

CHAPTER 60

PREVAILING WAGES FOR PUBLIC WORKS

Authority

N.J.S.A. 34:11-56.25 et seq.

Source and Effective Date

R.2004 d.54, effective February 2, 2004.
See: 35 N.J.R. 1041(a), 36 N.J.R. 667(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 60, Prevailing Wages for Public Works, expires on August 1, 2009. See: 41 N.J.R. 1157(a).

Chapter Historical Note

Chapter 60, Prevailing Wage Rate Determinations, was adopted and became effective prior to September 1, 1969. Subsequent prevailing wage rate determinations for construction workers on public works projects were filed, but not reproduced in Chapter 60. Those filings were: R.1973 d.61, filed March 7, 1973. See: 5 N.J.R. 114(b). R.1973 d.330, filed November 26, 1973. See: 6 N.J.R. 16(b). R.1974 d.223, filed August 14, 1974. See: 6 N.J.R. 352(a). R.1975 d.323, filed October 28, 1975. See: 7 N.J.R. 569(b). R.1976 d.301, filed September 23, 1976. See: 8 N.J.R. 517(b). R.1977 d.383, filed October 11, 1977. See: 9 N.J.R. 537(a). R.1978 d.377, filed October 24, 1978. See: 10 N.J.R. 553(c). R.1979 d.370, filed September 19, 1979. See: 11 N.J.R. 561(a). R.1980 d.410, filed September 24, 1980. See: 12 N.J.R. 666(b).

Chapter 60, Prevailing Wages for Public Works (Subchapters 1 through 5), was adopted as R.1988 d.113, effective March 21, 1988. See: 19 N.J.R. 345(b), 20 N.J.R. 664(a). Subchapter 6, Inspection of Records, was adopted as R.1988 d.398, effective August 15, 1988. See: 20 N.J.R. 1164(a), 20 N.J.R. 2064(a). Subchapter 7, Criteria for Determining Apprentice to Journeyman Ratio, was adopted as R.1988 d.399, effective August 15, 1988. See: 20 N.J.R. 1164(b), 20 N.J.R. 2064(b). Subchapter 8, Debarment from Contracting, was adopted as R.1989 d.23, effective January 3, 1989. See: 20 N.J.R. 2520(a), 21 N.J.R. 21(b). Subchapter 9, Violations, Penalties, and Fees, was adopted as R.1991 d.611, effective December 16, 1991. See: 23 N.J.R. 2945(b), 23 N.J.R. 3812(a).

Pursuant to Executive Order No. 66(1978), Chapter 60, Prevailing Wages for Public Works, was readopted as R.1993 d.164, effective March 19, 1993. See: 25 N.J.R. 453(a), 25 N.J.R. 1771(a).

Pursuant to Executive Order No. 66(1978), Chapter 60, Prevailing Wages for Public Works, was readopted as R.1998 d.182, effective March 16, 1998. See: 30 N.J.R. 17(a), 30 N.J.R. 1292(a).

Subchapter 2A, Application of the Prevailing Wage Act to Off-site Activities, was adopted as new rules by R.2002 d.380, effective November 18, 2002. See: 34 N.J.R. 2254(a), 34 N.J.R. 2549(b), 34 N.J.R. 3967(a).

Chapter 60, Prevailing Wages for Public Works, expired on September 12, 2003.

Chapter 60, Prevailing Wages for Public Works, was adopted as new rules by R.2004 d.54, effective February 2, 2004. As a part of R.2004 d.54, Subchapter 3, Categories of Crafts, Trades or Classes of Workmen was repealed effective February 2, 2004 and existing Subchapters 4 through 8 were recodified as 3 through 9. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:60-1.1 Title and citation
- 12:60-1.2 Authority
- 12:60-1.3 Purpose
- 12:60-1.4 Scope
- 12:60-1.5 Documents referred to by reference
- 12:60-1.6 Validity

SUBCHAPTER 2. DEFINITIONS

- 12:60-2.1 Definitions

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

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

- 12:60-3.1 Scope of subchapter
- 12:60-3.2 Criteria for establishment

SUBCHAPTER 4. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

- 12:60-4.1 Documents referred to by reference
- 12:60-4.2 Availability of documents for inspection
- 12:60-4.3 Availability of documents from issuing organization

SUBCHAPTER 5. INSPECTION OF RECORDS

- 12:60-5.1 Inspections

SUBCHAPTER 6. CRITERIA FOR DETERMINING APPRENTICE TO JOURNEYMAN RATIO

- 12:60-6.1 Definitions
- 12:60-6.2 Responsibilities of contractors and subcontractors
- 12:60-6.3 Ratio of apprentices to journeymen
- 12:60-6.4 Correction of wage rate

SUBCHAPTER 7. DEBARMENT FROM CONTRACTING

- 12:60-7.1 Purpose and scope
- 12:60-7.2 Definitions
- 12:60-7.3 Conditions of debarment
- 12:60-7.4 Notification of debarment
- 12:60-7.5 Lists

SUBCHAPTER 8. VIOLATIONS, PENALTIES AND FEES

- 12:60-8.1 Purpose; scope
- 12:60-8.2 Violations of the Act
- 12:60-8.3 Administrative penalties
- 12:60-8.4 Administrative fees
- 12:60-8.5 Interest
- 12:60-8.6 Hearings
- 12:60-8.7 Discharge or discrimination against employee making complaint

SUBCHAPTER 9. (RESERVED)

APPENDIX A

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.

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.

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.

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 \$11,892 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.

Amended by R.1998 d.182, effective April 6, 1998.
See: 30 N.J.R. 17(a), 30 N.J.R. 1292(a).

Rewrote (b).
Administrative change.
See: 31 N.J.R. 1617(a).
Administrative change.
See: 36 N.J.R. 3398(c).

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. 12:60-6.

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.

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 Labor, or his 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.

“Division of Workplace Standards” means the Division of Workplace Standards, New Jersey Department of Labor, PO Box 054, Trenton, New Jersey 08625-0054.

“Employer” means any natural person, company, firm, sub-contractor 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.

“N.J.A.C.” means the New Jersey Administrative Code.

“N.J.S.A.” means the New Jersey Statutes Annotated.

“Office of Wage and Hour Compliance” means the Office of Wage and Hour Compliance of the Division of Workplace Standards, New Jersey Department of Labor, PO Box 389, Trenton, N.J. 08625-0389.

“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:

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.

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

Added definitions “Certified payroll record” and “payroll record”; revised “public work”.

Amended by R.2008 d.187, effective July 7, 2008.
See: 39 N.J.R. 2470(a), 40 N.J.R. 4221(b).

Added definition “Custom fabrication”; and in definition “Public work”, inserted “custom fabrication,” twice.

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.

Amended by R.2008 d.187, effective July 7, 2008.
See: 39 N.J.R. 2470(a), 40 N.J.R. 4221(b).

Section was “Off-site manufacturing, custom fabrication, or furnishing of materials, articles, supplies or equipment”. In (a), inserted “, assembly”; added new (b); recodified former (b) through (d) as (c) through (e); in the introductory paragraph of (d)1, substituted “assembly” for “custom fabrication”; and in (d)1ii and (e), substituted “(c)1” for “(b)1”.

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.

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

Amended by R.1998 d.182, effective April 6, 1998.
 See: 30 N.J.R. 17(a), 30 N.J.R. 1292(a).
 In (b), changed the division reference.

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.

12:60-4.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Wage and Hour Compliance between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

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

Amended by R.1998 d.182, effective April 6, 1998.
 See: 30 N.J.R. 17(a), 30 N.J.R. 1292(a).
 Changed the division reference.

12:60-4.3 Availability of documents from issuing organization

(a) 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 at www.nj.gov/labor.

1. Copies available from:

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

Amended by R.1998 d.182, effective April 6, 1998.
 See: 30 N.J.R. 17(a), 30 N.J.R. 1292(a).
 Changed the division reference.

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 A, 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.

Amended by R.1992 d.94, effective February 18, 1992.
See: 23 N.J.R. 2945(a), 24 N.J.R. 622(b).
Added (c).

**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 Division of Vocational Education in the New Jersey Department of Education or by the Bureau of Apprenticeship and Training 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.

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.

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.

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.

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.

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 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.

“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.

Amended by R.2002 d.329, effective October 7, 2002.
See: 34 N.J.R. 2255(a), 34 N.J.R. 3528(a).
Rewrote "Suspension".

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 Office 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.

Amended by R.2002 d.329, effective October 7, 2002.

See: 34 N.J.R. 2255(a), 34 N.J.R. 3528(a).

Rewrote (d) and recodified former (d)1 as (e); added (f) and (g).

Case Notes

No debarment of general contractor where minor violations trigger administrative penalties. *New Jersey Department of Labor v. DeSapio Management, Inc.*, 97 N.J.A.R.2d (LBR) 25.

Violations of Prevailing Wage Act were not significant and did not warrant debarment of contractor from public work projects. *Department of Labor v. Kinder Construction*, 95 N.J.A.R.2d (LBR) 31.

Employee was discharged because he refused to report to work, not because he filed claim for workers' compensation benefits. *Johnson v. Anheuser-Busch*, 95 N.J.A.R.2d (LBR) 23.

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.

12:60-7.4 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.

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.

12:60-7.5 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.

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.

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:
 - 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 thereof:

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.

Case Note

Government contractor underpaid its employees. New Jersey Department of Labor v. Can Tech Services Co., 96 N.J.A.R.2d (LBR) 48.

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, 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.

12:60-8.4 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.

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.

New Rule, R.2001 d.278, effective August 6, 2001.

See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(a).

Former N.J.A.C. 12:60-9.5, Hearings, recodified to N.J.A.C. 12:60-9.6.

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 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).

Recodified from N.J.A.C. 12:60-9.5 by R.2001 d.278, effective August 6, 2001.
See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(a).

Recodified from N.J.A.C. 12:60-9.6 by R.2001 d.278, effective August 6, 2001.
See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(a).

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.

SUBCHAPTER 9. (RESERVED)

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, PO Box 049, Trenton, New Jersey 08625-0049, 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).