed.

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### **12:66-4.3 Administrative fees**

(a) The Commissioner may supervise the payment of amounts due to workers under the Act, and the contractor may be required to make these payments to the Commissioner to be held in a special account in trust for the worker, and paid on order of the Commissioner directly to the worker or workers affected.

(b) The contractor shall pay the Commissioner an administrative fee on all payments due to workers pursuant to the Act.

(c) A schedule of the administrative fees is set forth in Table 4.3(c) below:

Table 4.3(c) Schedule of Administrative Fees

1. First violation--10 percent of the amount of any payment to the Commissioner pursuant to the Act.

2. Second violation--18 percent of the amount of any payment made to the Commissioner pursuant to the Act.

3. Third and subsequent violations--25 percent of the amount of any payment made to the Commissioner pursuant to the Act.

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### **12:66-4.4 Interest**

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When a contractor has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to a worker;

2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the contractor over an extensive period of time; or

3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to a worker shall be calculated at the annual rate as set forth in New Jersey Court Rules, R.4:42-11.

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### **12:66-4.5 Hearings**

(a) No assessment of wages, fees or penalties shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the wages, fees and/or penalties and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice of assessment. All contested cases shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The filing of a request for a hearing regarding wages, fees or penalties shall not preclude the Commissioner from pursuing other remedies under the Act.

(b) All requests for a hearing shall be reviewed by the Office of Wage and Hour Compliance to determine if the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached or if the review indicates that no settlement conference is warranted, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division

of the New Jersey Superior Court.

(e) If the contractor, or a designated representative thereof, fails to appear at a requested hearing, the Commissioner may, for good cause shown, reschedule a hearing.

(f) If the Commissioner does not authorize such a rescheduled hearing, then the Commissioner shall issue a final agency determination.

(g) Payment of the wages, fees and/or penalties is due when a final agency determination is issued.

(h) Upon final determination, the wages, fees and penalties may be recovered with costs in a summary proceeding commenced by the Commissioner.

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## **12:66-4.6 Discharge or discrimination against worker making complaint**

(a) A contractor who discharges or in any other manner discriminates against any worker because such worker has made any complaint to the contractor, to the public utility or to the Commissioner that the worker has not been paid wages in accordance with the provisions of the Act or because such worker has caused to be instituted, or is about to cause to be instituted, any proceeding under or related to the Act, or because such worker has testified or is about to testify in any such proceeding, shall be guilty of a disorderly persons offense and shall, upon conviction therefore, be fined not less than \$100.00, nor more than \$1,000.

(b) As an alternative to, or in addition to, any sanction imposed under (a) above, the Commissioner may under P.L. 2007, c. 343 assess and collect administrative penalties as provided for in N.J.A.C. 12:66-4.2.

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## **N.J.A.C. 8:95 NJ HEALTH CARE FACILITIES FINANCING AUTHORITY SUBCHAPTER 1. PAYMENT OF PREVAILING WAGE WHERE AUTHORITY FINANCIAL ASSISTANCE HAS BEEN PROVIDED**

### **8:95-1.1. Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Authority" means the New Jersey Health Care Facilities Financing Authority.

"Construction contract" means any contract, subcontract or agreement, whether written or oral, for construction, reconstruction, renovation, demolition, alteration, repair work, maintenance work related to a project, or construction related to the installation of equipment, undertaken in connection with a project that has received final approval for Authority assistance and paid for in whole or in part with funds received through Authority assistance.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Prevailing wage rate" means the prevailing wage rate established by the Commissioner of the New Jersey Department of Labor and Workforce Development from time to time in accordance with the provisions of *N.J.S.A. 34:11-56.30* for the locality in which the project is located.

"Project" means a project, as defined in *N.J.S.A. 26:21-3*.

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### **8:95-1.2. Payments of prevailing wages in projects receiving assistance**

Recipients of assistance from the Authority for projects, as a condition for receipt of such assistance, shall, in all construction contracts in the amount of \$2,000 or more, require that wages paid to workers employed in the performance of the construction contracts be not less than the prevailing wage rate for such work.

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### **8:95-1.3. Assurances required**

(a) Recipients of assistance for construction contracts shall deliver a certificate to the Authority, upon completion of the project, signed by an authorized representative of the recipient, representing and confirming that:

1. The recipient has complied and has caused its contractors and subcontractors to comply with the requirements of *N.J.A.C. 8:95-1.2*; or
2. The recipient has not entered into any construction contracts subject to the provisions of *N.J.A.C. 8:95-1.2*.

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### **8:95-1.4. Contract provisions required**

(a) Each recipient of assistance from the Authority shall provide in all construction contracts in the amount of \$2,000 or more that:

1. The general contractor shall apply or have each subcontractor apply to the Department for a wage determination for the locality where the project is to be performed and shall specify in the construction contract the rate to be paid for each craft, trade or classification of work to be performed;
2. The general contractor shall become the custodian of all records required by the provisions of this Chapter. Each subcontractor shall provide the general contractor with the records required to be kept by (a)3 below;
3. The general contractor and each subcontractor keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract, file all required reports, and preserve such records for two years from the completion date of the project, in compliance with *N.J.S.A. 34:11-56.25* et seq. and *N.J.A.C. 12:60*; and
4. The general contractor and each subcontractor must permit the Department, its designated agent or other interested parties, including, but not limited to, the Authority or the recipient, complete access to all records required by the provisions of this subchapter for purposes of determining compliance with the provisions of this subchapter.

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### **8:95-1.5. Notification requirement**

The recipient shall notify the Department in writing, prior to the commencement of construction by the general contractor, of the name and business address of the custodian of records where complete payroll records for the project shall be maintained.

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### **8:95-1.6. Violation**

A violation of the provisions of this subchapter shall be deemed a violation of *N.J.S.A. 34:11-56.25* et seq., and *N.J.A.C. 12:60*.

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## **TITLE 12A - COMMERCE, ECONOMIC GROWTH AND TOURISM**

### **CHAPTER 2A - COMMISSION ASSISTANCE PROGRAMS (UEZ AUTHORITY)**

#### **SUBCHAPTER 3. PAYMENT OF PREVAILING WAGES**

##### **12A:2A-3.1 Applicability and scope**

The rules in this subchapter shall apply to workers (and their employers) employed in the performance of any construction contract in excess of \$2,000 undertaken in connection with Commission financial assistance or undertaken to fulfill any condition of receiving Commission financial assistance. However, pursuant to *N.J.S.A. 52:27C-73.1*, this subchapter shall not be construed as requiring the payment of the prevailing wage for construction commencing more than two years after the assistance is received.

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##### **12A:2A-3.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Commission" means the New Jersey Commerce, Economic Growth and Tourism Commission.

"Commission financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance approved, funded, authorized, administered or provided by the Commission to any entity, including, but not limited to, all Commission financial assistance received by the entity pursuant to *N.J.S.A. 34:1B-112* et seq., as amended by P.L. 2004, c.65, or other Commission programs authorized by P.L. 2004, c.65, that enables the recipient to engage in a construction contract.

"Construction contract" means any contract, subcontract or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, custom fabrication, repair work, or maintenance work undertaken in connection with Commission financial assistance or undertaken to fulfill any condition of receiving Commission financial assistance.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Prevailing wage rate" means the applicable prevailing wage rate determined by the Commissioner of the Department from time to time pursuant to the provisions of *N.J.S.A. 34:11-56.25* et seq.

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##### **12A:2A-3.3 Payment of prevailing wages required**

(a) Each recipient of Commission financial assistance, as a condition for receipt of such assistance, shall, in all construction contracts in excess of \$2,000, require that wages paid to workers employed in the performance of such construction contracts be not less than the prevailing wage rate for such work.

(b) Notwithstanding (a) above, payment of the prevailing wage rate shall not be required for construction commencing more than two years after the Commission financial assistance was received.

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##### **12A:2A-3.4 Assurances required**

(a) Upon completion of work required under a construction contract, each recipient of Commission financial assistance shall deliver to the Commission (or its designated agent) a certificate, signed by an authorizing representative of the recipient, representing and

confirming that:

1. The recipient has complied and has caused its contractors and subcontractors to comply with the requirements of *J.A.C. 12A:2A-3.3*; or
2. The recipient has not entered into any construction contracts subject to the provisions of *J.A.C. 12A:2A-3.3*.

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### **12A:2A-3.5 Contract provisions required**

(a) For construction contracts in excess of \$2,000, each recipient of Commission financial assistance shall apply or have the general contractor or each subcontractor apply to the Department for a wage determination for the locality where the construction contract is to be performed. The construction contract shall specify the prevailing wage rate to be paid for each craft, trade or classification of work to be performed. In addition, the construction contract shall provide that:

1. The general contractor shall be the custodian of all records required by the provisions of this chapter. Each subcontractor shall provide the general contractor with the records required to be kept by (a)2 below, and the general contractor shall preserve such records for two years from the completion of performance of the construction contract;
2. The general contractor and each subcontractor shall keep accurate records showing, for each employee:
  - i. His or her name, address, and social security number;
  - ii. His or her craft or trade;
  - iii. His or her actual hourly rate of pay;
  - iv. The actual daily, overtime and weekly hours worked in each craft or trade;
  - v. His or her gross pay, itemized deductions and net pay; and
  - vi. Any fringe benefits paid to or on behalf of the employee; and
3. The general contractor and each subcontractor shall permit the Commissioner of the Department, or his or her authorized designee, and other interested parties, including, but not limited to, designated agents of the Commission and the recipient, complete access to employees working on the construction contract and to books, registers, payrolls or other records that relate to or affect wages, hours and other conditions of employment for such employees.

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### **12A:2A-3.6 Violation**

A violation of the provisions of this subchapter shall be deemed a violation of *N.J.S.A. 34:11-56.25* et seq.

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## **CHAPTER 12B (DEPARTMENT OF LABOR CONTRACTOR DEBARMENT CASES) SUBCHAPTER 1. APPLICABILITY**

### **1:12B-1.1 Applicability**

The rules in this chapter shall apply to contractor debarment cases transmitted by the Department of Labor pursuant to *N.J.S.A. 34:11-56.37*. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in *N.J.A.C. 1:1*. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

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## **SUBCHAPTERS 2 THROUGH 7. (RESERVED)**

### **SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW**

#### **1:12B-8.1 Agency filing with the Office of Administrative Law; settlement efforts**

(a) Upon receipt of an appeal of a debarment notice, the agency shall either immediately notify the Clerk of the Office of Administrative Law or, if the agency determines to retain the case under the provisions of N.J.S.A. 52:14F-8, notify all parties of the decision to retain. If the agency intends to transmit the case to the Office of Administrative Law, it shall forward to the Clerk, by facsimile transmission, two copies of the transmittal form, debarment notice and appeal.

(b) Pending the commencement of the hearing, the agency may attempt settlement. However, the agency shall either transmit the contested case to the Office of Administrative Law immediately or commence a hearing with the timeframe of N.J.A.C. 1:12B-9.1(a).

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### **SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS; INACTIVE LIST**

#### **1:12B-9.1 Scheduling of proceedings**

(a) Upon transmittal of a debarment appeal, a plenary hearing shall be scheduled to commence five days following the appeal filing date as determined by N.J.A.C. 12:60-8.4(a)5.

(b) The individual appealing the debarment may waive the right to a hearing scheduled pursuant to (a) above and may proceed with an accelerated proceeding pursuant to N.J.A.C. 1:1-9.4, provided, however, that the individual shall be debarred by the Department of Labor pending issuance of a final decision.

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#### **1:12B-9.2 Adjournments**

Adjournments may be granted for extraordinary circumstances, provided, however, that if the adjournment is granted at the request of the individual appealing the debarment, the individual shall be debarred by the Department of Labor pending issuance of a final decision. The individual may apply to the Commissioner of the Department of Labor for a stay of the debarment pursuant to the emergency relief procedures set forth in N.J.A.C. 1:1-12.6.

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### **SUBCHAPTER 10. DISCOVERY**

#### **1:12B-10.1 Discovery**

(a) The individual appealing the debarment shall be permitted to review the agency's entire file or files on the matter. Copies of any document in the file or files shall be provided to the individual upon the individual's request and for a reasonable copying charge as provided by N.J.S.A. 47:1A-2. The agency may refuse to disclose any document subject to a bona fide claim of privilege.

(b) No other discovery shall be provided.

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### **SUBCHAPTER 11. (RESERVED) SUBCHAPTER 12. MOTIONS**

#### **1:12B-12.1 Motions**

Other than motions for summary decision, a party shall not file a motion in advance of the scheduled hearing date.

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## **SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES**

### **1:12B-13.1 Prehearing conferences**

A prehearing conference may be scheduled in any proceeding conducted under this chapter, provided, however, that the time for commencing a hearing pursuant to N.J.A.C. 1:12B-9.1(a) shall not be extended.

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## **SUBCHAPTER 14. CONDUCT OF CASES**

### **1:12B-14.1 Conduct of hearing**

Unless permitted by the judge, there shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other post-hearing submissions permitted after the final argument. If permitted, post-hearing submissions shall not extend the deadline for initial decision.

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## **SUBCHAPTERS 15 THROUGH 17. (RESERVED)**

## **SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS**

### **1:12B-18.1 Initial decision**

(a) An initial decision shall be issued in writing no later than 10 days from the conclusion of the hearing.

(b) The initial decision shall include a caption; date record closed; appearances by the parties and representatives, if any; a brief statement of the case; a brief summary of findings of fact and conclusions of law and reasons therefor; and appropriate remedies.

(c) The initial decision shall be provided immediately to the agency head and to the parties via facsimile or electronic transmission.

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### **1:12B-18.2 Exceptions; replies**

(a) If a party wishes to take exception to the initial decision, such exceptions must be submitted in writing to the Commissioner of the Department of Labor, the judge, and to all parties. Exceptions must be received by the Department of Labor and the parties within three business days of issuance of the initial decision.

(b) Replies or cross-exceptions must be received by the Department of Labor within one day of receipt of exceptions.

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### **1:12B-18.3 Final decision**

The Commissioner of the Department of Labor shall issue a final decision which shall adopt, reject or modify the initial decision no later than five days from the date of receipt of the initial decision.

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### **1:12B-18.4 Extensions of time limits**

Time limits for filing an initial decision, exceptions, and for issuing a final decision shall not be extended.

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