

CHAPTER 60

PREVAILING WAGES FOR PUBLIC WORKS

Authority

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

Source and Effective Date

R.2009 d.260, effective July 23, 2009.
See: 41 N.J.R. 1157(a), 41 N.J.R. 3091(c).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 60, Prevailing Wages for Public Works, expires on July 23, 2016. See: 43 N.J.R. 1203(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: 35 N.J.R. 1041(a), 36 N.J.R. 667(a).

Chapter 60, Prevailing Wages for Public Works, was readopted as R.2009 d.260, effective July 23, 2009. See: Source and Effective Date. See, also, section annotations.

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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 \$14,187 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).

Administrative change.

See: 41 N.J.R. 3460(a).

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.

Amended by R.2009 d.260, effective August 17, 2009.

See: 41 N.J.R. 1157(a), 41 N.J.R. 3091(c).

Updated the N.J.A.C. reference.

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 Wage and Hour Compliance” means the Division of Wage and Hour Compliance, New Jersey Department of Labor and Workforce Development, PO Box 389, Trenton, N.J. 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.

“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:

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.

Amended by R.2009 d.260, effective August 17, 2009.

See: 41 N.J.R. 1157(a), 41 N.J.R. 3091(c).

Deleted definitions “Division of Workplace Standards” and “Office of Wage and Hour Compliance” and added definition “Division of Wage and Hour Compliance”.

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 Pre-

vailing 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”.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 572) adopted, which found that the Department of Labor could not assess administrative penalties against a company for allegedly failing to maintain a record of the wages paid in connection with work performed on a new elementary school where the Department failed to present evidence to refute the company’s claim that it was not a contractor or subcontractor, but rather a manufacturer and supplier of non-residential sheet metal ductwork. N.J. Dep’t of Labor & Workforce Dev. v. McGill AirFlow, LLC. OAL Dkt. No. LID 2592-07, 2007 N.J. AGEN LEXIS 862, Final Decision (September 7, 2007 (Issued).

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.

Case Notes

Three-year debarment of a contractor under N.J.A.C. 12:60-7.3 for failure to pay the prevailing wage was proper where it knowingly and intentionally committed violations on three projects within a mere three months of settling another violation, rather than invoking procedures available to it under N.J.A.C. 12:60-3.2 to apply to the Commissioner for designation as a unique trade; the frequency and scale of the violations outweighed any mitigating circumstances set forth by respondents, including their cooperation in producing requested documents (adopting 2006 N.J. AGEN LEXIS 753). N.J. Dep't of Labor & Workforce Dev. v. R.I., Inc., d/b/a Seating Solutions, OAL Dkt. No. LID 5211-06 and LID 5212-06, 2006 N.J. AGEN LEXIS 937, Final Decision (October 13, 2006), aff'd in part, rev'd in part per curiam, No. A-1713-06T3, 2008 N.J. Super. Unpub. LEXIS 1576 (App.Div. August 12, 2008) (upholding debarment of company and its vice-president, but finding there was no evidence to support debarment of corporate president and secretary).

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 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 and Workforce Development at www.nj.gov/labor.

1. Copies available from:

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

The following annotation applies to N.J.A.C. 12:60-4.2 prior to its repeal by R.2009 d.260:

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.

The following annotation applies to N.J.A.C. 12:60-4.2 subsequent to its recodification from 12:60-4.3 by R.2009 d.260:

Recodified from N.J.A.C. 12:60-4.3 and amended by R.2009 d.260, effective August 17, 2009.

See: 41 N.J.R. 1157(a), 41 N.J.R. 3091(c).

In the introductory paragraph of (a) and in the address in (a)1, inserted "and Workforce Development". Former N.J.A.C. 12:60-4.2, Availability of documents for inspection, repealed.

12:60-4.3 (Reserved)

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.

Recodified to N.J.A.C. 12:60-4.2 by R.2009 d.260, effective August 17, 2009.

See: 41 N.J.R. 1157(a), 41 N.J.R. 3091(c).

Section was "Availability of documents from issuing organization".

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.