

Bill S989

Session 2020 - 2021



CHAPTER 68

AN ACT concerning prevailing wages and benefits of certain airport and train station workers and amending and supplementing P.L.2005, c.379.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2005, c.379 (C.34:11-56.58) is amended to read as follows:

C.34:11-56.58 Prevailing wage levels for certain employees.

1. a. It is declared to be the public policy of this State to establish prevailing wage levels for the employees of contractors and subcontractors furnishing building services for any property or premises owned or leased by the State in order to safeguard the efficiency and general well-being of those employees and to protect them and their employers from the effects of serious and unfair competition based on low wage levels which are detrimental to efficiency and well-being.

b. It is further declared that:

In 2018, over 30 million passengers traveled through Newark Liberty International Airport, making this airport, combined with the Newark Liberty International Airport Train Station, one of the busiest transit hubs in the country.

The workers at the airport and train station often cannot afford employer-provided healthcare plans, and unaffordable healthcare expenses is one of the sources of the high rates of turnover for the workers in the airport and train station.

Improved retention rates of workers in the airport and train station is an investment in service and safety for all who pass through the airport and train station and compensating these workers so that they can afford healthcare and receive a prevailing wage is a way to increase retention.

2. Section 2 of P.L.2005, c.379 (C.34:11-56.59) is amended to read as follows:

C.34:11-56.59 Definitions relative to prevailing wage levels for certain employees.

2. As used in this act:

"Commissioner" means the Commissioner of Labor and Workforce Development or the commissioner's duly authorized representatives.

"Building services" means any cleaning or building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling, or other work in connection with the care, securing, or maintenance of an existing building, except that "building services" shall not include any maintenance work or other public work for which a contractor is required to pay the "prevailing wage" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

"Leased by the State" means that not less than 55% of the property or premises is leased by the State, provided that the portion of the property or premises that is leased by the State measures more than 20,000 square feet.

"Prevailing wage for building services and covered airport or related location workers" means the wage and benefit rates designated by the commissioner based on the determinations made by the General Services Administration pursuant to the federal McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. s.6701 et seq.), for the appropriate localities and classifications of building service employees; provided, however, that in no event shall the prevailing wage rate applicable to a covered airport or related location worker on and after September 1, 2021 and every year thereafter be less than the following:

(1) any otherwise applicable minimum wage rate established through a policy of the Port Authority of New York and New Jersey; and

(2) an amount of wages or supplements equal to the rate for health and welfare for all occupations, designated by the commissioner based on the determinations made by the federal department of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. s.6701 et seq.) for the geographic region in which the covered airport location is located and in effect on the date of the designation by the commissioner; and

(3) paid leave equal to the paid leave requirements designated by the Commissioner the immediately preceding August 1, based on the determinations made by the General Services Administration pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. s.6701 et seq.).

"The State" means the State of New Jersey and all of its departments, bureaus, boards, commissions, agencies and instrumentalities, including any State institutions of higher education, but does not include political subdivisions.

"State institutions of higher education," means Rutgers, The State University of New Jersey, Rowan University, the New Jersey Institute of Technology, and Montclair State University, and any of the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, but does not include any county college established pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

"Covered airport or related location" means the Newark Liberty International Airport and the Newark Liberty International Airport Train Station.

"Covered airport or related location employer" means:

(1) any person, corporation, limited liability company, or association employing any covered airport or related location worker in an occupation, industry, trade, business or service; or

(2) any person who contracts with a person to perform work related to the preparation or delivery of food for consumption on airplanes departing from a covered airport or related location.

"Covered airport or related location employer" shall not include a public agency.

"Covered airport or related location worker" means:

(1) any person employed to perform work at a covered airport or related location, provided at least half of the employee's time during any workweek is performed at a covered airport and related location; or

(2) any person who performs work related to the preparation or delivery of food for consumption on airplanes departing from a covered airport or related location.

"Covered airport or related location worker" shall not include persons employed in an executive, administrative, or professional capacity as defined in subparagraph 1 of paragraph (a) of section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. s.213 et seq.), persons employed by a public agency.

"Public agency" means:

(1) any department or agency of the State of New Jersey and any political subdivision thereof;

(2) the New Jersey Transit Corporation; and

(3) the Port Authority of New York and New Jersey.

3. Section 4 of P.L.2005, c.379 (C.34:11-56.61) is amended to read as follows:

C.34:11-56.61 Record of employee wages, benefits.

4. Each contractor and subcontractor shall keep an accurate record showing the name, classification, and actual hourly rate of wages and any benefits paid to each worker employed by him to perform building services pursuant to a State contract or subcontract, and shall preserve those records for two years after the date of payment. Each covered airport or related location employer shall keep an accurate record showing the name, classification, and actual hourly rate of wages and any benefits paid to each covered airport or related location employee, and shall preserve those records for two years after the date of payment. Such records shall be open at all reasonable hours to inspection by the Director of the Division of Purchase and Property and the commissioner.

4. Section 5 of P.L.2005, c.379 (C.34:11-56.62) is amended to read as follows:

C.34:11-56.62 Civil action to recover prevailing wage.

5. Any worker paid less than the prevailing wage for building services and covered airport or related location workers to which the worker is entitled by the provisions of this act may recover in a civil action the full amount of the prevailing wage for building services and covered airport or related location workers less any amount actually paid to the worker by the employer together with any costs and reasonable attorney's fees allowed by the court, and an agreement between the worker and the employer to work for less than the prevailing wage for building services and covered airport or related location workers shall not be a defense to the action. The worker shall be entitled to maintain an action for and on behalf of the worker or other workers similarly situated and the worker or workers may designate an agent or representative to maintain such actions for and on behalf of all workers similarly situated. At the request of any worker paid less than the prevailing wage for building services and covered airport or related location workers required under the provisions of this act, the commissioner may take an assignment of the wage claim in trust for the assigning worker or workers and may bring any legal action necessary to collect the claim, and the employer shall be required to pay any costs and such reasonable attorney's fee as are allowed by the court.

5. Section 6 of P.L.2005, c.379 (C.34:11-56.63) is amended to read as follows:

C.34:11-56.63 Authority of commissioner.

6. The commissioner shall have the authority to:

a. investigate and ascertain the wages of any employees of a contractor or subcontractor furnishing building services for any property or premises owned or leased by the State, or of any covered airport or related location workers;

b. enter and inspect the place of business or employment of any contractor or subcontractor furnishing building services for any property or premises owned or leased by the State, or of any covered airport or related location employer for the purpose of examining and inspecting any or all books, registers, payrolls, and other records of any such contractor or subcontractor, or of any covered airport or related location employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any employees of such contractor or subcontractor, or of any covered airport or related location workers; copy any or all of such books, registers, payrolls, and other records as the commissioner may deem necessary or appropriate; and question the employees of such contractor or subcontractor or any covered airport or related location workers for the purpose of ascertaining whether the provisions of this act have been and are being complied with;

c. require from such contractor or subcontractor, or covered airport or related location employer, full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and other information pertaining to the contractor or subcontractor's workers, or covered airport or related location workers, and their employment as the commissioner may deem necessary or appropriate; and

d. require any contractor or subcontractor, or covered airport or related location 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 contractor or subcontractor fails to provide the requested records within 10 days, the State Treasurer may immediately withhold from payment to the employer up to 25% of the amount, not to exceed \$100,000, to be paid to the employer under the terms of the contract pursuant to which the building services work is being performed. The amount withheld shall be immediately released upon receipt by the State Treasurer of a notice from the commissioner indicating that the request for records has been satisfied.

6. Section 7 of P.L.2005, c.379 (C.34:11-56.64) is amended to read as follows:

C.34:11-56.64 Violations; fines, penalties.

7. Any contractor or subcontractor, or covered airport or related location employer, who willfully hinders or delays the commissioner in the performance of the commissioner's 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 that worker under this act and each worker so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, if the commissioner finds that a contractor or subcontractor, or covered airport or related location employer, has violated the 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 contractor or subcontractor, or covered airport or related location employer, the seriousness of the violation, the good faith of the contractor or subcontractor, or covered airport or related location employer, and the size of the contractor's or subcontractor's, or covered airport or related location employer's, business. No administrative penalty shall be levied pursuant to this section unless the commissioner 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 the commissioner's 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 shall be 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.

7. Section 8 of P.L.2005, c.379 (C.34:11-56.65) is amended to read as follows:

C.34:11-56.65 Alternative, additional sanctions, penalties.

8. 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 contractor or subcontractor, or covered airport or related location 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 contractor or subcontractor, or covered airport or related location 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 and Workforce Development.

8. Section 9 of P.L.2005, c.379 (C.34:11-56.66) is amended to read as follows:

C.34:11-56.66 Retaliation against complaining worker; offense, other sanctions, fines, penalties.

9. Any contractor or subcontractor, or covered airport or related location employer, who discharges or in any other manner discriminates against any worker because the worker has made any complaint to the worker's employer, to the State Treasurer or to the commissioner that the worker 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 this act, if the commissioner finds that a contractor or subcontractor, or a covered airport or related location employer, has violated the 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 contractor or subcontractor, or covered airport or related location employer, the seriousness of the violation, the good faith of the contractor or subcontractor, or covered airport or related location employer, and the size of the contractor's or subcontractor's, or covered airport or related location employer's, business. No administrative penalty shall be levied pursuant to this section unless the commissioner 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 the commissioner's 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 shall be 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.34:11-56.70a Covered airport, related location workers paid prevailing rate.

9. Not earlier than September 1, 2021, every covered airport or related location employer shall pay a covered airport or related location worker a wage of not less than the prevailing wage rate applicable to that covered airport or related location worker. Nothing in this article shall alter or limit any employer's obligation to pay any otherwise applicable prevailing wage under the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) or the prevailing wage levels for the employees of contractors and subcontractors furnishing building services established under P.L.2005, c.379 (C.34:11-56.58 et seq.).

C.34:11-56.70b Designation of supplemental benefits rate, paid leave requirements.

10. On August 1, 2021 and each August 1 thereafter, the commissioner shall designate the supplemental benefits rate and paid leave requirements required under the determinations made by the General Services Administration pursuant to the federal McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. s.6701 et seq.). The commissioner shall publicly post the designated supplemental benefits rates and paid leave requirements.

C.34:11-56.70c Rules, regulations.

11. The commissioner, in consultation with the Department of Transportation and the Attorney General, shall promulgate rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), within six months of the date of enactment of this act, to implement the provisions of this act.

12. This act shall take effect immediately.

Approved April 29, 2021.

