

CHAPTER 66**PREVAILING WAGES AND SAFETY TRAINING
FOR CONSTRUCTION WORK ON
PUBLIC UTILITIES****Authority**

P.L. 2007, c. 343.

Source and Effective DateR.2010 d.024, effective January 19, 2010.
See: 41 N.J.R. 2765(a), 42 N.J.R. 492(a).**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 66, Prevailing Wages and Safety Training for Construction Work on Public Utilities, expires on January 19, 2017. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 66, Prevailing Wages and Safety Training for Construction Work on Public Utilities, was adopted as new rules by R.2010 d.024, effective January 19, 2010. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**12:66-1.1 Purpose**

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

(b) This chapter also establishes that any contractor referred to in (a) above shall employ, on the site, only individuals who have successfully completed any Occupational

Safety and Health Act (OSHA)-certified safety training required for work to be performed on that site.

12:66-1.2 Definitions

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

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

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

“Construction work on a public utility” means, in connection with the construction of any public utility in the State of New Jersey, construction, reconstruction, installation, demolition, restoration and alteration of facilities of the public utility. “Construction work on a public utility” shall not be construed to include operational work, including the work of flaggers, snow plowing, vegetation management in and around utility rights of way, mark outs, janitorial services, landscaping, the work of leak surveyors, meter work and miscellaneous repairs customarily and historically performed in-house by the employees of the public utility. “Construction work on a public utility” shall also not be construed to include any construction, reconstruction, installation, demolition, restoration or alteration of facilities on property owned by a private developer, including facilities located off-site pursuant to a subdivision or site plan approval received by a private developer, notwithstanding that ownership of the facilities being constructed, reconstructed, installed, demolished, restored or altered on the property owned by the private developer will ultimately be transferred to a public utility or a public body.

“Contractor” means a person, partnership, association, joint stock company, trust, corporation or other legal business entity or successor thereof, that enters into a contract with a public utility to engage in construction work on a public utility and includes any subcontractor or lower-tier subcontractor of a contractor, as defined in this section.

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

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

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

2. Fringe benefits paid in cash to the worker.

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

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

SUBCHAPTER 2. CONTRACTOR AND PUBLIC
UTILITY RESPONSIBILITIES

12:66-2.1 Contract provisions

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

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

12:66-2.2 Multiple classes of work

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

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

of work for the given worker in the given workweek were spent engaged in covered work and which hours were spent engaged in work not subject to the Act.

12:66-2.3 Collective bargaining rights

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

12:66-2.4 Records

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

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

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

SUBCHAPTER 3. INSPECTIONS

12:66-3.1 Right to enter and inspect

(a) The Commissioner shall have the authority to:

1. Inspect and copy books, registers, payrolls or other records that relate to or affect wages, hours and other conditions of work for workers who perform construction work on a public utility;
2. Question privately, any employee or managerial executive of the contractor, including workers who perform construction work on a public utility, to determine whether they are aware of violations of the Act; and
3. Require contractors to submit written statements, including sworn statements, concerning wages, hours, names, addresses and other information pertaining to the contractor’s workers and their work as the Commissioner may deem necessary or appropriate.

SUBCHAPTER 4. VIOLATIONS, PENALTIES AND
FEES

12:66-4.1 Violations of the Act

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

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