

Debarment from list of subcontractors performing public work projects was appropriate given undisputed failure to pay prevailing wages on four projects. Department of Labor v. Bob Jones Electrical, 95 N.J.A.R.2d (LBR) 21.

Debarment from list of contractors performing public works was required for failure to pay prevailing wages to employees performing work on prison wastewater treatment plant. Department of Labor v. V.S.P., Inc., 95 N.J.A.R.2d (LBR) 18.

Roofing company debarred; failure to pay overtime. Grove Roofing, Inc. v. Department of Labor, 94 N.J.A.R.2d (LBR) 18.

Contracting company debarred; failure to pay prevailing wages. Department of Labor v. Bob Jones Electrical Contracting Co., Inc., 94 N.J.A.R.2d (LBR) 10.

**12:60-8.4 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.

Amended by R.1996 d.113, effective February 20, 1996.  
See: 27 N.J.R. 4495(a), 28 N.J.R. 1221(a).

Shortened the time for appeal from 25 to 15 days.

**12:60-8.5 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.

**SUBCHAPTER 9. VIOLATIONS, PENALTIES, AND FEES****12:60-9.1 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.

**12:60-9.2 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:
  - i. 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
8. 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.

### 12:60-9.3 Administrative penalties

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:60-9.2, 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 \$250.00.
2. Second and subsequent violations—not less than \$25.00 nor more than \$500.00.

(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, 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.

(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.

### 12:60-9.4 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 9.4(c) below:

Table 9.4(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.

### 12:60-9.5 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. 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 Office 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.

Amended by R.1996 d.113, effective February 20, 1996.  
See: 27 N.J.R. 4495(a), 28 N.J.R. 1221(a).

**12:60-9.6 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. 12:60-9.3.

**APPENDIX A**

**FORM TO FACILITATE THE SUBMISSION  
OF PAYROLL RECORDS**

Editor's Note: N.J.A.C. 12:60, Appendix A, is not reproduced in the New Jersey Administrative Code. A copy may be obtained by contacting the Office of Administrative Law, CN 049, Trenton, New Jersey 08625, or the Department of Labor, Division of Workplace Standards.

New Rule, R.1992 d.94, effective February 18, 1992.  
See: 23 N.J.R. 2945(a), 24 N.J.R. 622(b).